1982

Julie M. Child v. Board of Review of the Industrial Commission of Utah : Reply Brief of Appellant

Utah Supreme Court

Julie M. Child; Pro Se;
K. Allan Zabel; Utah Department of Employment Security; Attorney for Respondent;

IN THE SUPREME COURT OF THE STATE OF UTAH

JULIE M. CHILD

Plaintiff-Appellant,

-vs-

THE BOARD OF REVIEW OF THE INDUSTRIAL COMMISSION OF UTAH,

Defendant-Respondent,

Case No. 18169

REPLY BRIEF OF APPELLANT

Appeal from a decision of the Board of Review of the Industrial Commission of Utah finding that Appellant voluntarily left work without good cause.

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INTRODUCTION

This is a review of a decision of the Board of Review of the Industrial Commission of Utah, finding, pursuant to Utah Code Annotated (1953) § 35-4-5(a), that plaintiff voluntarily left work without good cause. Both appellant's and respondent's briefs have been previously filed with the court.

STATEMENT OF FACTS

Appellant outlined the facts in her brief and the respondent agreed with those facts in its brief.

ARGUMENT

POINT I.

DEFENDANT'S POLICY WHICH PROVIDES THAT LEAVING WORK TO ATTEND SCHOOL IS NOT GOOD CAUSE FOR VOLUNTARILY TERMINATING EMPLOYMENT SHOULD NOT BE EXTENDED TO A CLAIMANT WHO LEAVES WORK TO ACCOMPANY A SPOUSE TO ANOTHER AREA IN ORDER FOR THE SPOUSE TO ATTEND SCHOOL.

The defendant, at page 5 of its brief, submits that "The policy of the State that leaving work to attend school is not good cause should be extended to the claimant who leaves work to accompany his/her spouse in order for the spouse to attend school." It is true, as the defendant submits, that voluntarily quitting work to attend school is not good cause. The Court in Townsend v. Board of Review, 493 P.2d 614 (Ut. 1972) explained the rationale for such a determination:

> To assure that only individuals, who are unemployed because of lack of suitable job opportunities, receive benefits, this state requires that one must be available for work. The Employment Security Act was designed to check and ameliorate the effects of unemployment among workers who are able, willing and ready to work. The legislature has deemed a person in attendance at an established school as an individual not available to work ...

The rationale of this case, and the others cited by the defendant in his brief at page 5, is not that quitting itself is disqualifying but rather the fact that a claimant is not available for full-time work. (See Utah Code Annotated (1953) § 35-4-5 (g)).

Therefore, because a person who is enrolled in school is not available for full-time work he is not deemed to be unemployed due to a lack of suitable job opportunities. This reasoning cannot be applied to a claimant who quits to accompany a spouse who attend school in an area which requires a move because that claimant may in fact be available for full-time work and not restricted by a

school schedule. The policy of denying benefits to a person who voluntarily terminates employment to attend school is distinct from the policy for determining whether a claimant terminated his employment for good cause because of compelling external pressures. Stated simply, the defendant's policy of denying benefits to one who voluntarily terminates his employment to attend school can only be applied when the claimant is the one who quit to attend school. As in the case at bar, school is only a factor to be considered in determining whether a claimant's reasons for terminating employment were reasonable and compelling and not the determining factor as the defendant submits. Any other determination would work unjust results.

Defendant states at page 5 of its brief that plaintiff cited no cases which allowed benefits to a claimant who terminated employment to accompany a spouse to a new area where the spouse was attending school. However, at page 10 of her brief plaintiff cited the case of Mountain States Tel. and Tel. Com. v. Dept. of Labor and Employment, 559 P.2d 252 (Col. App. 1976) in which the court affirmed an award of benefits to a claimant who terminated her employment to accompany her husband who was attending college in another state. In that case the claimant took a leave of absence to accompany her husband out of state where he was attending school. The leave was granted without a guarantee of re-employment while a transfer by the employer to the new area was pending. The transfer did not materialize and the claimant obtained other employment which only lasted for 19 weeks. When that employment terminated the claimant filed for unemployment compensation. The commission granted benefits under a special award section of the statute that allowed benefits to a claimant

who separated from her employment in order to fulfill a marital obligation. The issue in that case was whether an employee enjoying a "leave of absence" should be eligible for unemployment compensation. However, in addressing that issue the court affirm the commission's findings that the claimant left her employment under a condition of marital obligation and cited Briggs v. Industrial Commission, 539 P.2d 1303 (Colo. App. 1975). The treatment of the Colorado statute which Briggs interpreted is discussed in Appellant's brief at pages 9 and 10. The reasoning used in Briggs is still viable and plaintiff urges that this court adopt it.

POINT II.

DEFENDANT'S CONTENTION THAT PLAINTIFF'S VOLUNTARY TERMINATION FROM HER EMPLOYMENT WAS NOT CAUSED BY EXTERNAL COMPELLING PRESSURES IS UNFOUNDED AND NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

Defendant submits at page 6 of its brief that personal compelling circumstances for voluntarily terminating employment must be outside of the control of the claimant and her spouse. It is the defendant's contention that if the claimant's unemployment results from a volitional act of her spouse which is not good cause under the Act, good cause cannot be found to exist for the claimant's termination.

It is repugnant to the purpose of the Act to penalize a claimant for circumstances that are not within her control. The defendant must look to the reasonableness of plaintiff's acts and not those of her spouse. Certainly the contrary would not be true. That is, if a non-claimant spouse voluntarily left work under circumstances that would constitute good cause under the Act and the claimant's spouse voluntarily left work to accompany

the spouse to a different area under circumstances that would not constitute good cause under the Act the defendant would not award benefits to the claimant's spouse. This would be true since the non-claimant spouse left work with good cause.

The defendant cites a portion of Bliley Electric Co. v. Unemployment Compensation Board of Review, 158 Pa. Super. 548, 45A 2d 898, 903 (1946), at pages 6 and 7 of its brief, that stands for the proposition that the circumstances in each individual case must be evaluated to determine the strength and effect of the compulsive pressure to determine whether they are relevant and controlling. Yet, the defendant urges the adoption of a holding that would categorically deny benefits to a claimant who quit to accompany a non-claimant spouse in another locality who is attending school. Such a categorical holding ignores the individual factors that must be evaluated in each specific case contrary to the holding in Bliley. Further, defendant cites no authority for its proposition.

POINT III.

DEFENDANT'S CONTENTION THAT CLAIMANT'S ACTS WERE NOT REASONABLE IS UNFOUNDED AND NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

The defendant concedes, as he must, that plaintiff evidenced a genuine attachment to the labor market. However, in its brief at pages 8 and 9, defendant submits that plaintiff's decision to leave work was not reasonable. The defendant states that: "Obviously, alternatives were available to the claimant other than quitting her work on August 14, 1981. Such alternatives could have included a search for work in California during a vacation period or with leave of absence from her Utah employer

prior to her terminating her employment and moving to California." Such a proposition ignores the practical realities of plaintiff's circumstances. Plaintiff and her spouse would be forced to maintain separate residences, and incur exorbitant traveling expense in attempting to locate employment in California. Such a situation would hardly promote the integrity of the family unit.

Realistically, plaintiff had no alternative available to her and in order to preserve the marital relationship she was forced to terminate her employment in Utah and accompany her spouse to California. (See Brief of Appellant, p. 9.)

As outlined in Point II of her brief, plaintiff submits it would be contrary to equity and good conscience to impose a disqualification against her as provided by Utah Code Annotated (1953) § 35-4-5 (a). However, the defendant argues that if the plaintiff is unable to establish that her leaving was for good cause then her actions were unreasonable thereby denying her the equitable relief available in Utah Code Annotated (1953) § 35-4-5 (a). Such an interpretation would deny this equitable relief in every situation where a claimant was not eligible under the statute. That is certainly not the purpose of the statute. Plaintiff submits that the equityand good conscience provision of Utah Code Annotated (1953) § 35-4-5 (a), is to prevent unjust results that would otherwise occur by strictly applying the statute. Such an interpretation is supported by the defendant's own regulations (Utah Department of Employment Security, General Rules of Adjudication at VOLUNTARY LEAVING § 210, as cited in Appellant's brief at pages 12-13.)

Wherefore, plaintiff submits that her actions were reasonable and even assuming arguendo that she had not established good

cause for leaving her employment it would be against equity and good conscience to find that her actions are disqualifying under the Utah Employment Security Act.

POINT IV.

THE RECENT AMENDMENT TO THE ACT PROVIDES NO EVIDENCE THAT THE LEGISLATURE INTENDED TO DENY BENEFITS TO A CLAIMANT WITH RESPECT TO THE QUESTION AND STATUTE HEREIN PRESENTED.

The defendant at pages 10 and 11 of its brief, submits that the recent amendment to Section 5(a) of the Act by the Utah Legislature evidences legislative intent with respect to the question herein provided. It is true that Utah Code Annotated (1953) § 35-4-5(a) was amended to provide that:

> Notwithstanding any other provision of this section, a claimant who has left work voluntarily to accompany, follow, or join his or her spouse to or in a new locality does so without good cause for the purposes of this subsection.

However, this amendment does not establish the intent of the legislature regarding the statute in question in this case, as the defendant contends. In fact, the contrary is true. Had the legislative intent of the statute in question been to exclude a claimant who left work voluntarily to accompany a spouse to a new locality, the amendment would not have been required. Plaintiff submits that the amendment to the statute evidences a previous intent by the legislature under the statute in question to not deny benefits to a claimant who had left work voluntarily to accompany a spouse, provided it was in compelling circumstances Even if it was not the legislature's specific intent to not deny benefits in such a situation their silence must be construed as impliedly requiring the same good cause provisions to be applied as in any other voluntary termination, in fact, no other interpretation is possible. Also, the equity and good conscience

provision of Utah Code Annotated (1953) § 35-4-5(a) is applicable even though good cause does not exist. All the amendment does is specify a specific situation which is not good cause, it does not limit or eliminate the equity and good conscience provision of the statute. That must still be considered.

Further, the defendant conceeds, as it must, that the recent amendment is not applicable in the present case. The amendment was not effective until April 1, 1982.

CONCLUSION

Plaintiff has established that terminating her employment for the personally compelling reason of accompanying her husband who moved out of the state to attend school was for good cause under the Utah Employment Security Act. Defendant's determinatior to the contrary is not supported by substantial evidence and shoul be reversed. In addition, the imposition of a disqualification would be contrary to equity and good conscience. The recent amendment by the legislature evidences a previous intent not to de benefits to a claimant who voluntarily terminated his/her employment to accompany a spouse who is attending school in another locality.

DATED this 6th day of January, 1983.

Respectfully Submitted,

Julie M. Child

Julie M. Child
Pro Se

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the above and foregoing BRIEF OF APPELLANT to K. Allan Zabel, Legal Counsel, Board of Review at the Utah Department of Employment Security, P.O. Box 11249, Salt Lake City, Utah, 84147, via first-class U.S. Mail, postage prepaid this 6th day of January, 1983.

Julie M. Child

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