

1982

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

Utah Supreme Court

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Julie M. Child; Pro Se;

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IN THE SUPREME COURT OF THE STATE OF UTAH

JULIE M. CHILD)

Plaintiff-)
Appellant,)

-vs-)

Case No. 18169)

THE BOARD OF REVIEW OF THE)
INDUSTRIAL COMMISSION OF)
UTAH,)

Defendant-)
Respondent.)

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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FILED

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IN THE SUPREME COURT OF THE STATE OF UTAH

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Plaintiff-)
Appellant,)

-vs-)

Case No. 18169

THE BOARD OF REVIEW OF THE)
INDUSTRIAL COMMISSION OF)
UTAH,)

Defendant-)
Respondent.)

BRIEF OF APPELLANT

NATURE OF THE CASE

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. In making its decision, the Board of Review adopted the findings of fact and conclusions of law of the decision of the Appeals Referee, dated December 1, 1981. (R.0010) The Appeals Referee held that the plaintiff was ineligible for Unemployment Compensation benefits beginning August 16, 1981, and ending when she had earned wages in bona fide covered employment equal to at least six times her weekly benefit amount and is otherwise eligible.

DISPOSITION BELOW

The Industrial Commission of Utah, through its Board of Review, affirmed the previous decisions of the Department of Employment Security and its Appeals Referee.

RELIEF SOUGHT ON APPEAL

Plaintiff requests the Court to reverse the holding of the Board of Review and enter its judgment that defendant's decision was not supported by substantial evidence and that plaintiff is entitled, as a matter of law, to Unemployment Compensation benefits from August 16, 1981, until she is no longer otherwise eligible.

STATEMENT OF FACTS

The facts are clear, simple, and uncontroverted. Plaintiff left her employment with Weber State College in Ogden, Utah, on August 14, 1981. She had been employed there as a secretary for seven months. (R.0026-0027)

The reason plaintiff gave for her termination was that she was moving to Sacramento, California, where her husband began attending law school on August 24, 1981. In order for her to retain her marriage and family relationship it was necessary for her to move with him. Plaintiff's husband was accepted to a school in California and placed on a waiting list at the University of Utah Law School. Plaintiff did not know exactly if, and when, she would need to terminate her employment and move with her husband. The resignation she submitted to Weber State College was contingent upon her being required to leave Utah. Plaintiff did not search for employment prior to her move to California because she was not certain she would be moving there more than one week before her move. (R.0027-0028)

Plaintiff left Utah on August 16, 1981, and arrived in California on August 17, 1981. She immediately started making applications for employment and on September 14, 1981, she was

hired by E.F. Hutton and Company, Inc., as an Administrative Assistant to the Regional Vice President of Consulting Services. Prior to her obtaining employment, plaintiff had made an active job search. The employer's representative did not controvert any of appellant's contentions. (R.0027-0029)

ARGUMENT

POINT I.

DEFENDANT'S DETERMINATION THAT PLAINTIFF LACKED GOOD CAUSE FOR VOLUNTARILY LEAVING HER EMPLOYMENT WAS ARBITRARY, UNREASONABLE, UNSUPPORTED BY SUBSTANTIAL EVIDENCE AND NOT IN COMPLIANCE WITH ITS OWN REGULATIONS OR THE UTAH EMPLOYMENT SECURITY ACT.

The appropriate standard of review in a case such as this is stated in Gocke v. Wiesley, 18 U.2d 245, 420 P.2d 45, (1966):

A reversal of an order of the Industrial Commission denying compensation can only be justified if there is no substantial evidence to sustain the determination and there is proof of facts giving rise to the right of compensation so clear and persuasive that the Commission's refusal to accept it and make an award was clearly capricious, arbitrary, and unreasonable. Citing Kennecott Copper Corp. Employees v. Department of Employment Security, 13 U.2d 262, 372 P.2d 987 (1962).

The Utah Supreme Court has held on more than one occasion that where a decision of the Industrial Commission is unsupported by substantial evidence, a reversal of the order is appropriate. Martinez v. Board of Review, Department of Employment Security, 25 U.2d 131, 477 P.2d 587 (1970); Kennecott Copper Corp. Employees v. Department of Employment Security, supra., Gonzales v. Board of Review, Department of Employment Security, No. 17554 (Ut. September 22, 1981).

In reviewing decisions of the Industrial Commission, the Supreme Court is required to review the record below. Martinez v. Board of Review, Department of Employment Security, supra., Denby v. Board of Review of Industrial Commission, 567 P.2d 626 (Ut. 1977). Furthermore, the Court is not bound by conclusions of the Board of Review and will not substitute missing findings in order to corroborate a decision of the Industrial Commission which is not supported by the record. Gocke v. Wiesley, supra., at 46.

The decisions of the Industrial Commission are not automatically affirmed. The Utah Supreme Court, in Blamires v. Board of Review, Etc., 584 P.2d 889, at 892 (Ut. 1978), held:

The findings of the Board are only final and binding upon us when supported by substantial, competent evidence.
Whitcombe v. Dept. of Emp. Sec. Ind. Comm., 563 P.2d 807 (Ut. 1977).

In the present case, the decision of the Board of Review, denying unemployment benefits to the plaintiff, was not supported by substantial competent evidence and, therefore, must be reversed.

Utah Code Annotated (1953) §35-4-5(a) denies benefits to a claimant who voluntarily leaves work without good cause:

An individual shall be ineligible for benefits or for purposes of establishing a waiting period:

(a) For the week in which the claimant left work voluntarily without good cause, if so found by the commission, and for each week thereafter until the claimant has performed services in bona fide covered employment and earned wages for such services equal to at least six times the claimant's weekly benefit amount; provided, that no claimant shall be ineligible for benefits if the claimant leaves work under circumstances of such a nature that it would be contrary to equity and good conscience to impose a disqualification.

The commission shall in cooperation with the employer consider for the purposes of this act, the reasonableness of the claimant's actions, and the extent to which the actions evidence a genuine continuing attachment to the labor market in reaching a determination of whether the ineligibility of a claimant is contrary to equity and good conscience.

The General Rules of Adjudication of the Utah Department of Employment Security (U.D.E.S.) at VOLUNTARY LEAVING § 210 further define what constitutes "good cause". This section states:

"Good cause" as used in unemployment insurance is cause which would justify an employee's voluntarily leaving work and becoming unemployed; the leaving must be for reasons which would reasonably motivate in a similar situation the average worker to give up employment with its wage rewards to become unemployed. To constitute good cause, the circumstances which compel the decision to leave must be real, not imaginary; substantial, not trifling; and reasonable, not whimsical. There must be some compulsion from outside and necessitous circumstances. The standard of what constitutes good cause is the standard of reasonableness as applied to the average individual and not to supersensitive.

The Utah Supreme Court, in Denby v. Bd. of Review of Indus. Comm., supra., at 630, further defines "good cause". Justice Maughan, in his decision for the Court, stated:

"Good cause" has been defined as "such cause as would similarly affect persons of reasonable and normal sensitivity, and is limited to those instances where the unemployment is caused by external pressures so compelling that a reasonably prudent person, exercising ordinary common sense and prudence, would be justified in quitting under similar circumstances." (Citation omitted) Accord, Mills v. Gronning, 581 P.2d 1334 (Ut. 1978).

Once a voluntary quit is established or admitted, the claimant has the burden of establishing the termination was with good cause. U.D.E.S. General Rules of Adjudication, at VOLUNTARY

LEAVING § 190.01; Denby v. Bd. of Review of Indus. Comm., supra., at 630. Plaintiff has conceded that she terminated her employment with Weber State College (R.0027) and has accepted the burden of establishing her termination was for "good cause."

Plaintiff explained at her telephone hearing the reason she terminated her employment. In response to the Appeals Referee's request for an explanation, she testified: "Ah, my husband was going to attend law school here in California and in order to retain our marriage and our family relationship, it was necessary for me to quit my employment and move with him." (R.0027) The record further substantiates this assertion. (R.0013-0018, 0032-0034, 0040, 0042, 0043, 0044)

The U.D.E.S. General Rules of Adjudication, at VOLUNTARY LEAVING § 50 provides:

As the Act does not specify that good cause for leaving must be attributable to the employer, all circumstances surrounding the separation, personal, or job connected, should be considered in determining whether a disqualification applies. (emphasis added)

Section 155.2 further provides:

When an individual voluntarily leaves a job to move to another locality, the reason for moving must be examined. Moving for a compelling reason such as to accompany a spouse who was transferred to a new job out of the area could indicate a good cause for leaving a job.

Compelling personal reasons alone are considered as "good cause" for terminating employment voluntarily under the Utah statute. Defendant's regulations, as cited above, reflect this interpretation and, infact, urge examination of personal circumstances in determining eligibility.

The Appeals Referee's decision, adopted by the Board of Review as their final decision, (R.0010) made the following Findings of Fact, Comments and Conclusion of Law:

FINDINGS OF FACT:

1. Prior to filing a claim for unemployment insurance benefits effective August 16, 1981, the claimant earned \$780 per month working as a secretary for Weber State College from January 26, 1981, to August 14, 1981. Her weekly benefit amount is \$94 for 36 weeks.
2. The claimant voluntarily left her employment to relocate with her husband in Sacramento, California. He had been accepted into law school there. Neither the claimant nor her husband had any definite prospects of employment.
3. The claimant began working for E.F. Hutton as an Administrative Assistant on September 14, 1981, at \$950 per month.

COMMENTS:

Section 35-4-5(a) of the Utah Employment Security Act provides as shown on the attached sheet.

When an individual voluntarily leaves gainful employment to move to another locality, the reasons for moving must be examined. Moving for a compelling reason such as a spouse's being transferred by an employer or who has a guarantee of a new job is considered to be good cause. However, quitting a job for a non-compelling reason such as a desire to relocate to another area to seek work or be close to family is not held to be good cause.

In determining good cause, the Utah Employment Security Act stresses that a spouse must be moving to accept substantial employment. In the present case, the claimant's spouse was moving to attend school and the family was to accompany him. It is therefore held, the claimant voluntarily left work for personal non-compelling reasons and it is not considered good cause in accordance with the Utah Employment Security Act.

CONCLUSION OF LAW:

The Appeals Referee, therefore, finds:

The claimant voluntarily left work without good cause. (R.0023-0024)

The Appeals Referee correctly states that in determining whether a voluntary termination of employment due to a move to another locality is disqualifying the reasons for such a move must be examined. However, his reasoning and application of the law is flawed.

First, the Appeals Referee's premises assume his conclusion. His decision states: "Quitting a job for a non-compelling reason such as a desire to relocate to another area to seek work or be closer to family is not held to be good cause." (R.0023) It is precisely those elements that must be examined to determine whether the termination is compelling. In other words, his decision presupposes that a claimant who terminates his or her employment for a reason other than a transfer of the spouse to new employment or a guarantee of new employment is presumed to be non-compelling.

Second, the Appeals Referee stated that: "In determining good cause, the Utah Employment Security Act stresses that a spouse must be moving to accept substantial employment." (R.0024) This contention is totally unfounded. The Appeals Referee provides no support for his contention and plaintiff is unaware of the existence of any authoritative support. Defendant's own regulations, as cited above, U.D.E.S. General Rules of Adjudication, at VOLUNTARY LEAVING §§ 50, 155.2, provide that all circumstances should be examined when an individual leaves a job to move to another locality. Indeed, these regulations

provide a presumption that a compelling reason such as accompanying a spouse who was transferred to a new job indicates good cause, but does not limit a conclusion only to those facts. Therefore, it is clear the defendant misperceived and misapplied the law.

Plaintiff submits the record supports a finding that her termination was for personal compelling reasons that were neither frivolous nor whimsical. Plaintiff's only option other than terminating her employment would have been to remain in Utah while her husband moved to California and established his permanent residence there. Plaintiff's decision to accompany her husband is based on the long standing tradition of the family relationship. To argue that a reasonable person would abrogate the responsibility of a lawful marriage and family relationship in order to comply with an arbitrary interpretation of a statute by the defendant is repugnant to public policy.

The state has a vested interest in protecting the integrity of the family unit. To apply the interpretation the defendant gives to Utah Code Annotated (1953) §35-4-5(a) would be to ignore the importance, desirability and function of the family unit. It stretches the imagination to believe that a reasonable person in a situation similar to that of the plaintiff would be compelled to make a decision contrary to the one made by the plaintiff.

The Colorado Court of Appeals in Briggs v. Industrial Commission, 539 P.2d 1303 (Colo. App. 1975), at 1304-5, stated that:

First of all, we rule that one who becomes unemployed as the result of leaving employment in order to travel to another place to live with his or her spouse has not "voluntarily" left work. The pressure of family and marital responsibilities

and claimant's capitulation to them transforms what is ostensibly voluntary unemployment into involuntary unemployment. Bliley Electric Co. v. Unemployment Compensation Board of Review, 45 A.2d 898 (Pa. 1946). Indeed, it would be repugnant to public policy, which encourages and promotes the family as a social unit in society, to require that a husband, in certain circumstances, be denied unemployment benefits merely because he chooses to live with his wife.

Although the statute under which Briggs was decided was declared unconstitutional on other bases, the Colorado Court of Appeals later in Mountain States Tel. & Tel. Com. v. Dept. of Labor and Employment, 579 P.2d 65 (Col. App. 1978), held that the rationale of Briggs, as quoted above, remained viable. The court also made reference to Mountain States Tel. & Tel. Com. v. Dept. of Labor and Employment, 559 P.2d 252 (Col. App. 1976) where they affirmed an award of benefits to a wife who left her job to accompany her husband who was attending college in another state.

Mountain States Tel. & Tel. Com. v. Dept. of Labor and Employment, 579 P.2d 65 (Col. App. 1978) was reversed in 592 P.2d 808 (Col. 1979) without reaching the issue of whether a married woman who terminates her employment in order to relocate with her husband is deemed to be unavoidably unemployed within the meaning of a special Colorado statute. Although the statutes used by the Colorado courts are and were different from Utah's statute, plaintiff submits that the reasoning of the Colorado Court of Appeals is consistent with the Utah statute and the construction urged by a liberal interpretation. Johnson v. Board of Review of Industrial Commission, 320 P.2d 315 (Ut. 1958).

Also, in Ayers v. Employment Security Dept., 536 P.2d 610 (Wash. 1975), at 611-12, the Washington Supreme Court stated:

Many factors may enter into the decision of a family as to where they shall live and work. It is often a substantial factor to be considered that it is desirable for numerous

~~employment for~~ keep the family together. If employment for the husband and for the wife are not available in the same area, it is a compelling personal reason, and therefore, good cause, for one of the spouses to leave employment and go to the place of employment of the other spouse in order to keep the family together. The decision of which place of employment should be accepted must not be governed by any arbitrary rule, but should be decided upon a consideration of all relevant factors. It is generally a decision which the spouses should make for themselves, subject to the need to make a reasonable decision.

Wherefore, plaintiff submits that the defendant has misperceived and misapplied the law in her situation and urges the court to apply a construction of Utah Code Annotated (1953), § 35-4-5(a), that promotes the purposes of the Utah Employment Security Act while, at the same time, strengthens and protects the integrity of the family unit. A contrary holding would send a clear signal to the defendant commission that the only compelling reason a spouse may have to terminate his or her employment with good cause is to accompany the other spouse who has been transferred by an employer or who has a guarantee of a new job. Such an inflexible interpretation would vitiate any other compelling reason that would force a person to terminate his or her employment in order to maintain and promote a family relationship. As stated above, the state has a vested interest in protecting the family unit.

POINT II.

DEFENDANT'S DETERMINATION THAT IT WOULD NOT BE CONTRARY TO EQUITY AND GOOD CONSCIENCE TO IMPOSE A DISQUALIFICATION AGAINST PLAINTIFF SHOULD BE REVERSED SINCE IT IS UNSUPPORTED BY SUBSTANTIAL EVIDENCE.

Even assuming arguendo that plaintiff has not established good cause for leaving her employment, it would be contrary to equity and good conscience to find that her actions are dis-

qualifying under the Utah Employment Security Act.¹ The Act provides that:

(N)o claimant shall be ineligible for benefits if the claimant leaves work under circumstances of such a nature that it would be contrary to equity and good conscience to impose a disqualification.

The Commission shall in cooperation with the employer consider for the purposes of this act, the reasonableness of claimant's actions, and the extent to which the actions evidence a genuine continuing attachment to the labor market in reaching a determination of whether the ineligibility of a claimant is contrary to equity and good conscience. U.C.A. Section 35-4-5(a).

This provision is further discussed in the department's regulations U.D.E.S. General Rules of Adjudication at VOLUNTARY LEAVING Section 210 provides that:

If it is determined that "good cause" does not exist, then the surrounding circumstances must be reviewed to determine whether the claimant's actions were such that a disqualification under this section of law would be contrary to equity and good conscience. The statute requires that three factors be considered in making a determination of whether equity and good conscience required the disqualification to be abated:

1. The purposes of the Employment Security Act;
2. The reasonableness of the claimant's actions; and
3. The extent to which the claimant's actions evidence a genuine attachment to the labor market.

¹Plaintiff submitted this argument to the Appeals Referee (R.0035-0037) however, he failed to make any express findings regarding plaintiff's contentions. Plaintiff also alleged the same contentions before the Board of Review (R.0016-0017). By adopting the decision of the Appeals Referee the Board also made no express findings. However, plaintiff submits that the Appeals Referee's decisions impliedly rejects plaintiff's contentions and is subject to review by this court.

Prior to the 1979 amendments to the Employment Security Act, the Utah Supreme Court has held on several occasions that the purpose of the Act was to assist the worker and his family in times when, without fault on his part, he was out of work and to provide stability for the economy by assuring continuity of purchasing power. The 1979 amendments altered that purpose to the extent that although a claimant may be "at fault" in his resulting unemployment, he will not be disqualified from receiving benefits if the actions which led to his unemployment evidence a degree of reasonableness under the circumstances and demonstrate a genuine continuing attachment to the labor market. Any determination involving mitigating circumstances must be made with a sensitive regard for fairness to the parties.

Thus, the statute and defendant's regulations, require three factors that must be considered in making this determination. First, the purposes of the Employment Security Act. The Utah Supreme Court in Singer Sewing Machine Co. v. Industrial Commission, Etc., 134 P.2d 479 (Ut. 1943) at 485, held that the Act's purpose is:

(R)emedial to protect the health, morals, and welfare of the people by providing a cushion against the shock and rigors of unemployment. Being remedial under the police powers and not imposing limitations on basic rights, it should be liberally construed. (emphasis added)

Further, the Employment Security Act is to be liberally construed and administered and the prerogatives of the Commission are necessarily to be exercised in accordance with the social purposes of the Act. Johnson v. Board of Review of Industrial Commission, supra. Also, it has been held in Utah's sister state, Colorado, that the courts in construing the Act should apply the construction which favors the claimant. Allen v. Industrial Commission, 540 P.2d 350 (Colo. 1975).

Since the purpose of the act is remedial to provide a cushion to the shock, and rigors of unemployment and is to impose

no limitation on basic rights, this factor balances in favor of plaintiff in determining whether it would be against equity and good conscience to impose a disqualification.

Second, the reasonableness of plaintiff's actions must be considered. Although plaintiff submitted to the Appeal's Referee her contentions regarding this argument (R.0037) he made no specific findings as to plaintiff's reasonableness, nor did the Board of Review. However, his decision impliedly rejects plaintiff's contentions of reasonableness, and wrongfully so.

As established in Point I, *infra*, plaintiff's termination of her employment was not an act of an unreasonable person. On the contrary, it is not conceivable that a successful marriage could exist with the partners permanently residing in different states. Plaintiff, reasonably realizing this fact, made a deliberate decision which was not whimsical or rash and not unlike that of an other reasonable person similarly situated. Therefore, this factor also balances in favor of the plaintiff.

Third, plaintiff's actions must evidence a genuine attachment to the labor market. The record reflects that plaintiff terminated her employment on August 14, 1981. (R.0026, 0032, 0039, 0042, 0044) She left Utah on August 16, 1981, and arrived in California on August 17, 1981. (R.0027) She registered for work at the employment office on August 19, 1981, (R.0040-0045)² and made an active job search. (R.0032)

²Plaintiff testified that she registered for employment on August 20, 1981 (R.0027), however, her applications are all dated August 19, 1981, the day she actually registered for work.

She became employed on September 14, 1981, as an Administrative Assistant at E.F. Hutton & Co. Inc., where she is presently employed. (R.0028)

These actions clearly evidence that plaintiff was genuinely attached to the labor market. Indeed, she terminated her employment only two days before leaving Utah and registered for work only two days after arriving in California. She became steadily employed exactly one month after she left Utah. Such a diligent effort evidences a genuine attachment to the labor market.

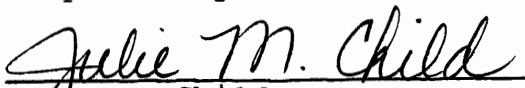
Therefore, the weight of the evidence substantiates that an imposition of a disqualification would be contrary to equity and good conscience and the defendant erred in not so finding.

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 determination to the contrary is not supported by substantial evidence and should be reversed. In addition, the imposition of a disqualification would be contrary to equity and good conscience.


DATED this 15th day of March, 1981.

Respectfully Submitted,


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 15th day of March, 1982.


Julie M. Child