1982

Larry L. Youngberg v. Industrial Commission of Utah et al : Brief of Respondent

Utah Supreme Court

IN THE SUPREME COURT OF THE STATE OF UTAH

LARRY L. YOUNGBERG,

Plaintiff/Appellant,

vs.

Case No. 18238

THE INDUSTRIAL COMMISSION OF UTAH, DEPARTMENT OF EMPLOYMENT SECURITY,

Defendant/Respondent.

RESPONDENT'S BRIEF

Appeal from a decision of the Department of Employment Security, State of Utah, as upheld by the Appeals Referee and the Board of Review of the Industrial Commission, State of Utah

DAVID L. WILKINSON
Attorney General

FLOYD G. ASTIN
K. ALLAN ZABEL
Special Assistants
Attorney General
174 Social Hall Avenue
Salt Lake City, Utah 84147

Attorney for Defendant/Respondent

LARRY L. YOUNGBERG, Pro Se
Box 273
Kamas, Utah 84036

Plaintiff

TABLE OF CONTENTS

CASES CITED

TABLE OF CONTENTS (Continued)

CASES CITED (Continued)

STATUTES CITED

IN THE SUPREME COURT
OF THE STATE OF UTAH

LARRY L. YOUNGBERG,

Plaintiff/Appellant,

vs.

Case No. 18238

THE INDUSTRIAL COMMISSION
OF UTAH, DEPARTMENT OF
EMPLOYMENT SECURITY,

Defendant/Respondent.

RESPONDENT'S BRIEF

STATEMENT OF NATURE OF THE CASE

This is an action before the Supreme Court of the State of Utah pursuant to Section 35-4-10(i), Utah Code Annotated 1953, as amended, for the purpose of judicial review of a decision of the Board of Review of the Industrial Commission of Utah, affirming the decision of an Appeal Referee which denied benefits to the Plaintiff, Larry L. Youngberg, on the grounds the claimant left work voluntarily without good cause.

DISPOSITION BY BOARD OF REVIEW OF THE INDUSTRIAL COMMISSION OF UTAH

Appellant, Larry L. Youngberg (hereafter referred to as claimant), was denied unemployment insurance benefits by a Department Representative pursuant to Section 35-4-5(b)(1), Employment Security Act, Utah Code Annotated 1953, (hereafter referred to as the Act) on the grounds that he was discharged for actions which were deliberate and willful, and adverse to his employer's interests. Timely appeal was made by the claimant to the Appeals Referee of the Department of Employment Security. Subsequent to a hearing held on November 24, 1981, the Appeals Referee modified the determination to deny benefits under Section 35-4-5(b)(1) and denied benefits pursuant to Section 35-4-5(a) of the Act on the grounds that the claimant voluntarily quit work without good cause in a decision dated December 1, 1981. The claimant appealed to the Board of Review of the Industrial Commission of Utah which affirmed the Appeals Referee's decision in Case No. 81-A-4291, 81-BR-413.

RELIEF SOUGHT ON APPEAL

Claimant seeks a reversal of the decision of the Board of Review denying unemployment benefits. Respondent seeks affirmance of such decision.

STATEMENT OF FACTS

The claimant is a forty-three year old male who was employed as a switch-tender/flagman earning $84.75 per day for the Kennecott Minerals Company, hereinafter referred to as the company, from April 20, 1964 to

August 27, 1981. (R. 0034, 0067) On July 2, 1981, the claimant submitted a Request for a Leave of Absence from August 16, 1981 to September 17, 1981. Although the Rail Operations Superintendent, Mr. Bodgen, recommended approval, the Mine Manager, Tom Carlson, disapproved the leave of absence on July 13, 1981, on the grounds that "manpower cannot be spared barring some personal exigency." (R. 0068, 0054, and 0035)

After receiving the disapproval of his leave of absence, the claimant asked Mr. Carlson to reconsider. (R. 0039-0041; 0051)

On July 14, 1981, before reporting to work the claimant purchased a round-trip ticket on Quantas Airlines to Australia and New Zealand. (R. 0050)

After purchasing his tickets, the claimant received notice that same night that his request for reconsideration on his leave of absence had been denied. (R. 0050) He made no further effort to obtain a leave of absence. (R. 0049) During the first part of August the claimant requested two weeks vacation, starting August 15, 1981. (R. 0049) The claimant was paid for his vacation time and left on his vacation trip on August 15, 1981. (R. 0037, 0049, 0052) The company expected the claimant to return to work on August 30, 1981. He did not do so. Following its normal procedures, the company waited 15 days and then sent a separation notice to the claimant on September 15, 1981, which was signed for by the claimant's Mother on October 2, 1981. (R. 0035 0054, 0056, 0057)

The claimant returned home on October 12, 1981, (R. 0052), and contacted the company on October 12 or 13, 1981, to talk about his job. (R. 0036, 0055) He made an appointment with Mr. Carlson on October 15, 1981, to discuss his

job. (R. 0040) Mr. Carlson informed the claimant he would not approve the claimant's returning to work. (R. 0052, 0055)

ARGUMENT

POINT I

IN REVIEWING DETERMINATIONS OF THE INDUSTRIAL COMMISSION UNDER THE UTAH EMPLOYMENT SECURITY ACT THE COURT WILL AFFIRM THE FINDINGS OF THE BOARD OF REVIEW IF SUCH ARE SUSTAINED BY SUBSTANTIAL COMPETENT EVIDENCE.

The standard of review in unemployment insurance cases is well established. Section 35-4-10(i), Utah Code Annotated, 1953, provides in part:

> In any judicial proceedings under this section the findings of the Commission and the Board of Review as to the facts if supported by evidence shall be conclusive and the jurisdiction of said Court shall be confined to questions of law.

This Court has consistently held that where the findings of the Commission and the Board of Review are supported by evidence, they will not be disturbed. Martinez v. Board of Review, 25 U. 2d 131, 477 P. 2d 587 (1970). In analyzing the above-referenced review provision, this Court has stated:

> Under Section 35-4-10(i) the role of this Court is to sustain the determination of the Board of Review unless the record clearly and persuasively proves the action of the Board of Review was arbitrary, capricious, and unreasonable. Specifically, as a matter of law, the determination was wrong; because only the opposite conclusion could be drawn from the facts. Continental Oil Company v. Board of Review of the Industrial Commission of Utah, (Utah, 1977) 568 P. 2d 727, 729.

POINT II

SECTION 35-4-5(a), UTAH CODE ANNOTATED 1953, AS AMENDED, IS INTENDED TO DISQUALIFY FROM THE RECEIPT OF UNEMPLOYMENT BENEFITS THOSE INDIVIDUALS WHO ARE UNEMPLOYED BY REASON OF THEIR OWN FAULT.

Section 35-4-5(a), Utah Code Annotated 1953, as amended, provides in pertinent part:

> 5. 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.

This Court has previously held that the purpose of the Employment Security Act is to assist a worker and his family in times when he is out of work without fault on his part. Kennecott Copper Corporation Employees v. Department of Employment Security, 13 U. 2d 262, 372 P. 2d 987 (1962); and that the

Department is to determine a claimant's eligibility for unemployment compensation by adhering to the volitional test. Olaf Nelson Construction Company v. The Industrial Commission, 121 U. 521, 243 P. 2d 951 (1952); Mills v. Gronning, (Utah, 1978) 581 P. 2d 1334.

However, a claimant voluntarily leaving work with good cause is in fact unemployed without fault. This Court explained the reason for the good cause exception in the following terms:

> What is "good cause" must reflect the underlying purpose of the act to relieve against the distress of involuntary unemployment. The seeming paradox of allowing benefits to an individual whose unemployment is of his own volition disappears when the context of the words is viewed in that light. The legislature contemplated that when an individual voluntarily leaves a job under the pressure of circumstances which may reasonably be viewed as having compelled him to do so, the termination of his employment is involvuntary for the purposes of the act. In statutory contemplation he cannot then reasonably be judged as free to stay at the job . . ." Denby v. Board of Review of the Industrial Commission of Utah, (Utah 1977) 567 P. 2d 626, 630; Krauss v. M. Karagheusian, Inc., 13 N.J. 447, 100 A. 2d 277, 286 (1953).

The Court further explained "good cause" was limited to those instances where the unemployment was caused by external pressures so compelling a reasonably prudent person, exercising ordinary common sense and prudence, would be justified in quitting under similar circumstances, Mills v. Gronning, Supra.

In the instant case the claimant voluntarily quit his employment under circumstances not constituting good cause, as shall be more fully explained in Point III hereof.

POINT III

THE BOARD OF REVIEW AND THE APPEALS REFEREE DID NOT ERR IN FINDING THAT APPELLANT LEFT WORK WITHOUT GOOD CAUSE, AND SUCH DECISION IS SUPPORTED BY COMPETENT, SUBSTANTIAL EVIDENCE.

The thrust of the claimant's argument seems to be that, because company personnel initially agreed that the chances of his getting a leave of absence to vacation in New Zealand and Australia were pretty good in that he had been granted a similar leave of absence to vacation in Europe in 1966, the company was obligated to grant his request for a leave of absence in 1981. (R. 0038 and Petitioner's Brief, page 4, Point I and page 5, Point II)

The claimant seeks to strengthen his claim to a right to a leave of absence on the grounds that other company employees had been granted leaves of absence for various purposes in the past. (R. 0041-0043, 0050 and Petitioner's Brief, page 5, Point III and page 6, Point VII.

In response to Point V on page 5 of Petitioner's Brief, it is noted that after the Department Representative (R. 0065), the Appeals Referee (R. 0030), and the Board of Review (R. 0023) had all unanimously denied the claimant's claim for unemployment insurance benefits, the claimant petitioned the Board of Review to reopen his case and subpoena: 1) the company's records on leave of absence requests (R. 0017); 2) the Magna Smelter records for leave of absences (R. 0018); 3) a transcript of Doug Haun's class schedules and related activities during spring and summer quarters of 1981 from the University of Utah (R. 0019-0020); and, 4) American Oil records of the date

it hired Mr. Haun. (R. 0020) The apparent purpose of these subpoenas was to allow the claimant to engage in a fishing expedition in search of some support for his contention that his leave of absence had been wrongfully denied and he, therefore, had good cause to abandon his job while he vacationed in New Zealand and Australia, and further, that because the company then refused to allow him to return to work the Respondent must grant him unemployment benefits.

In its review of this case, the Court should note that although the claimant made inquiries about obtaining a leave of absence in the Spring of 1981, (R. 0033, 0066), indicated more specifically as in May of 1981 on page 1 of Appellant's Brief, the claimant never formally requested a leave of absence until July 2, 1981. (R. 0068) Although the claimant knew (R. 0049) his request was denied on July 13, 1981, (R. 0068) he went ahead and purchased his airline tickets on July 14. (R. 0050) While it is true the claimant requested the company to reconsider its denial of his request for a leave of absence before he purchased his tickets, he went ahead and purchased his tickets before he had received the company's response, (R. 0051) in spite of the fact that he knew there would be a substantial penalty for cancelling out on the trip. (R. 0049 & 0052) Even though the company acted expeditiously on his request for reconsideration and informed him his request was denied during his night shift of July 14 or 15, 1981, (R. 0050) the claimant made no further effort to resolve the dilemma he had placed himself in. He said nothing further to the company except to request his regular two weeks' vacation. (R. 0049) He made no effort to obtain a refund on his airline tickets. (R. 0052)

Although the claimant's combined leave of absence and vacation time would have totaled only six weeks even if his leave of absence had been granted (R. 0068), the claimant worked his last shift on August 13, 1981 (R. 0035) and his next contact with the company was October 12 or 13, 1981, over eight weeks later, after he returned from his vacation. (R. 0036, 0052)

The company's mining manager, Mr. Carlson, was understandably nonplussed when the claimant came to see him about his job on October 15, 1981. (R. 0040) The claimant knew he was putting his job in jeopardy by taking his unauthorized leave of absence. (R. 0051 and 0045)

Any possible merit in claimant's contention that he had good cause to quit his job because the company should have approved his request for a leave of absence evaporates when he abandoned his job for two weeks beyond what his leave of absence would have been had it been granted. In so saying, Respondent does not acknowledge or agree that claimant would have had good cause for his actions had he come back two weeks earlier. Obviously, an employer may have many reasons for denying a leave of absence to an employee, including workload requirements and staffing needs, which may change from day to day and week to week.

It is sufficient to say that in this case, the claimant has entirely failed to show that his unemployment was caused by external pressures so compelling a reasonably prudent person, exercising ordinary common sense and prudence, would be justified in quitting under similar circumstances. Denby, Supra; Mills v. Gronning, Supra; Stevenson v. Morgan, 17 Or. App. 428, 552 P. 2d 1204, 1206 (1974); Wilton v. Employment Division, 26 Or. App. 549, 553 P. 2d 1071 (1976).

CONCLUSION

The decision of the Board of Review denying benefits to the claimant for voluntarily leaving work without good cause is supported by substantial competent evidence, properly effectuates the purposes of the Act, and should, therefore, affirmed.

Respectfully submitted this _____ day of September, 1982.

DAVID L. WILKINSON
Attorney General of Utah

FLOYD G. ASTIN
K. ALLAN ZABEL
Special Assistants
Attorney General

By _____
Lorin R. Blauer

CERTIFICATE OF MAILING

I do hereby certify that I mailed two copies of the foregoing Respondent's Brief postage prepaid to the following this _____ day of September, 1982: Larry L. Youngberg, Plaintiff, Box 273, Kamas, Utah 84036.

_____