

2006

Arrow Legal Solutions v. Sherryl Angle, Workforce Appeals Board : Petition for Review of Agency Order Granting Unemployment Benefits

Utah Court of Appeals

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Sherryl Angle; Appellee Respondent; Geoffrey T. Landward; Workforce Appeals Board; Appellee Respondent.

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IN THE UTAH COURT OF APPEALS

ARROW LEGAL SOLUTIONS,
Appellant/Petitioner,

vs..

REPLY BRIEF OF PETITIONER

Case No. 20060102

SHERYL ANGLE,
WORKFORCE APPEALS BOARD,

Appellees/Respondents.

PETITION FOR REVIEW OF AGENCY ORDER
GRANTING UNEMPLOYMENT BENEFITS

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MARSHALING OF ALL POTENTIALLY ADVERSE FACTS

1. Respondent, Sheryl Angle [Angle], stated at the hearing that the reason given for being discharged was, “He just said that the situation was too uncomfortable there-some allegations by his parents and his brother, and he didn't feel comfortable with me working there any more.” Agency Record (AR) p. 23:34-38.

2. Instead of continuing to work Angle, “chose the severance.” [Because Angle] didn't feel that it would be tolerable for either [Mr. Lambert or her] to continue there.” AR p. 24:1-4. Angle indicated that June 21, 2005 would be her final day of work. AR p. 25:22-35. Mr. Lambert testified that Angle told him prior to reporting to work for her final day on June 21, 2005 that she was accepting her severance pay. AR p. 31:27-32. In fact Angle has admitted, “After Mr. Lambert fired me in the presence of my attorney, on June 20th, I remained at my attorney's office and discussed with him my options. His recommendation was that I take the severance . . . I went to Mr. Lambert's office the next day having made the decision to take the severance.” AR 52, beginning of 2nd and 3rd paragraphs.

3. After deciding to accept the severance pay rather than work, Angle alleges that the situation at work was tense because on her final day, she was told that: (1) all her communications were to be through employee Ms. Eyring, (2) she was not to answer the phones or speak with clients, and (3) she was not to do any gardening or maintenance work. She further complained that it appeared to her that an employee was scrutinizing

her work. AR p. 24:25-35.

4. Angle further alleges that Mr. Lambert told her that employee Eyring “was worried that [she] was doing something [she] wasn't supposed to be, so he [had] came out. . . .” AR p. 25:5-6.

5. Angle further alleges that the situation at work was tense because she had, “a paternity suit with Mr. Lambert's brother,” that had been going on for 3 years. AR pp. 25:18-20, 27:36-38.

6. Angle further alleges that she chose to accept the severance pay because, “It just was very hostile. [Ms. Eyring] was very curt and rude to me, and Mr. Lambert just, unless he had some direct question that she wanted, wasn't speaking to me . . . Mr. Lambert's family has accused me and my family of some inappropriate activities that have never happened, and I just didn't feel that it was necessary for me to continue to take that kind of abuse.” AR pp. 25:37-43, 26:1-6. Angle acknowledges that she learned of Mr. Lambert's family's accusations against her at the meeting of June 20, 2005 when Mr. Lambert informed her she could continue working until she found another job or she could accept severance pay. AR p. 27:40-43, 28:1-3.

7. Angle further alleges that she chose to accept the severance pay because (after giving her last day's notice) her schedule had been switched, “from the Tuesday/Thursday 9 to 5 to this 2 to 7 Monday, Tuesday, Thursday, and I was not able to cover those shifts.” AR p. 26:12-19.

8. Angle claims she could not adjust her schedule “to cover those shifts” because she had, “. . . family and church obligations.” AR p. 26:21-27.

9. Angle never tried to discuss with Mr. Lambert any problems regarding her work schedule or work duties. AR pp. 27:31-34, 33:40-42. Her complaint against Mr. Lambert was that he, “didn't complain about [her] office work, and comments here and there that you'd like certain things done, but generally it was just extremely cold and [he was] curt.” AR p. 28:20-23 .

10. Mr. Lambert testified that the reason he acted in giving Angle the choice to accept severance or continue working until she found employment was because:

. . . As far as the relation that [Angle] and I had, and how that was affected by the paternity suit . . . [M]y concern was that over the months it appeared that she . . . was antagonistic toward my family and myself. . . [W]hat I noticed in an overall attitude. She . . . was not as friendly as she had been prior to this problem. She . . . was coming to work . . . very . . . down not upbeat. . . I viewed that [Angle] was developing an attitude . . . [S]he was starting to dictate when she would work, and when she wouldn't. And that doesn't work when you have an office of part-time employees where everybody has different concerns and different needs . . . I would have allowed a great amount of leeway . . . as long as I knew that she was diligently pursuing-getting another job. I did not put any limitations on how long she could stay and, again as a part-time employee, I thought that was a very doable situation . . . [S]he never talked to me about Exhibit I 7, and the instruction was not that she couldn't come talk to me, it's that I was trying to change things in my office, and I was detecting not only resistance from her, but . . . resistance from some of the other employees. There were communication problems that were occurring where I had employees telling me that they told [Angle] one thing, and then [Angle] telling me that she was told another thing, and I wanted all the lines of communication to go through my administrator to avoid a mis communication of what people were being instructed, and the other thing that we wanted to make clear, as far as what I had decided . . . that we wanted [Angle] to only do the job that she was hired to do . . . without being distracted by answering phones and addressing clients . . . [Angle] was also spending time on the phone and taking care

of what we thought was a part-time job of hers, and that was working for Creekside . . . [also] I felt that I could, instead of paying [Angle] \$20 an hour to do the gardening, I could have my kids . . . and other people doing gardening for \$6, and, you know, \$7 an hour. AR pp. 29:15-43, 30:1-37.

8. The parties stipulated that the allegedly false allegations, brought to Angle's attention of June 20, 2005, asserted by Mr. Lambert's family against Angle, were irrelevant to the proceedings. Angle specifically said, "I don't really think that that's relevant." AR p. 31:34-43, 32:1-16.

9. When asked about her willingness to do other work by increasing the hours of her other part time job instead of accepting unemployment benefits Angle said, ". . . Shelly does the work and the people that she hires, you know, to mow the lawn and things like that—**that's not really a productive use of my time. . .**" AR p. 33:30-31.

ARGUMENT

I. A Marshaling of All The Potentially Adverse Evidence Does Not Inure To Angle's Benefit to Show Good Cause.

As previously stated in, *Granite School Dist. v. Berry*, 606 P.2d 1209,1213 (1980), the Utah Supreme Court held: "A claimant is ineligible for unemployment compensation when [she] voluntarily leaves [her] employment without good cause and remains ineligible for benefits so long as [she] continues to refuse to accept suitable work offered [her] by [her] employer."

In *Covington v. Industrial Comm.*, 737 P.2d 207, 210 (Utah 1987) the Utah Supreme Court held:

In the case before us, the majority of the Board of Review ignored a substantial part of the record evidence before it and selected an isolated incident to deny Covington unemployment benefits. That action was arbitrary and capricious and cannot stand. Under the Board's own rules and regulations, "good cause" to quit is established if a claimant shows that actual or potential physical, mental, economic, personal, or professional harm would occur by continuing in her employment. Good cause is not shown if a claimant could have continued working while looking for other employment, had reasonable alternatives that would have preserved her job, or failed to give the employer notice of the circumstances causing the hardship and thereby allow the employer an opportunity to rectify the hardship.

Here, the testimonies of both parties establish that on Monday, June 20, 2005, Mr. Lambert, in a meeting with Angle and her attorney, brought to Angle's attention that her ongoing 3-year paternity battle with his brother was causing tension between Angle and her employer. At this meeting, Angle also alleged that Mr. Lambert had informed her that his family had made allegations against her regarding the blessing of her child. However, as to these allegations, Angle stipulated that they were irrelevant to her request for unemployment benefits. AR pp. 23:34-38, 25:18-20, 27:36-38, 31:34-43, 32:1-16.

Angle and the Agency, however, argue that, based upon this meeting, Angle had good cause to leave because on her last day of work: (1) she was directed to communicate through employee Ms. Eyring, (2) she was not to answer the phones, speak with clients, or do any gardening, maintenance work, (3) her work was scrutinized because there was a concern that she was doing something she wasn't supposed to be doing, and (4) her schedule had been switched, "from the Tuesday/Thursday 9 to 5 to this 2 to 7 Monday, Tuesday, Thursday, and [she] was not able to cover those shifts" because she had, ". . .

family and church obligations.” AR pp. 26:12-19, AR p. 26:21-27.

Without Angle having provided any detail thereon, Angle and the Agency further allege that she had good cause to quit and accept the severance pay because Mr. Lambert’s employee had been very curt and rude to her and Mr. Lambert was only speaking to her when he had some direct question. AR pp. AR p. 24:25-35, 25:5-6, 25:37-43, 26:1-6. However, except for these later two allegations, these alleged “stresses” at her work set forth in the preceding paragraph occurred after she had decided to quit.

Angle admits that prior to her last day of work and the events thereon of June 21, 2005 she, “chose the severance. [Angle] didn't feel that it would be tolerable for either of [her or Mr. Lambert] to continue there.” AR p. 24:1-4. She thereby admits that she, in part, was a source of the tension and that June 21, 2005 was her final day of work. AR p. 5:22-35. In fact, Mr. Lambert’s testimony that Angle told him prior to reporting to work on June 21, 2005 that it would be her final day and that she was accepting her severance pay, is corroborated by Angle’s letter to the Agency. In that letter she indicates that immediately after the meeting between Mr. Lambert, on June 20th, she and her attorney decided that she should take the severance pay and when she “went to Mr. Lambert's office the next day,” on June 21, 2005 she had decided, “to take the severance.” AR pp. 31:27-32, 52–beginning of 2nd and 3rd paragraphs. Therefore, what happened on June 21, 2005 had nothing to do with her decision to quit and cannot be used to support an

argument that she had good cause to quit.

Moreover, Angle never tried to discuss with Mr. Lambert any problems regarding her work schedule or work duties. AR pp. 27:31-34, 33:40-42. Her complaint against Mr. Lambert was that he was extremely cold and curt, is a conclusory statement that does not demonstrate that she would suffer, “actual or potential physical, mental, economic, personal, or professional harm would occur by continuing in her employment.” Nor does this evidence show that she could not “have continued working while looking for other employment,” or that there was no, “reasonable alternatives that would have preserved her job.” AR p. 28:20-23. She also, “failed to give [Mr. Lambert] her employer notice of the circumstances causing the hardship and thereby allow the employer an opportunity to rectify the hardship.” Since she did not do this, she cannot establish good cause.

To the contrary, Mr. Lambert testified that the reason he acted as he did, was because Angle had become antagonistic toward him and his family, had become a grouch with a bad attitude, and was dictating her work schedule. Mr. Lambert was merely trying to change things in his office by making the lines of communications clear and by streamlining employee duties. Angle was resisting this change. These changes did not constitute “actual or potential physical, mental, economic, personal, or professional harm” to Angle and do not amount to good cause to quit. AR pp. 29:15-43, 30:1-37.

When asked about her willingness to do other work by increasing the hours of her other part time job instead of accepting unemployment benefits Angle said, “. . . Shelly

does the work and the people that she hires, you know, to mow the lawn and things like that—**that’s not really a productive use o my time. . .**” AR p. 33:30-31. This statement, along with her assertion that her church and family duties prevented her from adjusting her schedule, and her refusal to work while finding additional employment, indicated that she was “refuse[ing] to accept suitable work offered [her] by [her] employer,” and, therefore, had no willingness to be engaged in full time employment. She, therefore, is ineligible for unemployment benefits.

CONCLUSION

In conclusion, none of the evidence equates to good cause to leave. Therefore, Arrow Legal Solutions respectfully challenges the Agency’s conclusion that it immediately discharged the Claimant, that her termination was not a voluntary quit, or that the Claimant had good cause to leave. She had been working part time and she could have continued to work part time with no difficulty while looking for other employment. To be eligible for unemployment, one must be willing to work. She had a choice to continue working and she declined it. She voluntarily quit.

Dated: June 13, 2000

ARROW LEGAL SOLUTIONS GROUP, PC



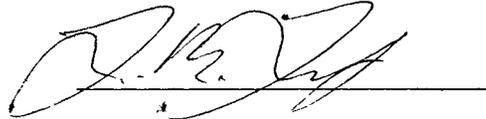
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Attorney for Petitioner

CERTIFICATE OF MAILING

I certify that I mailed a true and correct copy of the foregoing BRIEF OF APPELLANT on June 15, postage prepaid to:

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A handwritten signature in black ink, appearing to read "G. T. Landward", is written over a horizontal line.