White Hall Mutual Insurance Co. v. Unemployment Compensation Board of Review

2002 | Cited 0 times | Supreme Court of Pennsylvania | October 3, 2002

Submitted: May 17, 2002

OPINION NOT REPORTED

White Hall Mutual Insurance Company (Employer) appeals from the order of the Unemployment Compensation Board of Review (Board) reversing the decision of the referee, which denied benefits to Cynthia L. Castrovillare (Claimant).[1] The Board determined that Claimant was eligible for unemployment compensation benefits pursuant to Section 402(e) of the Unemployment Compensation Law (the Law), Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. §802(e) because her refusal to return to work fulltime after maternity leave did not constitute willful misconduct. We affirm the decision of the Board.

Claimant was employed full-time as a senior programmer from February 12, 1990[2] until her discharge on September 28, 2001. Her job duties included traveling to customer sites throughout the United States to provide programming and support services. Claimant was discharged from her position when she refused to report to work in the office, fulltime, on October 1, 2001, as directed. At the time of her discharge, she was working from home via computer link, following the birth of her child on June 23, 2001. Claimant asserted that she could not return to the office as directed by Employer, because she could not arrange suitable childcare. Further, she did not feel that Employer had a right to order her back to work after having agreed to allow her to work from home until after the Christmas holidays.[3]

Employer acknowledged that it had agreed to allow Claimant to work at home, but maintained that the arrangement was contingent upon the job getting done, which included the travel performed by Claimant prior to maternity leave. Claimant confirmed that the arrangement, which she described as "extended maternity leave," was contingent upon it "working out well." R.R. 58a, 65a. By mid-September Employer determined that the arrangement was not satisfactory and in a letter dated September 20, 2001, directed Claimant to return to the office full-time starting October 1, 2001. Claimant refused because she was unable to secure full-time childcare on such short notice.

Section 402(e) of the Law provides that an employee shall be ineligible for compensation for any week "(e) [i]n which his unemployment is due to his discharge or temporary suspension from work for willful misconduct connected with his work..." The statute does not define "willful misconduct." However, case law precedent has defined willful misconduct as an act of wanton or willful disregard of the employer's interests, a deliberate violation of the employer's rules, a disregard of the standards

of behavior which the employer has a right to expect of an employee or negligence indicating an intentional disregard of the employer's interests or the employee's duties and obligations to the employer. Arnold v. Unemployment Compensation Board of Review, 703 A.2d 582 (Pa. Cmwlth. 1997).

The employer bears the burden of establishing a claimant's ineligibility for unemployment benefits on the basis of willful misconduct. Gillins v. Unemployment Compensation Board of Review, 534 Pa. 590, 633 A.2d 1150 (1993). Once the employer establishes a prima facie case of willful misconduct, the burden shifts to the claimant to demonstrate that her conduct does not constitute willful misconduct or that she had good cause for her actions. Estate of Fells v Unemployment Compensation Board of Review, 635 A.2d 666 (Pa. Cmwlth. 1993). Good cause is established "where the action of the employee is justifiable or reasonable under the circumstances." Frumento v. Unemployment Compensation Board of Review, 466 Pa. 81, 87, 351 A.2d 631, 634 (1976). If the employee's behavior was justifiable or reasonable under the circumstances, it cannot be considered to be in willful disregard of conduct the employer has a right to expect. In other words, if there was "good cause" for the employee's action, she is eligible for unemployment benefits because she cannot be charged with willful misconduct.

Whether an employee's conduct rises to the level of willful misconduct is a question of law fully reviewable by this Court. County of Luzerne v. Unemployment Compensation Board of Review, 611 A.2d 1335 (Pa. Cmwlth. 1992). In our review, "[w]e must look at all of the circumstances, including the employee's noncompliance with the employer's directives and the reasons for the noncompliance." Rossi v. Pennsylvania Unemployment Compensation Board of Review, 544 Pa. 261, 266, 676 A.2d 194, 197 (1996).

The Board found that Employer failed to meet its burden of establishing that the discharge was for willful misconduct in connection with Claimant's work. The Board reasoned that Employer had originally agreed to allow the Claimant to work from home and was, therefore, required to give her reasonable notice of the change in the job requirements and a reasonable amount of time to find suitable childcare. The Board found that directing Claimant on September 20, 2001, to return to the office on October 1, 2001, did not give her sufficient time to find childcare. In spite of the tight deadline, Claimant attempted to arrange childcare, but she was unsuccessful. The Board concluded that the Claimant had good cause not to return to work.

On appeal, Employer argues, first, that Claimant's acts do constitute willful misconduct and, second, that the Board's decision is not supported by substantial evidence.[4] The question before this Court is whether Claimant's reasons for not reporting to work at the office on October, 2001 were reasonable under the circumstances.

Anticipating her child's birth to occur in late July, Claimant and Employer agreed that she would return to the office full-time after eight weeks of maternity leave; this schedule would have required Claimant to arrange childcare by October 1, 2001. Claimant testified that her child was born on June

23, 2001, one month prematurely. She explained that the company president, Richard Riddle, had agreed to maternity leave of eight weeks but, subsequently, her immediate supervisor, Senior Vice-President David Potter (Potter) negotiated for Claimant to return to work sooner because he could not function without the senior programmer for eight weeks. R.R. 58a. To secure her early return, Employer agreed to allow Claimant to work from home for a period of time.

Testimony diverges on the issue of the length of time Claimant was to work from her home. Potter testified that the maternity leave was extended from eight weeks to twelve weeks. During that twelve week period, Claimant would have six weeks leave; then she would work three weeks fulltime from home; finally, for the final three weeks, she would work two days a week in the office and three days at home. After twelve weeks, she was to be working full-time in the office. By Employer's calculation, October 1, 2001, was the beginning of the fifteenth week since Claimant had last worked full-time in the office.

Claimant testified that she agreed to a four-week maternity leave, followed by two weeks of part-time work from home, and then full-time work from home until after the Christmas holidays. Claimant admitted that the arrangement was the result of a "rough agreement" which was part of an unfinished discussion before the premature birth of her child. R.R. 62a. Further, in July, after she had been on leave for four weeks, the discussion was continued on the basis of allowing her to remain at home "if it all worked out well working from home." R.R. 58a. The one point on which the parties agreed was that the arrangement of working from home was contingent upon it "working out well." [5] R.R. 58a, 65a. "Working out well" is a subjective standard, given to different application by Claimant and Employer, who were, nevertheless, attempting to resolve their differences.[6]

The Board resolved the conflicts in testimony in favor of Claimant.[7]

"[T]he findings of fact made by the Board, or by the referee as the case may be, are conclusive on appeal so long as the record, taken as a whole, contains substantial evidence to support those findings." Taylor v. Unemployment Compensation Board of Review, 474 Pa. 351, 355, 378 A.2d 829, 831 (1977).[8] "The appellate court's duty is to examine the testimony in the light most favorable to the party in whose favor the Board has found, giving that party the benefit of all inferences that can logically and reasonably be drawn from the testimony, to see if substantial evidence for the Board's conclusion exists." Id.

The Board found that Claimant had good cause not to return to work when she was unable to arrange childcare in the short period of time permitted by Employer in its letter of September 20, 2001. Employer complains that Claimant should have begun arranging for leave in December of 2000, when she announced her pregnancy. However, knowing the date full-time childcare would be required is dependent upon knowing the date when Claimant's full-time work in the office would be required. The Board found that Claimant did not look for childcare until August because the Employer had given her permission to work from home. This is a crucial finding of fact that is

supported by the testimony of Employer's witness.

Where an employee is discharged for refusing to follow an employer's directive, both the reasonableness of the demand and the reasonableness of the employee's refusal must be examined. Gwynedd Square Center v. Unemployment Compensation Board of Review, 656 A.2d 562 (Pa. Cmwlth. 1995). This Court has also recognized that the inability of a parent to care for her children may constitute good cause for terminating employment where the claimant established that she made a reasonable effort to advise her employer of her child care problems and sufficiently attempted to sustain her employment. Ganter v. Unemployment Compensation Board of Review, 723 A.2d 272 (Pa. Cmwlth. 1999).[9]

The Employer has the responsibility to make the terms of employment, including a special arrangement such as the one made for Claimant, definite and clear. Having failed to define in objective terms the parameters of the work-at-home arrangement with Claimant, it was unreasonable of the Employer, who was fully aware of Claimant's circumstances, to demand that Claimant return to work without providing her with a reasonable period of time to provide care for her child.

Accordingly, we affirm the decision of the Board.

MARY HANNAH LEAVITT, Judge

ORDER

AND NOW, this 3rd day of October, 2002, the order of the Unemployment Compensation Board of Review, dated January 11, 2002 in the above-captioned matter is hereby affirmed.

MARY HANNAH LEAVITT, Judge

1. Our scope of review is limited to determining whether constitutional rights were violated, whether an error of law was committed or whether necessary findings of fact are supported by substantial evidence. Lausch v. Unemployment Compensation Board of Review, 679 A.2d 1385 (Pa. Cmwlth. 1996), appeal denied, 547 Pa. 745, 690 A.2d 1164 (1997).

2. A finding of fact in the decisions of both the referee and the Board indicate a start date of February 12, 1999. However, the testimony of the Employer's representative, Reproduced Record 52a, 53a (R.R. ___), and the Employer Questionnaire entered into evidence at the hearing before the referee, R.R. 15a., indicate that the correct start date is February 12, 1990.

3. The record includes Claimant's letter of September 26, 2001, to David Potter, her supervisor, in reply to his letter of September 20, 2001, in which he directed her to return to work in the office on October 1, 2001. In her letter Claimant agrees to come into the office only two days a week until after the Christmas holidays, in spite of her testimony that her mother-in-law was available for childcare on alternate weeks. Claimant testified that it was "incorrect for him

(Employer)...that he turns around and demands me back into the office." R.R. 60a. When asked by the referee if Claimant offered to come in every other week until she could secure childcare for the alternate weeks, she replied, "No. I just thought he should abide by the agreement that he originally agreed upon." R.R. 62a.

4. Specifically, Employer challenges the Board's finding that Employer's direction to return to full-time employment on October 1, 2001, did not give her sufficient time to arrange for child care. Employer maintains that the evidence shows that Claimant knew that she would need to return to the office to perform her duties as senior programmer, including the requisite travel, when she first because aware of her pregnancy in December of 2000, however, she took no steps to find childcare until mid-August when she placed her child on a daycare waiting list for a January opening.

5. The record includes an exhibit of notes of the September 19, 2001 meeting between Claimant and David Potter prepared by Potter. These notes indicate that the parties discussed "what we could do to meet each ½ way until the Christmas holidays." R.R. 17a. These notes show that the arrangement was not in final form as late as September 19, 2001, although the Employer was attempting to accommodate Claimant's requests for more time at home while providing for the need of the business, which required her presence in the office and availability for travel.

6. Although Claimant advised Potter that her child was on waiting lists for childcare, and had complained that she had no one to baby-sit except her mother-in-law on alternate weeks, she agreed on September 26 to work in the office every Monday and Wednesday.

7. The Board is the ultimate factfinder and sole arbitrator on issues of credibility and evidentiary weight in unemployment cases, and where the Board makes its own findings of fact, it is the Board's findings, not the referee's, that are subject to review by this Court. Gioia v Unemployment Compensation Board of Review, 661 A.2d 34 (Pa. Cmwlth. 1995). Further, a reversal by the Board of a referee's credibility determination as between claimant and employer is permissible. Griffith Chevrolet-Olds, Inc. v. Unemployment Compensation Board of Review, 597 A.2d 215 (Pa. Cmwlth. 1991). Credibility of witnesses and weight to be given their testimony is for the referee and the Board to determine, not the Commonwealth Court, and resolution of conflicting testimony is within sole province of the compensation authority. Yazevac v. Unemployment Compensation Board of Review, 430 A.2d 1207 (Pa. Cmwlth. 1981).

8. "Substantial evidence" requisite to support the necessary findings of fact on appeal challenging the sufficiency of evidence, is such relevant evidence as a reasonable mind might accept as sufficient to support a conclusion. John Kenneth, Ltd. v. Unemployment Compensation Board of Review, 444 A.2d 824 (Pa. Cmwlth. 1982).

9. The controlling childcare cases are voluntary quit cases under Section 402(b) of the Law, 43 P.S. §802(b), but the good cause standards are equally applicable under Section 402(e). See Truitt v. Unemployment Compensation Board of Review, 527 Pa. 138, 589 A.2d 208 (1991); Blakely v. Unemployment Compensation Board of Review, 464 A.2d 695 (Pa. Cmwlth. 1983). This Court has consistently noted that domestic childcare problems are deserving of both recognition and individualized determinations. King v. Unemployment Compensation Board of Review, 414 A.2d 452 (Pa. Cmwlth. 1980); Wallace v. Unemployment Compensation Board of Review, 393 A.2d 43 (Pa. Cmwlth. 1978).