Owens v. State

102 Wash.App. 1040 (2000) | Cited 0 times | Court of Appeals of Washington | September 18, 2000

UNPUBLISHED OPINION

Eileen Owens appeals the Department of Employment Security's (the Department) decision to deny her unemployment benefits. Substantial evidence supports the Department's determination that Owens lacked good cause to terminate her employment. We therefore affirm.

FACTS

Eileen Owens, a licensed professional nurse, was employed by Doctors, Inc. (Doctors) as a consultant nurse. Doctors contracts with hospitals and managed care organizations to provide consulting nurse services by telephone to patients.

When a patient calls Doctors for consultation, a telephone service representative (TSR) initially answers the call. The TSR, who is not a nurse, takes down basic information from the caller, and passes it on to a consulting nurse. The nurse "triages" or prioritizes the call in an effort to respond most rapidly to the most urgent calls.

Although Doctors wished to have all calls answered within 20 minutes, often this standard was not met in practice. Doctors had contracted with an organization called InteliCare for backup support. But because InteliCare's services were slow, Doctors discouraged its nurses from relying on it.

On July 5, 1998, Owens was on duty with a recently hired nurse whom she was training. At some point during the day, Owens received a note from a TSR stating that a woman was calling about her 74-year-old mother who was complaining of dizziness. Owens instructed the TSR to tell the caller that a response would take approximately 45 minutes, and that the caller should go to an emergency room if she thought necessary. Owens called back an hour and a half later. The caller reported that she had taken her mother to an emergency room, where the mother died of a massive heart attack. The caller was not upset with Owens and thanked her for returning the call.

When Doctors' corporate president Jan Johnson learned of the incident, she was concerned that it could jeopardize her contract with the organization to which the caller belonged. Johnson and clinical manager Ross Summers commenced an investigation to determine what had happened.

Johnson and Summers met with Owens on Saturday, July 11, to discuss the incident. Johnson questioned whether Owens had made proper use of backup resources on July 5 when excess calls

accumulated. According to Johnson, Owens could have relied on InteliCare, the trainee nurse, or Johnson herself, who had been present at Doctors that day, for assistance. Owens was told that she was suspended pending completion of an investigation.

Owens believed that she had acted appropriately under the circumstances. According to Owens, Johnson told her at the July 11 meeting that Johnson would do "anything" to save the client contract (which was ultimately lost), and that the investigation would show that Owens had been at fault. Johnson denied making these statements, and Summers who had been present during the exchange corroborated Johnson's testimony. After the meeting, Owens concluded that Johnson would try to make her the scapegoat, if necessary, to retain the contract with the client. Based on that conclusion, Owens resigned on Monday, July 13.

Owens applied for unemployment benefits. The Employment Security Department (the Department) denied Owens's request for benefits on the ground that "{she} did not make every effort to resolve {her} problem or preserve {her} job."

Owens appealed this determination and an administrative hearing was held. The administrative law judge (ALJ) affirmed the Department's denial of benefits, ruling that Owens had failed to establish good cause for quitting. The Department commissioner affirmed the ALJ's decision, without substantive comment. Owens appealed to superior court, which affirmed the agency's decision. Owens now appeals to this court.

ANALYSIS

Judicial review of a decision by the Department commissioner is governed by the Washington Administrative Procedure Act (APA). Tapper v. State Employment Sec. Dept., 122 Wn.2d 397, 402, 858 P.2d 494 (1993). In reviewing an administrative action, we sit in the same position as the superior court, applying the standards of the APA directly to the record before the agency. Tapper, 122 Wn.2d at 402. We will grant relief from an agency order if, inter alia, the agency has erroneously interpreted or applied the law, the order is not supported by substantial evidence, or the order is arbitrary or capricious. RCW 34.05.570(3)(d), (e), (i). The commissioner's decision is prima facie correct, and Owens carries the burden to establish her right to benefits. RCW 50.32.150.

A. Good Cause

Owens first contests the Department's conclusion that she did not have good cause to terminate her employment with Doctors.

Under RCW 50.20.050, a worker may be disqualified from receiving unemployment benefits if he or she voluntarily leaves work without good cause. The employee must establish three factors to establish good cause: (1) that the employee left because of work-related factors; (2) that the factors

were sufficiently compelling to cause a reasonably prudent person to terminate employment; and (3) that the employee exhausted all reasonable alternatives (but the employee need not perform futile acts). WAC 192-16-009; Terry v. Employment Sec. Dept., 82 Wn. App. 745, 750, 919 P.2d 111 (1996).

The question of whether the Department erred by concluding that Owens voluntarily quit without good cause is a mixed question of law and fact. Terry, 82 Wn. App. at 748. We review factual questions under the substantial evidence standard and review questions of law and the application of the law to the facts under the de novo standard. Terry, 82 Wn. App. at 748-49. The agency's factual determinations must be supported by evidence that is substantial when viewed in light of the whole record before the court. Martini v. State, Employment Sec. Dept., 98 Wn. App. 791, 795, 990 P.2d 991 (2000).

1. Per Se Good Cause

The first issue is whether Owens established that she had per se good cause to terminate her employment with Doctors.

An employee has per se good cause to leave work voluntarily where: (1) there exists a clear statutory violation; (2) the employer has knowledge of the factual circumstances that give rise to the violation; and (3) the employee can establish some nexus between the employer's policies that give rise to the violation and the termination. Martini, 98 Wn. App. at 798. In addition, where an employer violates the law so that a professional has a reasonable basis for believing that his or her professional license is at risk, this may constitute good cause to terminate employment. Robinson v. Employment Sec. Dept., 84 Wn. App. 774, 779, 930 P.2d 926 (1996). Generally, an employee has the responsibility to do everything in his or her power to correct unsuitable conditions. Martini, 98 Wn. App. at 796. But where an employee has per se good cause to quit, he or she need not exhaust all reasonable alternatives before quitting. Martini, 98 Wn. App. at 796.

Owens contends that she had per se good cause to quit, because Doctors directly or indirectly violated regulations that govern the nursing profession. Specifically, Owens claims that Doctors violated the regulations by promising its clients in its contracts that it would respond to calls within 20 minutes, and by insisting that Owens rely on untrained personnel as backup when dealing with call backlogs. Owens claims that by expecting her to live up to these standards, Doctors put her professional license at risk.

Under the relevant nursing regulations, a "registered nurse shall be responsible and accountable for practice based on and limited to the scope of her/his education, demonstrated competence, and nursing experience." WAC 246-840-700(3)(b). Further, under WAC 246-840-700:

Each individual, upon entering the practice of nursing, assumes a measure of responsibility and public trust and the corresponding obligation to adhere to the standards of nursing practice. The

nurse shall be responsible and accountable for the quality of nursing care given to clients. This responsibility cannot be avoided by accepting the orders or directions of another person.

Finally, a "registered nurse shall be accountable for the safety of clients receiving nursing service by . . . {d}elegating selected nursing functions to others in accordance with their education, credentials, and demonstrated competence" and by "{s}upervising others to whom he/she has delegated nursing functions." WAC 246-840-700(2).

Owens's first claim, that Doctors contractually promised its clients a 20-minute response time, is not supported by the record. Jan Johnson, the corporate president, admitted in her testimony that Doctors had a policy of trying to return patient calls within 20 minutes. But the record contains insufficient evidence to support the claim that Doctors made a "promise" to this effect in its client contracts. The only evidence supporting the claim is Owens's own uncorroborated testimony that Johnson told her that contracts with new clients contained this promise. Owens admitted that she never saw any contract with this promise included.

Furthermore, even if Doctors had implied to clients that they would receive a 20-minute response time, the record still does not support the claim that Doctors violated the nursing regulations. The record indicates instead that Doctors encouraged its nurses to work within their capabilities.

For instance, the record contains a memorandum that Doctors' nursing director wrote to Doctors' employees. In the memo, the nursing director acknowledged that the 20-minute response time was not always realistic. She stated, "I have since talked with Jan Johnson, President and she concurs, we can't return all calls within 20 minutes." Instead, the nursing director encouraged the employees to "feel more empowered to triage and not so pressured to return all calls within 20 minutes, but to try and do so with THE most emergent." Further, Owens's own witness, another of Doctors' nurse consultants, testified that she was never told that she had to answer calls within 20 minutes. When she asked a supervisor what to do if she got backed up with calls, the supervisor told her just to try her best and take calls one at a time. These uncontested facts indicate that Doctors encouraged employees to do their best in providing quality nursing care in accordance with regulations.

Owens has also failed to show that Doctors violated the nursing regulations by expecting her to rely on a nurse trainee as backup when excess calls accumulated. The record indicates that relying on the nurse trainee for backup would not have been improper. The nurse trainee working with Owens on July 5 was a licensed registered nurse receiving training in telephonic consultation. Jan Johnson testified that the trainee, Arlene, was a "high-skilled, trained, professional nurse who has extensive years of working at Childrens Hospital including doing a lot of triage and call backs to families who have sick kids." Arlene had already handled a majority of calls that morning. Johnson further testified that she contemplated that Owens would only delegate non-emergent calls, such as a call about hives, to the nurse in training.

Because Owens has failed to show a clear statutory violation, or the employer's awareness of a statutory violation, she has failed to establish per se good cause for terminating her employment with Doctors.

2. Other Good Cause

Owens next argues that she otherwise had good cause to terminate her employment, because she reasonably believed that Johnson would make her the scapegoat for the July 5 incident, and because her attorney had advised her to quit. In light of these facts, Owens contends, her decision to quit before exploring other alternatives was reasonably prudent.

The test for determining good cause is "what a reasonably prudent person would do in similar circumstances." Robinson v. Employment Sec. Dept., 84 Wn. App. 774, 779, 930 P.2d 926 (1996). The determination of good cause is based on existing facts rather than conjecture. Robinson, 84 Wn. App. at 779.

First, the record does not support Owens's claim that she had a reasonable fear of becoming a scapegoat. At the administrative hearing, Johnson and Summers flatly denied that Johnson had said in the July 11 meeting that she would do "anything" to keep the contract, and that an investigation would reveal that Owens was at fault. Johnson explained, "I would do anything that's appropriate {and} legal" to keep the contract. But she clarified, "if you interpret that to say someone's going to be the fall guy here for the company, that's absolutely not true."

According to her testimony, Johnson did believe that Owens should have relied on backup resources to deal with the excess calls on July 5. But Johnson and Summers repeatedly testified that they had no intention to terminate Owens. Johnson testified, "Eileen was not terminated, she was a good nurse. When she left I said, Eileen, you're not leaving. . . . You know, no one is blaming you, don't be so frightened. There was no intent to point fingers at Eileen and scapegoat her." According to Johnson, Owens was suspended based on the recommendation of Doctors' attorney. But Johnson reiterated, "I said to Eileen over and over and over that . . . she shouldn't feel alarmed and we had to do this . . . {a}nd what our client expected was what anyone would expect in that kind of a situation and that's what we are doing, that's all." Summers corroborated, "we were short staffed already, so considering what I've already said about her clinical abilities, her resigning was a blow to the program in itself. It was regretful that she did resign." Thus, substantial evidence supports the Department's finding that Doctors did not intend to terminate Owens, and that Owens's fear of becoming a scapegoat was not reasonable.

Second, Owens's claim that her attorney advised her to quit does not alone provide a reasonable basis for her decision to quit. Owens claimed that an attorney had advised her to quit, but she gave no indication of what information she provided the attorney, why the attorney advised her to quit, or even the attorney's identity. Even if there were proof that an attorney advised Owens to quit, this

alone would not magically render her eligible for benefits. Owens must still prove that a reasonably prudent person would have been compelled to quit, given her circumstances.

Owens has not shown that it was reasonably prudent to terminate her employment before exploring other alternatives, such as waiting to learn the outcome of Doctors' investigation into the July 5 incident. The Department's determination that Owens lacked good cause to quit was not in error.

B. Arbitrary and Capricious

Finally, Owens contends that the Department's decision was arbitrary and capricious. In support, Owens points out that the Department failed to refer to the nursing regulations, the Robinson case, Owens's claim that she sought legal advice prior to quitting, and Exhibit 9, in rendering its decision.

RCW 34.05.570(3)(i) entitles Owens to relief if the agency's order is "arbitrary or capricious." An agency's action is "arbitrary or capricious" when the action is a willful and unreasoning action in disregard of facts and circumstances. Children's Hosp. and Med. Ctr. v. Washington State Dept. of Health, 95 Wn. App. 858, 864, 975 P.2d 567 (1999). We will not set aside an agency decision under this standard absent a clear showing of abuse. ARCO Prods. Co. v. Washington Utils. and Transp. Comm'n, 125 Wn.2d 805, 812, 888 P.2d 728 (1995).

The Department's failure to address the four pieces of information that Owens claims were essential to its decision, does not render the Department's decision arbitrary and capricious. First, the Department did not abuse its discretion in failing to refer to the nursing regulations or the Robinson case. Owens's argument that these legal authorities entitle her to relief is without merit, as discussed above. Second, the Department's decision to disregard Owens's claim that she had consulted an attorney also does not render the decision arbitrary and capricious. Even if Owens had consulted an attorney, she must still demonstrate that her decision to quit was reasonably prudent. She has failed to make this showing.

Finally, the Department's failure to address Exhibit 9 was not an abuse of discretion. Exhibit 9 is a promotional sheet that Doctors prepared for potential clients in a marketing packet. It describes the background of Doctors' nurses. Owens testified before the ALJ that the sheet contained "embellishment{s}" and incorrect information about the nurses. For example, the sheet stated that Owens was a "certified case manager," which, according to Owens, was untrue. But Owens admitted that she was not aware of the document's existence until she resigned. Thus, Owens cannot show that the document contributed to her decision to quit. Again, the test for establishing good cause is what a reasonably prudent person would do in similar circumstances. Robinson v. Employment Sec. Dept., 84 Wn. App. 774, 779, 930 P.2d 926 (1996). Because the document did not contribute to the circumstances of Owens's decision to quit, it is not relevant to the determination of good cause.

Owens has failed to establish her right to unemployment benefits. We therefore affirm the

Department's decision.