

TABLE OF CONTENTS

A.	INTRODUCTION	1
B.	STATEMENT OF THE CASE	3
	1. JOB SEPARATION	3
	2. ADMINISTRATIVE DECISIONS	3
C.	ARGUMENT	4
	1. MS. KENNEDY SHOULD HAVE QUALIFIED FOR BENEFITS BECAUSE THE WASHINGTON SUPREME COURT HAS HELD IN VERY SIMILAR CIRCUMSTANCES THAT ONE LEAVES WORK DUE TO "MARITAL STATUS" EVEN WHEN ONE IS NOT MARRIED AT THE TIME OF THE JOB SEPARATION.	4
	2. THE COMMISSIONER'S ORDER SHOULD BE REVERSED BECAUSE IT IGNORES THE LIBERAL INTERPRETATION TO BE ACCORDED THE STATUTE.	8
D.	CONCLUSION	10

TABLE OF AUTHORITIES

Table of Cases

Washington Cases

Yamauchi v. Employment Security Department,
96 Wn.2d 773, 638 P.2d 1253..... passim

Statutes

50.20.050(1)(d).....5

RCW 50.20.050(2)(b)(iii)4, 7

RCW 50.20.050(2)(b)(iii).2

Regulations

WAC 192-150-112.....8

A. INTRODUCTION

Ms. Kennedy's fiancé was in the military and deployed to Iraq. Shortly after returning to Tacoma, he received orders to report to Kentucky, which he did on March 10, 2008. CP Comm. Rec. 60, FF 3.¹ Due to her soon-to-be spouse's relocation, Ms. Kennedy quit her job on March 13, 2008. CP Comm. Rec. 56; 60, FF 4. On March 18, she applied for unemployment benefits and arrived in Kentucky on March 27. The couple was married on April 25, 2008. CP Comm. Rec. 44; 60, FF 6.

Ms. Kennedy was denied unemployment benefits ultimately by the ESD's Commissioner who held that "because she was not married at the time she quit" she had not established good cause to quit. CP Comm. Rec. 76.

"RCW 50.01.010 states 'this title shall be liberally construed for the purpose of reducing involuntary unemployment and the suffering caused thereby to the minimum.' Under the interpretation of RCW 50.20.050(4) [a provision about qualifying for benefits

¹ The "Commissioner's Record" is the record on review in this case, as it was on review at the Superior Court. That record bears its own pagination. Although appellant's Designation of Clerk's Papers designated the Commissioner's Record as a portion of the file to be sent to this court, the Thurston County Superior Court's Index to Clerk's Papers merely states that the "Administrative Record is being transmitted concurrently herewith." Therefore, references in this brief to the Commissioner's Record will appear as "CP Comm. Rec. " followed by the page number as it appears in the original Commissioner's Record itself.

when leaving work due to “marital status or domestic responsibilities”] developed here, **a person who leaves work to get married and move to a place where it would be impracticable to commute to her old job leaves work because of marital status.**” *Yamauchi v. Employment Security Department*, 96 Wn.2d 773, 782, 638 P.2d 1253 (1982)(emphasis added).

Moreover, as noted in the State’s brief here, the 2009 Legislature amended the Employment Security Act providing claimants, after September 6, 2009, “good cause” to quit and qualify for benefits under precisely the same circumstances as presented in Ms. Kennedy’s case:

(iii) The claimant: (A) **Left work to relocate for the employment of a spouse or domestic partner** that is outside the existing labor market area; and (B) remained employed as long as was reasonable prior to the move;

RCW 50.20.050(2)(b)(iii). Thus, under the liberal interpretation to be afforded the statute and under prior Supreme Court opinions based on very similar circumstances of claimants *not yet married*, the Commissioner’s Order in this case should be reversed and Ms. Kennedy should receive benefits.

B. STATEMENT OF THE CASE

1. JOB SEPARATION

The facts in this case were fully set out in petitioner's opening brief, the most pertinent of which were the following:

"[S]olely because her fiancé had relocated to Kentucky, claimant [Ms. Kennedy] informed the employer to expect she would soon be quitting. She did give notice to quit, and quit March 13, 2008." CP Comm. Rec. 56; 60, FF 4.

The couple married on April 25, 2008. CP Comm. Rec. 44; 60, FF 6.

2. ADMINISTRATIVE DECISIONS

On August 5, 2008, the ESD denied Ms. Kennedy unemployment benefits for the period she had been unemployed:

It is determined that you quit work on March 13, 2008 to relocate to be with your fiancé who received a military transfer before you were married on April 25, 2008. Because you were not married at the time you quit your job, good cause for quitting to follow a military spouse has not been established.

CP Comm. Rec. 31.

The Commissioner affirmed:

To establish good cause pursuant to RCW 50.20.050(2)(b), a claimant must show that he or she quit for

one of the eleven reasons listed at conclusion No. 3. ***Here, the claimant quit to relocate because of the mandatory military transfer of her boyfriend, not her spouse. Because she was not married at the time she quit, the claimant has not established good cause*** for quitting pursuant to RCW 50.20.050(2)(b)(iii).

CP Comm. Rec. 76-77 (emphasis added).

C. ARGUMENT

1. MS. KENNEDY SHOULD HAVE QUALIFIED FOR BENEFITS BECAUSE THE WASHINGTON SUPREME COURT HAS HELD IN VERY SIMILAR CIRCUMSTANCES THAT ONE LEAVES WORK DUE TO “MARITAL STATUS” EVEN WHEN ONE IS NOT MARRIED AT THE TIME OF THE JOB SEPARATION.

The restricted reading the Commissioner gave to the “quit to follow” provisions of the Act in Ms. Kennedy’s case have been previously rejected by the Washington Supreme Court and should be rejected here as well. The State’s brief supports that restricted reading: “Kennedy apparently argues that the statute does not require persons to be spouses at the time of the relocation. This argument defies the plain language of the statute and logic.”

State’s Brief, pg. 8. If Ms. Kennedy “defies the plain language” of the Employment Security Act and defies “logic,” she is in good company: the Washington Supreme Court.

RCW 50.01.010 states “this title shall be liberally construed for the purpose of reducing involuntary unemployment and the suffering caused thereby to the minimum.” Under the interpretation of RCW 50.20.050(4) [a provision about

qualifying for benefits when leaving work due to “marital status or domestic responsibilities”] developed here, **a person who leaves work to get married and move to a place where it would be impracticable to commute to her old job leaves work because of marital status.**

Yamauchi v. Employment Security Department, 96 Wn.2d 773, 782, 638 P.2d 1253 (1982)(emphasis added).

Ms. Yamauchi, in that case, left her job in Pasco on April 21 to be married on April 29 and join her fiancé in Spokane. She applied for unemployment benefits on April 28 but the ESD denied benefits. The Commissioner found that Yamauchi had left work without good cause under the “good cause” portion of the statute, RCW 50.20.050 and was ineligible for treatment under the provisions of RCW 50.20.050(4) concerning persons “*whose marital status or domestic responsibilities cause him or her to leave employment.*” *Yamauchi*, 96 Wn.2d at 774-75.

The provisions of 50.20.050(4), now at 50.20.050(1)(d), essentially make the requalification requirements different for those “*whose marital status or domestic responsibilities cause him or her to leave employment.*” The State argued in that case, just as it has argued here, that this provision did not apply to Ms. Yamauchi *because she was not married at the time she quit.* The Washington Supreme Court rejected that argument under the liberal

construction to be afforded the statute because Ms. Yamauchi plainly left her job to marry her fiancé and to live with him in Spokane.

The same is true in Ms. Kennedy's case: she was engaged, her fiancé was deployed in Iraq, so no marriage happened; his return to Tacoma was brief, so they did not yet marry. He was transferred by the military to Kentucky shortly after returning to Tacoma and Ms. Kennedy and child relocated to Kentucky in late March to live with her fiancé and they were married in late April.

Thus, the State's arguments advanced here should be rejected for the same reasons they were rejected in *Yamauchi*. The plain language of the statute does not require that the marriage precede the quit if the quit was due to the marriage:

Respondent [ESD – the State] cannot seriously contend that Yamauchi did not leave work to get married and move to Spokane. ***Its primary argument is that leaving work to be married is not included within the reasons for leaving work because of "marital status"***. If a person were to leave work too long before the ostensible reason for leaving work manifested itself, he or she would risk a finding by the department that the reason for leaving work was not "caused" by that justification. But this is true in every case under RCW 50.20.050(4) upon which the department makes determinations. *The question of sufficient causal nexus is always before the department whether a person is married or not.*

Yamauchi, 96 Wn.2d at 781 (emphasis added). The argument attributed to the State in this quote is essentially the same argument advanced by the State in Ms. Kennedy's case: "To follow Kennedy's argument, anytime a person moves to follow someone else, he or she might be entitled to unemployment benefits if at anytime in the future they were to marry" State's Brief, pg. 8.

That argument was rejected in *Yamauchi* and should be rejected here. Ms. Kennedy should have qualified for benefits because by the time her appeals for unemployment benefits were heard, she was married and the reason she had quit was a mandatory military transfer of her spouse, a "good cause" to quit under the statute:

(B) . . . he or she (I) Left work **to relocate for the spouse's employment that, due to a mandatory military transfer**, is outside the existing labor market area; and (II) remained employed as long as was reasonable prior to the move;

RCW 50.20.050(2)(b)(iii) (emphasis added). That she was not married at the moment she quit is not required by the statute. She quit so that she could relocate with her fiancé whom she then married in the same way that Ms. Yamauchi quit, moved, and married and was not outside the meaning of having left her work for her "marital status."

2. THE COMMISSIONER'S ORDER SHOULD BE REVERSED BECAUSE IT IGNORES THE LIBERAL INTERPRETATION TO BE ACCORDED THE STATUTE.

As discussed in petitioner's opening brief, at the time Ms. Kennedy applied for unemployment benefits, the ESD's own regulations gave a broad definition to the concept of family or household member. Under the domestic violence "good cause" provisions of the voluntary quit statute, the ESD's regulation states that a "family or household member" means a broad range of relationships:

* * *

(iv) Adult persons who are presently residing together or who have resided together in the past,

(v) Persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship,

WAC 192-150-112 (emphasis added).

Moreover, as noted in the State's brief and the petitioner's brief here, this broad concept of "family and household members" has now been incorporated in the "quit to follow" provisions of the Act for job separations that occur on or after September 6, 2009:

(iii) The claimant: (A) Left work to relocate for the employment of a spouse or domestic partner that is outside the existing labor market area; and (B) remained employed as long as was reasonable prior to the move;

RCW 50.20.050(2)(b)(iii).

Because the plain meaning of "spouse" today encompasses domestic partners such as Ms. Kennedy and her fiancé, and because ESD regulations in effect at the time of Ms. Kennedy's job separation included within the meaning of "family or household member" people residing together, though unmarried, this Court should find Ms. Kennedy eligible for benefits. She left work to reside with her fiancé in Kentucky and was married within the month.

Finding she qualified for benefits would be consistent with the liberal construction required of the statute as underlined in the Act's preamble and in numerous cases, including *Yamauchi*.

This "liberal construction" has historically been true in Washington since the Act's inception in 1937 and it remains true today:

The legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this state require the enactment of this measure, under the police powers of the state, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own, and that **this title shall be liberally construed for the purpose of reducing involuntary unemployment and the suffering caused thereby to the minimum.**

RCW 50.01.010. Ms. Kennedy should have qualified under the mandatory military transfer provisions of the Act both because she did not need to be married at the moment she quit and because a liberal interpretation of the word "spouse" should have included domestic partners as it does today and as it did in related regulations at the time Ms. Kennedy quit.

D. CONCLUSION

Ms. Kennedy respectfully requests that the Commissioner's Order in this case be reversed and benefits be granted to her. For all the reasons advanced in the petitioner's opening brief and for the reason that the State's arguments in its brief regarding the language and intent of the Act were rejected in Yamauchi, as argued here, the petitioner should have been granted benefits.

Dated this 2nd day of December 2009.

Respectfully submitted,



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