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SUPREME COURT OF THE STATE OF WASHINGTON

ROBERT CAMPBELL,

Petitioner,

v.

STATE OF WASHINGTON DEPARTMENT OF EMPLOYMENT
SECURITY,

Respondent.

SUPPLEMENTAL BRIEF OF RESPONDENT

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I. INTRODUCTION

Robert Campbell wished to travel with his wife and daughter to Finland where his wife would be sojourning for four months on a Fulbright scholarship. When Campbell's employer denied his request for a leave of absence, he quit his job seven months before his wife was scheduled to depart and immediately filed a claim for unemployment compensation benefits. Campbell asserts he is entitled to such benefits because he quit for good cause under the Employment Security Act (the Act).

However, the legislature intended unemployment benefits to be provided only when a claimant has become involuntarily unemployed. Thus, the plain language of the "quit to follow" provision, RCW 50.20.050(2)(b)(iii), authorizes benefits only when the claimant "(A) [l]eft 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." The Commissioner of the Employment Security Department denied benefits because, under the Act, Campbell did not work as long as was reasonable prior to the move, nor did he establish he quit to relocate for his wife's "employment" as defined by statute. This decision is consistent with the legislature's purpose to encourage workers to preserve their employment.

and to reserve unemployment benefits for those who are involuntarily unemployed.

II. STATEMENT OF THE ISSUES

Persons who voluntarily quit their jobs are eligible for unemployment benefits only if they quit with good cause. Under the plain language of the “quit to follow” provision:

1. Did Campbell remain employed as long as was reasonable when he quit his job some seven months before his wife’s scheduled move absent any evidence to support such an early resignation was necessary?

2. If so, did Campbell establish he had good cause to quit even though he failed to present any evidence that his wife’s Fulbright scholarship constituted “employment” as defined by the Act?

III. STATEMENT OF THE CASE

Campbell was employed as a high school Spanish and history teacher by the University Place School District from September 2004 until he resigned effective June 21, 2010. AR 11-12, 33, 40, 48.¹ In April 2010, he informed his employer that his wife had received a Fulbright scholarship to teach and conduct research in Finland for four months beginning in February 2011. AR 13, 17, 19. He requested a leave of absence for the second semester of the 2010–2011 school year so that he

¹ The Administrative Record will be cited to in this brief as “AR.”

could accompany his wife and three year old daughter to Finland. AR 14. The school district denied the request. AR 14. He then requested a leave of absence for the entire 2010–2011 school year, which the school district also denied. AR 14-15. The district denied his leave requests to protect the instructional program and because the district was unsure it would be able to find a qualified teacher to fill his particular teaching roles for “such a limited absence.” AR 16, 49. Rather than working until his family was scheduled to leave for Finland in February 2011, Campbell quit his job effective June 21, 2010, at the end of the 2009–2010 school year and seven months before his wife was scheduled to leave. AR 12, 15, 48. He immediately applied for unemployment compensation.²

The Department denied his request for benefits, finding Campbell did not have good cause to quit his job, and Campbell appealed. AR 33-39. An administrative hearing was conducted by an administrative law judge (ALJ), who affirmed the denial of benefits. The ALJ found Campbell did not satisfy the “quit to follow” provision in the voluntary quit statute because it contemplates following a spouse for permanent employment, not a temporary, four month grant. AR 52-54. Campbell petitioned the Commissioner of the Department for review of the ALJ’s

² As Campbell concedes, he was ineligible for benefits while in Finland because he was not able to, available for, and actively seeking work while he was there. Respondent’s Reply Br. at 16; RCW 50.20.010(1)(c)(ii).

order. AR 60-62. The Commissioner modified the ALJ's order, stating that the evidence did not establish that the Fulbright scholarship equated with "employment" as defined by the Act. AR 66-67. The Commissioner also concluded that because Campbell quit his job seven months before the family was scheduled to leave for Finland, he quit prematurely and, therefore, was not eligible for unemployment benefits. AR 67.

Campbell appealed the Commissioner's decision to superior court. Clerk's Papers (CP) 4-9. The superior court reversed, concluding Campbell satisfied both prongs of the "quit to follow" provision, i.e., that he left work to relocate for the employment of his spouse outside the existing labor market area and remained employed as long as was reasonable prior to the move. CP 34-37. The Department appealed to Division II of the Court of Appeals. The Court of Appeals reversed the superior court and affirmed the Commissioner's decision, concluding that Campbell failed to remain employed as long as reasonable prior to quitting his job to follow his spouse to Finland. The Court reasoned that Campbell's decision to leave seven months early out of consideration for his employer did not make his quit "reasonable." *Campbell v. Dep't of Emp't Sec.*, 174 Wn. App. 210, 217, 297 P.3d 757, 760 (2013).

IV. STANDARD OF REVIEW

Campbell seeks judicial review of the administrative decision of the Commissioner of the Employment Security Department. Judicial review of the Commissioner's decisions is governed by the Washington Administrative Procedures Act (APA) pursuant to RCW 34.05.510 and RCW 50.32.120. The standard of review is of particular importance here because Campbell improperly suggests the Court should review the findings made by the superior court, not the Commissioner. *See* Pet. for Discretionary Review at 16. The appellate court sits in the same position as the superior court and applies the APA standards directly to the administrative record, not the superior court's or Court of Appeals' decisions. *Smith v. Emp't Sec. Dep't*, 155 Wn. App. 24, 32, 226 P.3d 263 (2010). In fact, "[a] tribunal with only appellate jurisdiction is not permitted or required to make its own findings and such findings, if entered, are surplusage." *J.L. Storedahl & Sons, Inc. v. Cowlitz County*, 125 Wn. App. 1, 8, 103 P.3d 802, 804 (2004).

The Commissioner "is authorized to make his own independent determinations based on the record and has the ability and right to modify or to replace an ALJ's findings, including findings of witness credibility." *Smith*, 155 Wn. App. at 36 n.2. In this case, the Commissioner modified the ALJ's decision. This Court reviews the decision of the Commissioner,

not the underlying decision of the ALJ—except to the extent the Commissioner’s decision adopted any findings and conclusions of the ALJ’s order. *Id.*; *Tapper v. Emp’t Sec. Dep’t*, 122 Wn.2d 397, 406, 858 P.2d 494 (1993).

Campbell has the burden of demonstrating the Commissioner’s decision is invalid. RCW 50.32.150; RCW 34.05.570(1)(a). Whether a claimant had good cause to quit his job is a mixed question of law and fact. *Terry v. Dep’t of Emp’t Sec.*, 82 Wn. App. 745, 748, 919 P.2d 111, 114 (1996). When reviewing a mixed question of law and fact, the court must make a three-step analysis. *Tapper*, 122 Wn.2d at 403. First, the court determines which factual findings below are supported by substantial evidence. *Id.* Second, the court makes a de novo determination of the correct law, and third, it applies the law to the facts.

Campbell did not assign error to any of the Commissioner’s findings of fact. Accordingly, they are verities on appeal. RAP 10.3(g); *Tapper*, 122 Wn.2d at 407. Questions of law are subject to de novo review. *Tapper*, 122 Wn.2d at 403. This Court, however, accords substantial deference to an agency’s interpretation of law in matters involving the agency’s special knowledge and expertise. *Overlake Hosp. Ass’n v. Dep’t of Health of State of Washington*, 170 Wn.2d 43, 50, 239 P.3d 1095, 1098 (2010). Finally, the Court may not substitute its judgment

for that of the agency on the credibility of the witnesses or the weight to be given to conflicting evidence. *Smith*, 155 Wn. App. at 35; *Davis v. Dep't of Labor & Indus.*, 94 Wn.2d 119, 124, 615 P.2d 1279 (1980).

V. ARGUMENT

This Court should affirm the Commissioner's decision because Campbell did not satisfy either prong of the "quit to follow" provision. He thus was not eligible for unemployment benefits. There are no disputed facts, and the Commissioner correctly applied the law to the facts.

A. **The Legislature Intended to Provide Benefits for Those Who Are Involuntarily Unemployed and Has Limited the Circumstances Where Employees Can Receive Benefits After Quitting to Follow a Spouse**

The purpose of the Act is to provide compensation to individuals who are "involuntarily" unemployed "through no fault of their own." RCW 50.01.010; *Tapper*, 122 Wn.2d at 408. To qualify for benefits, the reason for the unemployment must be external and apart from the claimant. *Safeco Ins. Cos. v. Meyering*, 102 Wn.2d 385, 392, 687 P.2d 195 (1984).

Because unemployment benefits are generally reserved for those who are unemployed for reasons truly beyond their control, a person is ineligible to receive benefits when he leaves employment voluntarily, unless he had good cause to quit. RCW 50.20.050(2). A claimant may

establish good cause only under one of eleven enumerated reasons listed in RCW 50.20.050(2)(b). The burden of establishing good cause to quit is on the benefits claimant; this burden never shifts during the course of proceedings. *Townsend v. Emp't Sec. Dep't*, 54 Wn.2d 532, 534, 341 P.2d 877 (1959); *In re Anderson*, 39 Wn.2d 356, 365, 235 P.2d 303 (1951).

Campbell admits that he quit his job voluntarily. Therefore, the only question is whether he had good cause. Campbell argues that he had good cause under the “quit to follow” section of the statute, RCW 50.20.050(2)(b)(iii), which sets forth a two-prong test a claimant must satisfy in order to qualify for benefits. The claimant must have “remained employed as long as was reasonable prior to the move.” RCW 50.20.050(2)(b)(iii)(B). The claimant also must have “[I]eft work to relocate for the employment of a spouse or domestic partner that is outside the existing labor market area.” RCW 50.20.050(2)(b)(iii)(A). Campbell satisfied neither prong. Accordingly, this Court should affirm the Commissioner’s decision.

B. Campbell Did Not Remain Employed as Long as Was Reasonable Prior to the Move

The Court of Appeals correctly reasoned, “we evaluate the reasonableness of Campbell’s decision in relation to the time of the move.” *Campbell*, 174 Wn. App. at 217. Here, rather than work until his

scheduled move in February 2011, he quit his job prematurely—at the end of the previous school year in June 2010.

1. The “quit to follow” provision plainly requires claimants to show they continued working as long as they reasonably could before the move.

The plain language of RCW 50.20.050(2)(b)(iii)(B) requires a claimant to have remained employed as long “as . . . reasonable prior to the move.” When interpreting statutes, the court’s objective is to determine legislative intent. *E.g., State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005). The court looks first to the statute’s plain meaning, considering the provision at issue, as well as the context of the entire act and related provisions. *State v. Campbell & Gwinn*, 146 Wn.2d 1, 11-12, 43 P.3d 4 (2002). If, after this plain meaning analysis, the meaning remains ambiguous, then the court will resort to other aspects of statutory construction. *Id.* at 12.

When determining the plain meaning of the “quit to follow” provision, the Court must also consider that the overall purpose of the Employment Security Act is to alleviate “involuntary” unemployment. RCW 50.01.010. The legislature was concerned about reserving unemployment benefits for those who suffer economic insecurity due to unemployment through no fault of their own and reducing the suffering of those affected by involuntary unemployment. RCW 50.01.010.

Campbell relies heavily on the preamble of the Act and urges this Court to liberally construe the term “reasonable” in the “quit to follow” provision. Pet. for Discretionary Review at 9. The Department does not dispute the Act is to “be liberally construed for the purpose of reducing *involuntary unemployment*.” RCW 50.01.010 (emphasis added). But the legislature was at least equally concerned with limiting benefits to those who suffer unemployment not caused by the party seeking benefits.

A person must still meet the plain language requirements of the Act before receiving unemployment benefits. *Leschner v. Dep’t of Labor & Indus.*, 27 Wn.2d 911, 926, 185 P.2d 113 (1947) (“[T]he liberal construction rule has not yet been extended to permit the consideration of a claim which the statute, in effect, says shall not be considered.”); *Boyd v. Sibold*, 7 Wn.2d 279, 289, 109 P.2d 535 (1941) (“[T]he rules of liberal construction do not contemplate that a statute shall be so interpreted as to make abortive the meaning of words therein employed.”). Thus, the liberal construction rule does not overcome the legislature’s overall intent to restrict benefits to those who meet the plain requirements of the Act by being involuntarily unemployed.

Also inherent in the Act is a policy requiring claimants to take reasonable steps to preserve their employment. For example, if one quits due to an illness or disability, he or she must have first exhausted all

reasonable alternatives prior to quitting in order to qualify for benefits. RCW 50.20.050(2)(b)(ii)(A). If one quits due to worksite deterioration or illegal activities, the claimant must have first reported the issues to the employer, and the employer must have failed to correct the issues. RCW 50.20.050(2)(b)(viii)-(ix). The requirement that one must remain employed as long as reasonable before quitting to follow a spouse for her employment is consistent with this overall scheme.

Campbell attempts to expand the scope of the reasonableness inquiry by suggesting that this Court should consider the reasonableness of his decision to quit his job to care for his child in Finland, rather than considering the reasonableness of the timing of his resignation. Pet. for Discretionary Review at 13. Yet the plain language of the “quit to follow” provision assumes that quitting to follow a spouse moving for her employment is a reasonable decision. The statute instead requires the Court to determine whether the claimant *remained employed* as long as reasonable prior to the move.

Thus, considering the Employment Security Act as a whole, the overall purpose is to provide unemployment benefits to those who are involuntarily unemployed. While the Act should be liberally construed, the legislature also plainly required claimants to take reasonable steps to preserve their employment. The requirements in the “quit to follow”

provision are consistent with these principles. Thus, the reasonableness inquiry should consider whether the claimant preserved his employment for as long as reasonably possible before the move.

2. Even if the “quit to follow” provision were not plain, the Commissioner’s interpretation of reasonableness would be entitled to deference.

Campbell seems to argue the “quit to follow” provision is ambiguous, and therefore, not subject to a plain language interpretation. Pet. for Discretionary Review at 9. Yet even if this Court were to conclude the statute is ambiguous, it should afford deference to the agency’s interpretation of reasonableness, so long as it is consistent with the statute’s plain language. *Overlake*, 170 Wn.2d at 50.

The Employment Security Commissioner’s decisions have applied the “quit to follow” provision to require the claimant to preserve his employment as long as reasonably possible prior to the move. *In re Keith A. Bottcher*, Emp’t Sec. Comm’r Dec.2d 963 (2011), Bottcher’s wife’s employer relocated her from Washington to Ohio. The couple was unable to sell their home prior to Bottcher’s wife’s move, so Bottcher stayed in Washington and continued to work. When the home finally sold, a condition of the sale required Bottcher to perform certain repairs. Bottcher resigned his employment on September 30 and then worked continuously on completing the home repairs until he moved to Ohio on

December 5. The Commissioner determined that because Bottcher worked continuously on the necessary repairs from the date of the job separation until his move to join his spouse, he had worked “as long as was reasonable” prior to his move. *Bottcher*, Emp’t Sec. Comm’r Dec.2d 963 (2011).³

In re Thelma J. Burkholder, Emp’t Sec. Comm’r. Dec.2d 315 (1977),⁴ the Commissioner also considered the reasonableness of the time between the quit and the move. In *Burkholder*, the claimant worked and lived with her husband in Walla Walla, Washington, when she was accepted into medical school in Seattle to begin on September 20, 1976. *Id.* She quit her job on July 1, 1976. *Id.* They then drove to Seattle to purchase a home, signed a purchase and sale agreement on August 6, returned to Walla Walla for about three days, then went on a three-week vacation on the claimant’s accrued leave. *Id.* The Commissioner explained that the claimant, who worked rotating days, could have used her days off or vacation days to look for a home and then return to work for a few weeks; instead, she quit on July 1. *Id.* The Commissioner further concluded, “[A] fairly narrow time frame between the quit and the

³ A copy has been attached as Appendix A. Under RCW 50.32.095, the Commissioner may designate certain Commissioner’s decisions as precedent, which serve as persuasive authority for this Court. *Martini v. State, Emp’t Sec. Dep’t*, 98 Wn. App. 791, 795, 990 P.2d 981, 984 (2000). All of the Commissioner’s decisions cited in this brief have been so designated by the Commissioner.

⁴ A copy has been attached as Appendix B.

move is needed in order to show ‘good cause’ in cases of quitting to follow a [spouse].” *Id.* Because she quit her job before it was necessary, she did not have good cause to quit when she did. *Id.*

Thus, where a claimant could show that a resignation several weeks before his move was necessary to complete certain necessary work, the early resignation was reasonable. But where the claimant could have reasonably remained employed longer, the statutory requirements were not satisfied. The Commissioner has therefore considered whether the claimant preserved his or her employment for as long as reasonably possible before the move. If this Court concludes that the “quit to follow” provision is ambiguous, it should defer to the Commissioner’s interpretation of reasonableness.

3. When viewing the statute as a whole, Campbell did not remain employed as long as reasonable.

Rather than working until his family was scheduled to leave for Finland in February 2011, Campbell quit his job effective June 21, 2010, at the end of the 2009–2010 school year, seven months before his wife was scheduled to leave. AR 12, 15, 48. Campbell quit his job long before his spouse’s scholarship necessitated that he resign. His unemployment was voluntary and thus was not within the intended coverage of the Act.

In his appeal letter, Campbell stated that when the school district denied his leave requests, he felt he “was given no choice but to resign in order to be a responsible parent.” AR 33; see also Pet. For Discretionary Review at 13. But this argument addresses the reasonableness of his decision to accompany his wife to Finland, not his early resignation. The relevant issue under the plain language of the “quit to follow” provision is whether he remained employed as long as reasonably possible. Working until February 2011, or shortly before, would not make him an irresponsible parent.

Moreover, unlike the claimant in *Bottcher*, Campbell offered no evidence establishing that he required seven months to prepare for the temporary four month trip to Finland. Campbell was “willing and able” to continue working for the district for the first semester if they had granted his leave request, and nothing about his ability to work changed when his leave request was denied. AR 33; Pet. for Discretionary Review at 12. Like the claimant in *Burkholder*, he simply did not leave a “fairly narrow time frame between the quit and the move.” *Burkholder*, Emp’t Sec. Comm’r. Dec.2d 315 (1977).

Campbell argues his decision to quit was based on consideration for his employer or “ethical considerations,” suggesting that the school district’s decision not to grant him leave conveyed a preference to hire a

single Spanish teacher for the entire 2010–2011 school year, instead of replacing Campbell mid-year. Pet. for Discretionary Review at 14. But the district denied leave because it did not believe it could replace him for such a limited period of time; it was the limited duration of his proposed leave that was the problem. AR 49.⁵ Despite his argument that he would have worked until February, “but the employer decided otherwise,” the record reflects that it was Campbell’s decision alone to voluntarily quit his job on the last day of the 2009–2010 school year. AR 23. Campbell provided no evidence that the school district’s denial of his leave requests precluded him from working until his scheduled departure. There is no evidence that the school district expressed a preference that he quit at the end of the school year, nor is there any evidence suggesting the employer would not allow Campbell to continue to work until he left for Finland. AR 15.

There is also no evidence to support the argument that Campbell had some ethical obligation to quit at the end of a school year. Indeed, circumstances often arise that require students to have more than one teacher in a particular school year, including, for example, a teacher’s need to take family leave. Moreover, by quitting in June 2010, Campbell

⁵ There may be differing opinions as to whether the school district should have granted Campbell a leave of absence. But that decision is not the decision being reviewed in this case. Here, the Court must review whether the denial of unemployment benefits was proper under these circumstances.

gave the school district only up to two months to find a replacement. Had Campbell continued working until February 2011, the school district, with advanced notice of his leaving, could have had up to seven months to find a long-term substitute or replacement to cover for Campbell's absence.

Applying the "quit to follow" provision, the Act as a whole, and the previously published Commissioner decisions, Campbell did not remain employed as long as reasonably possible before the trip. The school district's denial of Campbell's requests for leaves of absence did not preclude him from working until his scheduled departure in February 2011. As a result, his unemployment was voluntary, and he was not entitled to benefits under the Act. Indeed, permitting Campbell to collect benefits would contravene the legislature's intent to allow benefits only for those who experience involuntarily unemployment.

C. Campbell Did Not Establish That He Quit Work to Relocate for the Employment of His Spouse

While the Court need not reach this issue if it agrees that Campbell quit unreasonably early, Campbell also did not satisfy the prong of the "quit to follow" provision that requires him to establish he quit to relocate "for the *employment* of a spouse or domestic partner that is outside the existing labor market area." RCW 50.20.050(2)(b)(iii)(A) (emphasis added). The purpose of the unemployment compensation system is to

assist those who involuntarily lose their jobs, not to those who voluntarily quit to travel abroad with family. RCW 50.01.010.

The Commissioner correctly concluded: "In short, evidence does not establish whether the Fulbright grant was essentially scholarship income (paid primarily for the benefit of the claimant's spouse) or compensation for personal services. The burden of proof was the claimant's and was not satisfied." AR 67.

The Act defines "employment" as:

[P]ersonal service, of whatever nature, unlimited by the relationship of master and servant as known to the common law or any other legal relationship, including service in interstate commerce, performed for wages or under any contract calling for the performance of personal services, written or oral, express or implied.

RCW 50.04.100. To determine if Campbell's wife's Fulbright scholarship met the definition of "employment," the Commissioner needed to determine (1) if Campbell's wife was going to perform personal services for an employer, and (2) if her employer would pay wages for those services or if she would be paid under a contract calling for personal services. *Language Connection, LLC v. Emp't Sec. Dep't*, 149 Wn. App. 575, 581, 205 P.3d 924 (2009). To satisfy the first prong, the personal services must clearly be performed for an alleged employer or for its benefit. *Id.* at 582.

Here, although he was represented by counsel at the administrative hearing, Campbell did not establish that his wife's Fulbright scholarship constituted "employment." RCW 50.20.050(2)(b)(iii)(A); RCW 50.04.100. Campbell merely testified that it was a four month grant for \$17,000.00. AR 13, 16-17. At the time of the hearing, Campbell did not know through what university his wife would be working or exactly what the work would entail. AR 19-20 ("[S]he will be having to travel to public schools to do her research. She will be working with colleagues at whatever university she is placed at, and will be teaching university students presumably; perhaps teaching or making presentations to public school students. There is a whole variety of – of activities that she will be doing."). It is unclear whether this constitutes "personal services" under RCW 50.04.100 and, therefore, "employment" under RCW 50.20.050(2)(b)(iii)(A). The record does not establish whether Campbell's wife is a graduate student, or a professor, or some other type of Fulbright scholar.

The burden of establishing good cause to quit is on the benefits claimant. *Townsend*, 54 Wn.2d at 532. Because Campbell failed to carry his burden to establish that he quit his job to relocate for his wife's "employment," he did not satisfy either prong of the "quit to follow" provision.

VI. CONCLUSION

Campbell did not satisfy either of the prongs under the “quit to follow” provision: he neither worked as long as was reasonable prior to the move nor established that he was relocating for his wife’s “employment.” The Commissioner properly concluded that Campbell was not eligible for unemployment benefits. Accordingly, the Department respectfully requests that the Court affirm the Commissioner’s decision.

RESPECTFULLY SUBMITTED this 4th day of December
2013.

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PROOF OF SERVICE

I, Judy St. John, declare as follows:

1. That I am a citizen of the United States of America, a resident of the State of Washington, over the age of eighteen (18) years, and not a party to the above-entitled action.

2. That on the 4th day of December 2013, I caused to be served a copy of **Supplemental Brief of Respondent** on the Petitioner's counsel of record on the below stated date as follows:

US mail, postage prepaid, and email

Marcus Lampson
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1904 Third Ave., Suite 604
Seattle, WA 98101
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I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON that the foregoing is true and correct.

Dated this 4th day of December 2013 in Seattle, Washington.



Judy St. John, Legal Assistant

Appendix A

**Washington State
Employment Security Department
Precedential Decisions of Commissioner**



[Home](#)

IN RE: KEITH A. BOTTCHER
Empl. Sec. Comm'r Dec.2d 963
February 18, 2011

Term

Empl. Sec. Comm'r Dec.2d 963, 2011 WL 8129801 (WA)

Commissioner of the Employment Security Department
State of Washington
IN RE: KEITH A. BOTTCHER

Case No. 963
Review No. 2011-0299
Docket No. 02-2010-39007

February 18, 2011

DECISION OF COMMISSIONER

On January 12, 2011, KEITH A. BOTTCHER petitioned the Commissioner for review of an Initial Order issued by the Office of Administrative Hearings on December 14, 2010. Pursuant to chapter 192-04 WAC this matter has been delegated by the Commissioner to the Commissioner's Review Office. Having reviewed the entire record and having given due regard to the findings of the administrative law judge pursuant to RCW 34.05.464(4), we do not adopt the Office of Administrative Hearings' Findings of Fact or Conclusions of Law, but instead enter the following.

FINDINGS OF FACT

I.

The employer was provided due notice of the date, time, and place of the hearing, but failed to appear. As a result, these findings are based on the documentary evidence and on the testimony of claimant and his wife, Tamra Bottcher.

II

Claimant was employed by the interested employer from April 21, 2008 until September 30, 2010, as a customer service representative, full-time, non-union, earning \$19 per hour at the time of separation.

III

On September 30, 2010, claimant quit his employment, providing the following reason in writing to the employer: "Moving out of state. Wife transferred." See Exhibit 7.

IV

Claimant's wife worked for The Kroger Company ("Kroger"). On May 7, 2010,

Kroger offered claimant's wife a transfer opportunity to work as an account manager in the corporate marketing department in Cincinnati, Ohio. Claimant and his wife had experienced a prior transfer and knew that it was a complicated process, especially since the transfer would require the sale of their home in Bothell, Washington and further require them to be apart for some period of time.

V

Claimant and his wife made plans for her to accept the transfer and for them to temporarily live apart, with the understanding that claimant would remain behind at his job in the Seattle area and move to the Cincinnati area as soon as their home was sold.

VI

On June 2, 2010, claimant's wife accepted the transfer. On June 27, 2010, she left the family home in Bothell for the Cincinnati area. On June 28, 2010, she began to work in her new position in Cincinnati. As planned, claimant remained behind in Bothell and continued working at his job, pending sale of their home.

VII

Kroger had a "buy-out" program for transferring employees. Under that program, if an employee such as claimant's wife was unable to sell his or her home in connection with a transfer, Kroger would purchase the home on certain terms and conditions, including a home inspection and performance of any necessary repairs. Claimant and his wife were unable to sell their home within a reasonable period of time following the transfer and, therefore, elected to participate in Kroger's "buy-out" program.

VIII

Pending the home inspection, claimant continued his employment with his employer. On August 25, 2010, he received an inspection report, specifying the repairs that would have to be made to the house as a condition of Kroger's purchase.

IX

Only claimant was in a position to perform the required repairs. Until claimant performed the repairs, he would not be able to relocate to live with his wife in the Cincinnati area as originally planned.

X

For the purpose of being able to relocate to join his wife at her new place of employment, claimant resigned from his job on September 30, 2010 to perform the repairs required by Kroger and then to move. Claimant worked continuously on the required repairs from September 30 through December 5, 2010. As the repairs were nearing completion, another buyer offered a higher price than that offered by Kroger pursuant to the "buy-out" program, and a sale was closed with that third party. On Sunday, December 5, 2010, claimant moved to join his wife in the Cincinnati area, at their new residence just across the Ohio border in Florence, Kentucky. Claimant arrived there on Monday, December 6, 2010.

XI

During the weeks at issue claimant was able to work. He also actively sought work during all weeks at issue through December 5, 2010, but only by making at least three job search contacts per week online for jobs in the Cincinnati area. However, as found above, prior to the week ending December 11, 2010, claimant was continuously engaged in the house repairs required prior to moving, and was not in a position to move to the Cincinnati area. Therefore,

with the exception of the week ending December 11, 2010, if claimant had been offered a job to commence prior to the date of his move, he would not have been in a position to accept the job. There is no evidence of record on which to determine whether claimant was able to, available for, and actively seeking work during the week ending December 11, 2010, as the administrative law judge made no inquiries concerning that week.

ISSUES PRESENTED

I

Did claimant have good cause for quitting his employment under RCW 50.20.050(2)(b)(iii)?

II

Was claimant able to, available for, and actively seeking work during the weeks at issue as required by RCW 50.20.010(1)(c)?

CONCLUSIONS OF LAW

I

This case presents a question of first impression for the Commissioner's Review Office, relating to the contours of the good cause provisions of RCW 50.20.050(2)(b)(iii), enacted in 2009 and applicable to job separations occurring on or after September 6, 2009.

II

RCW 50.20.050(2)(b)(iii) provides in its entirety as follows:

(b) An individual has good cause and is not disqualified from benefits under (a) of this subsection only under the following circumstances:

...

(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

III

Both the Department in its November 16, 2010, Determination Notice (see Exhibit 2) and the administrative law judge in the December 14, 2010, Initial Order, concluded that claimant quit for "personal reasons" and did not have good cause.

IV

The language of RCW 50.20.050(2)(b)(iii) requires a claimant to satisfy two requirements. The first requirement is that a claimant "left work to relocate for the employment of a spouse or domestic partner that is outside the existing labor market area." (Emphasis supplied.) On the facts of this case, there is no question that claimant left his employment "for" the primary reason of relocating to be with his spouse at her new place of employment in the Cincinnati area, outside his existing labor market area in Seattle. The plain language of the statute does not impose a requirement that claimant's relocation be contemporaneous with his spouse's new employment outside the existing labor market area. It requires only that claimant's primary reason for leaving employment be "for" the employment of his spouse outside the existing labor market area. Here, there is no question that Cincinnati is outside claimant's existing labor market area in Seattle. Thus, the controlling issue is

whether claimant satisfied the second requirement of RCW 50.20.050(2)(b)(iii).

V

The second requirement of RCW 50.20.050(2)(b)(iii) is that a claimant "remained employed *as long as was reasonable prior to the move.*" (Emphasis supplied.) The plain language of the statute is that "the move" refers to claimant's move, not to his spouse's move. The issue therefore boils down to whether claimant remained employed "as long as was reasonable" prior to his move to join his spouse at her new place of employment. The record establishes that claimant remained employed until five days after he received the inspection report listing the repairs necessary to qualify for Kroger's "buy-out" program; that he was the only person in a position to perform the repairs; that the repairs were a prerequisite to his ability to relocate to join his spouse at her new place of employment as planned; that he continuously worked on the repairs from his date of separation until his move to join his spouse; and that if claimant had not performed the repairs, he would not have been able to join his spouse at her new place of employment. On these facts, we conclude that claimant remained employed as long as was reasonable prior to his move. This conclusion is not affected by the fortuitous facts that as claimant neared completion of the repairs required by Kroger, a third party offered more than Kroger and the residence was sold to the third party.

VI

In short, claimant carried his burden of proving by a preponderance of evidence that he quit with good cause under RCW 50.20.050(2)(b)(iii). The conclusions of the Department and the administrative law judge to the effect that claimant quit for "personal reasons" are contrary to the plain meaning of the statute and stretch the boundaries of "personal reasons." Claimant did not quit his job for the "personal reason" of deciding to make some home repairs; rather, he quit his job because making the home repairs required by Kroger was a prerequisite to his primary purpose of moving to live with his spouse at her new place of employment.

VII

The administrative law judge found and concluded that claimant was eligible for benefits under RCW 50.20.010(1)(c) for the benefit weeks prior to his December 5, 2010, move. We disagree. Claimant's own testimony establishes that during all weeks at issue, excluding the week ending December 11, 2010, he was fully occupied performing the required home repairs in Bothell and that he sought work only by making online contacts with prospective employers in the Cincinnati area. Until the repairs were completed and claimant was able to move to the Cincinnati area on December 5, 2010, he was not available to accept an offer of employment. It is well established that if a claimant places a substantial restriction on his availability for work, he is ineligible for benefits under RCW 50.20.010(1)(c). See, e.g., In re Wojanski, Empl. Sec. Comm'r Dec.2d 860, pp. 2-3 (1997); In re Erickson, Empl. Sec. Comm'r Dec. 1253, p. 6 (1975).

VIII

In the event that claimant has claimed and is entitled to receive benefits for the weeks ending December 11, 2010 and thereafter, the employer may be entitled to relief of benefit charges pursuant to RCW 50.29.021 and WAC 192-320-070. To obtain any such relief, the employer should follow the instructions below.

Now, therefore,

IT IS HEREBY ORDERED that the Initial Order issued by the Office of Administrative Hearings on December 14, 2010, is REVERSED on the issue of job separation. Claimant is not disqualified pursuant to RCW 50.20.050(2)(a). The Initial Order is REVERSED on the issue of availability. Claimant is ineligible for benefits under RCW 50.20.010(1)(c) for the weeks at issue prior to the week ending December 11, 2010. The issue of whether claimant is eligible for benefits under RCW 50.20.010(1)(c) for the week ending December 11, 2010, is REMANDED to the Department for determination, subject to further rights of

appeal pursuant to RCW50.32.020. *Employer:* If you pay taxes on your payroll and are a base year employer, or become one in the future, your experience rating account may not be charged for any benefits paid on this claim or future claims based on wages paid to this individual. See RCW 50.29.021. (If you are a local government or you reimburse the trust fund for benefits paid, this does not apply.) To obtain relief, you must submit a written request to the Employment Security Department's Benefit Charging Unit in Olympia. (Attach a copy of this decision.) The Unit's address and telephone number are:

Employment Security Department
Experience Rating/Benefit Charging Unit
PO Box 9046
Olympia, Washington 98507-9046
Telephone: (360) 902-9670

DATED at Olympia, Washington, February 18, 2011. [FN1]

Steven L. Hock
Chief Review Judge Commissioner's Review Office

FN1. Copies of this decision were mailed to all interested parties on this date.

RECONSIDERATION

Pursuant to RCW 34.05.470 and WAC 192-04-190 you have ten (10) days from the mailing and/or delivery date of this decision/order, whichever is earlier, to file a petition for reconsideration. No matter will be reconsidered unless it clearly appears from the face of the petition for reconsideration and the arguments in support thereof that (a) there is obvious material, clerical error in the decision/order or (b) the petitioner, through no fault of his or her own, has been denied a reasonable opportunity to present argument or respond to argument pursuant WAC 192-04-170. Any request for reconsideration shall be deemed to be denied if the Commissioner's Review Office takes no action within twenty days from the date the petition for reconsideration is filed. A petition for reconsideration together with any argument in support thereof should be filed by mailing or delivering it directly to the Commissioner's Review Office, Employment Security Department, 212 Maple Park Drive, Post Office Box 9555, Olympia, Washington 98507-9555, and to all other parties of record and their representatives. The filing of a petition for reconsideration is not a prerequisite for filing a judicial appeal.

JUDICIAL APPEAL

If you are a party aggrieved by the attached Commissioner's decision/order, your attention is directed to RCW 34.05.510 through RCW 34.05.598, which provide that further appeal may be taken to the superior court within thirty (30) days from the date of mailing as shown on the attached decision/order. If no such judicial appeal is filed, the attached decision/order will become final.

If you choose to file a judicial appeal, you must both:

- a. Timely file your judicial appeal directly with the superior court of the county of your residence or Thurston County. If you are not a Washington state resident, you must file your judicial appeal with the superior court of Thurston County. See RCW 34.05.514. (The Department does not furnish judicial appeal forms.) AND
- b. Serve a copy of your judicial appeal by mail or personal service within the 30-day judicial appeal period on the Commissioner of the Employment Security Department, the Office of the Attorney General and all parties of record.

The copy of your judicial appeal you serve on the Commissioner of the Employment Security Department should be served on or mailed to: Commissioner, Employment Security Department, Attention: Agency Records Center Manager, 212 Maple Park, Post Office Box 9555, Olympia, WA 98507-9555. To properly serve by mail, the copy of your judicial appeal must be received by the Employment Security Department on or before the 30th day of the appeal period. See RCW 34.05.542(4) and WAC 192-04-210. The copy of your judicial appeal you serve on the Office of the Attorney General should be

served on or mailed to the Office of the Attorney General, Licensing and Administrative Law Division, 1125 Washington Street SE, Post Office Box 40110, Olympia, WA 98504-0110.

Empl. Sec. Comm'r Dec.2d 963, 2011 WL 8129801 (WA)

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Appendix B

**Washington State
Employment Security Department
Precedential Decisions of Commissioner**

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IN RE THELMA J. BURKHOLDER
Empl. Sec. Comm'r Dec.2d 315
May 27, 1977

Term 

Empl. Sec. Comm'r Dec.2d 315, 1977 WL 191858 (WA)

Commissioner of the Employment Security Department
State of Washington
IN RE THELMA J. BURKHOLDER

May 27, 1977

Case No.
315
Review No.
27175
Docket No.
6-16620

DECISION OF COMMISSIONER

ST. MARY COMMUNITY HOSPITAL, the former and interested employer of the claimant above named, by and through THE GIBBENS COMPANY, INC., R.K. Lee, District Manager, having duly petitioned the Commissioner for a review of a Decision of an Appeal Tribunal entered in this matter on the 19th day of November, 1976, and the undersigned, having carefully reviewed the entire record, thereby being fully advised in the premises, does hereby enter the following:

FINDINGS OF FACT**I**

The claimant is a registered nurse and the primary source of income for herself and her husband. Her husband was notified in December, 1975, of his acceptance into the University of Washington Medical School at Seattle for the entering class of 1976. She worked for the employer from September, 1974, until her resignation on July 31, 1976, her last day of work. She gave a one-month notice. Her husband graduated at Walla Walla in May and worked in the pea fields until the end of July.

II

They drove to Seattle the following week to find a home. They located one and signed a purchase agreement on August 6 with a possession date about September 1, in order to start his schooling on September 20. After signing the agreement on August 6, they returned to Walla Walla for about three days. Then they went on a three-week vacation on the claimant's accrued leave. They returned to Seattle about September 12 to find the house not yet available. Hence, they had to live in a motel until late October, when they moved into their home.

III

The claimant had non-rotating hours. Her days off rotated. She had no promise of a job in

Seattle when she quit. She did not seek a home on her days off, nor did she ask for a couple of extra days off for which there was a possibility of obtaining. She did not use her three-weeks accrued vacation to seek, and then to return to her job for several weeks or more. Nor did she apparently have her husband, who was unemployed after July, seek out housing areas and houses near to the University and some hospitals or with available transportation systems.

From the foregoing Findings of Fact, the undersigned frames the following:

ISSUE

Is the claimant subject to disqualification for having voluntarily left her employment without good cause under RCW 50.20.050?

From the Issue as framed, the undersigned draws the following:

CONCLUSIONS

We concur with the Tribunal's citation of RCW 50.20.050, RCW 50.20.100 and RCW 50.20.110. We concur with Conclusion No. 2, where it stated in part that it must be established that the individual made every reasonable effort to preserve the employer-employee relationship. Additionally, the individual must endeavor to preserve the job relationship as long as possible under the facts. Careful attention is given to these cases. It usually boils down to a narrow set of facts and time frame. The burden is on the claimant to establish good cause.

In one leading case, a claimant worked for her Seattle employer from 1959 until she quit on September 2, 1960. Her husband had obtained a teaching job in July in Oakville to commence September 3, 1960. She left her job on September 2 to move there to establish a home for husband and child. It was held that she quit with "good cause" to follow her husband. In re Bale, 4 Comm. Dec. 452; 63 Wn.2d 83, 385 P.2d 545. However, it is important to note the time frame there.

There is also another line of cases which throw some light on the subject. These are the "quitting to get married" cases which usually find "not good cause". There is one reported case which, at first reading, would appear to be an exception to this holding. However, a closer reading shows that it was decided on its own very close set of facts, and is not truly an exception. There a claimant worked for her Spokane employer for one and one-half years. Her fiance and she planned to be married on a weekend. He was notified that he would be transferred to Clarkston to start September 29, 1969. The claimant gave two weeks' notice, last worked Friday, September 26, and was married Saturday, September 27, and moved with her husband to Clarkston that same day. Her husband started work there that Monday. It was noted that the act of marrying itself seldom gives rise to the need to terminate the job, since it can be contracted on a weekend or during a vacation or leave of absence. However, on the other hand, it is different where the individual feels it essential to quit on a date sufficiently prior to her intended date of marriage so as to complete all arrangements in relation thereto. In this latter situation, the individual "quits work to marry". The case then held that under the timing and sequence, the claimant had not quit to make preparations and to get married; but rather had quit in order to accompany her husband (on that same day) to a new location. In re Pedersen, 8 Comm. Dec. 811.

From all the above, it appears that a fairly narrow time frame between the quit and the move is needed in order to show "good cause" in cases of quitting to follow a husband. In the instant case, in view of Finding of Fact III above, we do not consider that the claimant did in any real way endeavor to preserve the job as long as possible under the facts. It is established that she quit prematurely without good cause within the meaning of the Act. Good cause was not established.

In passing, we note the Tribunal's Conclusion No. 5, which states:

"There is a vital public interest in encouraging the enrollment of individuals in medical school, and increasing the supply of practitioners of the healing arts. Accordingly, it is held that this claimant should be allowed a lengthier adjustment period than might be allowed for other categories of claimants."

While we agree that there is a vital need for encouraging education of doctors, we are still constrained to decide quit situations within the meaning and purview of the Act. We do not believe this can be so found. Accordingly,

IT IS HEREBY ORDERED that the Decision of the Appeal Tribunal entered in the matter on the 19th day of November, 1976, shall be SET ASIDE. Benefits shall be denied the claimant beginning July 25, 1976, and until she has obtained work and earned wages of not less than her suspended weekly benefit amount in each of five calendar weeks: PROVIDED, the disqualification shall not extend beyond October 9, 1976, pursuant to the provisions of RCW 50.20.050. The question of any overpayment shall be remanded to the local office for determination within RCW 50.20.190.

DATED at Olympia, Washington, MAY 27 1977

Thomas J. Moran
Commissioner's Delegate

CASE HISTORY:

--Commissioner affirmed by Superior Court for King County, Cause No. 830594, (10-19-79).

Empl. Sec. Comm'r Dec.2d 315, 1977 WL 191858 (WA)

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Dear Clerk,

Attached for filing is Supplemental Brief of Respondent by State of Washington Department of Employment Security in *Robert Campbell v State of Washington Department of Employment Security*, No. 88772-1.

The attorney for the Petitioner is receiving a courtesy copy of this email and a hard copy will follow via U.S. Mail.

Sincerely,
Judy St. John
Legal Assistant to:
Dionne Padilla-Huddleston, April Bishop
& Leah Harris

*Office of the Attorney General
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