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NO. 90544-4

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SUPREME COURT
OF THE STATE OF WASHINGTON

LINDA DARKENWALD,

Petitioner,

and

STATE OF WASHINGTON,
EMPLOYMENT SECURITY DEPARTMENT,

Respondent.

PETITIONER'S BRIEF IN RESPONSE TO MEMORANDUM OF
AMICUS CURIAE ASSOCIATION OF WASHINGTON
BUSINESS

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ORIGINAL

TABLE OF CONTENTS

1. RCW 50.20.050 does not preclude the protection of part-time worker status granted in RCW 50.20.119 as a basis for allowing benefits..... 1

2. AWB fails to explain how the purpose of the Act is served by permitting an unemployed part-time worker to receive benefits while turning down full-time work, but denying benefits to an employed part-time worker who turns down full-time work..... 3

3. Conclusion 7

TABLE OF AUTHORITIES

Cases

Campbell v. Emp't Security,
180 Wn.2d 566, 326 P.3d 566 (2014)..... 1

Courtney v. State Employment Sec. Dep't,
171 Wash. App. 655, 287 P.3d 596 (2012)..... 6

Darkenwald v. State Employment Sec. Dep't,
328 P.3d 977 (2014)..... 5

Davis v. Emp't Sec. Dep't,
108 Wash.2d 272, 737 P.2d 1262 (1987)..... 6

Read v. Emp't Sec. Dep't,
62 Wash.App. 227, 813 P.2d 1262 (1991)..... 5

Safeco Ins. Co. v Meyering,
102 Wn.2d 358, 687 P.2d 195 (1984)..... 1, 5, 6

Vergeyle v. Emp't Sec. Dep't,
28 Wash.App. 399, 623 P.2d 736 6

Statutes

RCW 50.01.010..... 5

RCW 50.20.050..... 1, 4, 5

RCW 50.20.050(2)(a)..... 5

RCW 50.20.119..... passim

The brief of amicus curiae Association of Washington Business (AWB) argues that the state's unemployment insurance law, and specifically the provisions of RCW 50.20.050, should be narrowly construed to deny a part-time worker benefits for refusing to accept a job offer of more than the seventeen hours that a part-time worker is allowed to work and still maintain their part-time status under the provisions of RCW 50.20.119.

1. RCW 50.20.050 does not preclude the protection of part-time worker status granted in RCW 50.20.119 as a basis for allowing benefits.

AWB relies on the decisions in *Campbell v. Emp't Security*, 180 Wn.2d 566, 326 P.3d 566 (2014) and *Safeco Ins. Co. v Meyering*, 102 Wn.2d 358, 392, 687 P.2d 195 (1984) in asking this court to deny Mrs. Darkenwald benefits on the basis that the reasons listed in RCW 50.20.050 are the only reasons an employee may "quit" work and receive benefits. However, neither case involved reconciling RCW 50.20.050 with the provisions of RCW 50.20.119 which establishes the eligibility of part-time workers to receive benefits while maintaining their part-time status by refusing work of more hours.

First, RCW 50.20.050 only applies to an applicant for unemployment benefits who voluntarily quits a job. As Mrs. Darkenwald argues

elsewhere, she never intended to quit her job, nor did her employer intend to fire her. She did, however, refuse her employer's insistence that she abandon her part-time worker status (and endanger her health) by working more hours than a part-time worker is permitted to work by the Act. RCW 50.20.119. As argued by amici Northwest Justice Project, Legal Voice and WELA, the refusal of new work in this circumstance should be deemed a discharge and analyzed under RCW 50.20.080. See WAC 192-150-150.

There is no "fault" in such a situation. The employer's business grew and he was entitled to change the job (increase the required hours) to meet his increased needs. Correspondingly, however, Mrs. Darkenwald had the right to refuse to lose her part-time worker status by working more hours – a substantial change in working conditions as a matter of law. RCW 50.20.119. The resulting loss of employment is the mirror image of when an employee loses a job because the employer's business has decreased and the employee is laid off as a result. It is not a result desired by either party nor the result of either party's "fault."

This parallel result is dictated by the Legislature's creation of the part-time worker status. In both cases, the unemployment *insurance* fund

is intended to be available to protect against the economic ravages of unemployment.¹

Hence, there is no expansion of “good cause” through the proper application of RCW 50.20.080. Simply put, this is not a voluntary quit case.

2. AWB fails to explain how the purpose of the Act is served by permitting an unemployed part-time worker to receive benefits while turning down full-time work, but denying benefits to an employed part-time worker who turns down full-time work.

RCW 50.20.119 permits an unemployed part-time worker to receive unemployment insurance benefits while turning down full-time employment (i.e. more than seventeen hours per week). The protection of part-time worker status provided in RCW 50.20.119 makes no sense if limited to only workers who are laid off from part-time employment. An employee who becomes unemployed by refusing more hours and who either quits or is fired for preserving their part-time worker status loses their employment in either case through an action initiated by their employer (increasing the employee’s work hours) and through no fault of the employee.

¹ The Act applies insurance principles to accumulate a fund “to be used for the benefit of persons unemployed through no fault of their own, and that [the Act] shall be construed for the purpose of reducing involuntary unemployment and the suffering caused thereby to the minimum.” RCW 50.01.010.

AWB does not explain how this reconciliation of the two provisions to permit part-time workers to preserve that status “ignore[s] the purpose of the statute [RCW 50.20.050],” as it argues. (Memo, p. 1). Other than arguing that the reasons set forth in the voluntary quit statute list is an “exclusive list” of reasons an employee may quit and still be eligible for benefits, *supra*, AWB does not provide any rationale for why a part-time employee who is laid off from her job is not required to accept employment of more hours to remain eligible for benefits, but an employed part-time employee should be forced to accept more hours or be deemed to be “at fault” for the loss of their employment.

AWB fails to answer the question of how such an application of the statutes is consistent with the act’s purpose of protecting both these employees from involuntary unemployment. The employee looking for work but refusing more than part-time work is unemployed for the same reasons as the part-time employee who loses their job by refusing to work more hours. Why is one more at fault and, therefore, less deserving than the other of protection against the “economic insecurity” of being unemployed that the Legislature expressly declared is the purpose of the Act?²

²Part-time workers who apply for unemployment benefits when their jobs are

AWB's argument ignores the fact that Mrs. Darkenwald's part-time job ended when her employer insisted that she work another day a week. Darkenwald didn't "quit" her job of two days per week that she had been working for at least the last four years of her employment, she refused a job of more than seventeen (17) hours a week which would have resulted in her losing her part-time worker status.

The Court of Appeals stated that "[w]hether [RCW 50.20.119] applies only to workers who are currently unemployed or also to employed part-time workers is a question of first impression." *Darkenwald v. State Employment Sec. Dep't*, 328 P.3d 977, 987 (2014).

The legislature enacted the Employment Security Act to award unemployment benefits to "persons unemployed through no fault of their own." RCW 50.01.010; *Safeco Ins. Cos. v. Meyering*, 102 Wn.2d 385, 392, 687 P.2d 195 (1984). **The Act disqualifies a person from receiving benefits if the individual worker is to blame for the unemployment.** *Safeco*, 102 Wn.2d at 392, 687 P.2d 195. Thus, the Act disqualifies a person from receiving benefits if she "left work voluntarily without good cause." RCW 50.20.050(2)(a). The phrase "left work voluntarily" in RCW 50.20.050 is a legal phrase determined by the facts of the case. *Read v. Emp't Sec. Dep't*, 62 Wn. App. 227, 233, 813 P.2d 1262 (1991). **The Act requires the Department to analyze the facts of each case**

converted to full-time are similarly situated to part-time workers who apply when they are simply laid off. The Legislature intended RCW 50.20.119 to protect both groups of claimants. No rational basis for treating these groups differently is apparent and AWB has not pointed to any such reason and a different application of the statute as argued by amicus (and the Department) has equal protections implications. See *DeYoung v. Providence Med. Ctr.*, 136 Wn.2d 136, 144, 960 P.2d 919 (1998) (eight year limitation period on medical malpractice claims invalidated).

to determine what actually caused the employee's separation. *Safeco*, 102 Wn.2d at 392–93, 687 P.2d 195. A voluntary termination requires a showing that an employee intentionally terminated her own employment or committed an act that the employee knew would result in discharge. *Vergeyle v. Emp't Sec. Dep't*, 28 Wn. App. 399, 402, 623 P.2d 736, review denied, 95 Wn.2d 1021, 1981 WL 191040 (1981), overruled on other grounds by *Davis v. Emp't Sec. Dep't*, 108 Wn.2d 272, 737 P.2d 1262 (1987). [[Footnotes omitted; Emphasis added]

Courtney v. State Employment Sec. Dep't, 171 Wn. App. 655, 660-61, 287 P.3d 596, 598-99 (2012). (employee intentionally separated from employment [quit] by failing to report).

RCW 50.20.119 embodies a policy allowing part-time workers to maintain their part-time status without jeopardizing their eligibility for benefits. AWB fails to even try to explain how the “fault” for the loss of a job is the employee’s when the employer initiates a job change by insisting that the employee abandon their part-time status by accepting a job with more hours.

Mrs. Darkenwald is not required to have a reason to choose part-time worker status, however, in this case, as in the case of many part-time workers, the employee’s refusal to abandon her part-time status was for a good reason. Mrs. Darkenwald’s limited work schedule was not a simple

matter of choice but was dictated by her well established physical health issues, stemming from her serious workplace injury.³

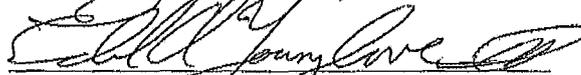
As the brief of amici curiae Northwest Justice Project, Legal Voice and WELA points out, there are a significant number of workers in the part-time worker category for a number of compelling reasons, e.g. child care, poor health, etc. (Brief p. 15-16) It is often not a choice or an easy choice for such a worker to increase their part-time hours of work. When they lose their employment because their employer insists they work more hours, they have truly become unemployed through no fault of their own.

3. Conclusion

Mrs. Darkenwald was entitled to preserve her part-time worker status and remain eligible for unemployment benefits.

RESPECTFULLY SUBMITTED this 4th day of February, 2015.

YOUNGLOVE & COKER, P.L.L.C.



Edward Earl Younglove III, WSBA #5873

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³ Any suggestion that Mrs. Darkenwald simply did not want to work Fridays was not supported by the record causing the Department to stipulate to reversal of the denial of benefits on that basis.

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Please find the attached Petitioner's Brief In Response to Memorandum of Amicus Curiae Association of Washington Business and Legal Voice and Certificate of Service of Petitioner, Linda Darkenwald for the above referenced case. Please also note the attorney of record is Edward Earl Younglove III, WSBA # 5873, and that his business phone number is (360) 357-7791. Please let me know should you have any issues opening the aforementioned attached documents. Thank you.

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