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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 02/02/2012
RUTH A. WILLINGHAM,
CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

CLAYTON PETERSON,) No. 1 CA-UB 10-0261
) 1 CA-UB 10-0262
Appellant,) (Consolidated)
)
v.) DEPARTMENT E
)
ARIZONA DEPARTMENT OF ECONOMIC) **MEMORANDUM DECISION**
SECURITY, an Agency,) (Not for Publication -
) Rule 28, Arizona Rules
and) of Civil Appellate
) Procedure)
SPECTRUM BUILDING MAINTENANCE,)
)
Appellees.)
)
)
_____)

Appeal from the A.D.E.S. Appeals Board

No. U-1156258-BR and U-1156276-BR

REVERSED AND REMANDED

Clayton Peterson
Appellant

Placentia, CA

Thomas C. Horne, Arizona Attorney General Mesa
By Eric Devany, Assistant Attorney General
Attorneys for Appellee Arizona Department of Economic Security

O R O Z C O, Judge

¶1 Claimant Clayton Peterson appeals from the Arizona
Department of Economic Security (ADES) Appeals Board decision

affirming earlier determinations that Peterson was disqualified from receiving unemployment benefits because he voluntarily left his job without good cause. He also appeals the determination that he had been overpaid by receiving unemployment benefits. For the following reasons, we reverse and remand for further proceedings consistent with this decision. We also vacate the overpayment decision, pending the outcome of the agency's reconsideration of eligibility.

FACTS AND PROCEDURAL HISTORY

¶2 Prior to January 2009, Peterson held two jobs: one full time at Best Buy and one part time at Spectrum Building Maintenance (Spectrum). Peterson was laid off from his job at Best Buy in early January, with the result that his part time job with Spectrum was his only source of income. Peterson worked approximately nine hours per week at Spectrum, at a rate of nine dollars per hour. Peterson's monthly living expenses were approximately \$800.00 per month. Peterson searched daily for full time work after being laid off from Best Buy but did not receive any offers for employment. Finding himself without prospects for full time employment and unable to meet his financial obligations, such as housing costs, vehicle insurance costs, and medical expenses, Peterson accepted an offer from his sister to move to California to live with her. As a result, Peterson ended his employment with Spectrum on January 30, 2009

and moved to California a few days later. Peterson applied for unemployment benefits on February 19, 2009.

¶13 In August 2009, an ADES deputy determined that Peterson had voluntarily quit his job without good cause, disqualified him from receiving future benefits and found that he had been overpaid in the amount of \$5,280.¹ Peterson timely appealed and the ALJ held separate hearings on the disqualification and overpayment issues on January 4, 2010. The ALJ affirmed the decision of the deputy in both cases. Peterson again timely appealed both decisions, which the Appeals Board subsequently affirmed. Both decisions were again affirmed on review.

¶14 Peterson timely appealed to this court, which consolidated both cases. We have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) section 41-1993.B (2011).²

DISCUSSION

¶15 On appeal, we give substantial deference to the decision of the Appeals Board and evidence will be viewed "in [the] light most favorable to upholding the decision." *Prebula*

¹ The deputy also classified Peterson's overpayment as "fraud" because he indicated that he had been laid off on his initial application for benefits. Peterson later testified that he had marked "laid off" as a mistake because he had been laid off from his previous two jobs. An Administrative Law Judge (ALJ) affirmed the decision that Peterson had been overpaid but reclassified it as "non-fraud."

² We cite to the current version of the applicable statutes when no revisions material to this decision have since occurred.

v. Ariz. Dep't of Econ. Sec., 138 Ariz. 26, 30, 672 P.2d 978, 982 (App. 1983). In evaluating the board's interpretations of the law, however, "we are free to draw our own legal conclusions." *Id.*

Disqualification From Benefits

¶6 An individual is disqualified from unemployment benefits if he "left work voluntarily without good cause in connection with the employment." A.R.S. § 23-775.1 (Supp. 2011). A worker who voluntarily leaves part time work "because of a desire to seek full time work leaves without good cause, unless the circumstances of the part time employment prevent him from seeking full time work during his nonworking hours." Arizona Administrative Code (A.A.C.) section R6-3-50450.H. When an individual voluntarily leaves his employment, he has the burden of proving that he left for "nondisqualifying reasons." A.A.C. § R6-3-50190.B.2.b.

¶7 The deputy disqualified Peterson from receiving benefits because he concluded Peterson "quit [his] job because [he] objected to working part time" and found Peterson had left work voluntarily without good cause because his part time job did not restrict him from looking for full time work during his off duty hours. The ALJ and the Appeals Board affirmed this determination, citing A.A.C. § R6-3-50190.

¶18 We conclude the Appeals Board erred because it failed to consider all of the reasons Peterson gave for moving to California. Although Peterson did testify that he was seeking full time employment and that he intended to seek full time employment in California, Peterson also indicated that he moved to California because he was unable to find affordable housing in Arizona.

¶19 If the circumstance prompting the worker to quit work is a housing problem, ADES must consider three factors in determining whether the worker left for a "compelling personal reason": (1) "[t]he availability of adequate housing within a reasonable distance of the work"; (2) "[t]he cost of housing in relation to wages"; and (3) "[p]rospects of other work that would eliminate the housing problem." A.A.C. § R6-3-50155.E.1. Although no Arizona cases have addressed this issue, other jurisdictions have recognized that low wages, an inability to afford housing, and the opportunity to obtain free or discounted housing elsewhere may be compelling reasons that do not disqualify a claimant from receiving unemployment benefits after he quits a job to move in search of work.³

³ See *Rios v. Emp't Dev. Dep't*, 231 Cal. Rptr. 732, 734 (App. 1986) (holding that claimants moved from California to Texas for good cause when they could not find work and could not afford housing in California but had access to housing in Texas); *Richards v. Unemp't Comp. Bd. of Review*, 420 A.2d 391, 395 (Pa. 1980) (holding that claimant was eligible for benefits after her

¶10 ADES erred when it failed to consider whether Peterson's housing problem was a compelling personal reason to end his employment with Spectrum. ADES incorrectly focused solely on Peterson's expressed desire to find full time work and relied only on a rule concerning an unfulfilled desire to obtain full time work. See A.A.C. § R6-3-50450.H. In doing so, ADES failed to consider the appropriate three-part housing test outlined by the Arizona Administrative Code and the uncontroverted evidence that Peterson's housing problem was also the reason for his move. See A.A.C. § R6-3-50155.E.1. As a part time employee at Spectrum, Peterson was earning gross pay of approximately \$324 per month. Peterson offered uncontroverted evidence that he was unable to live on his wages earned at Spectrum and his sister offered him free housing in California. Peterson testified that he spent "all [his] days looking for work and applying for jobs" but "no offers were being given to [him]" and no additional hours were available from Spectrum. This evidence is relevant to the three-part housing test and should

husband lost his job and they moved to take advantage of free housing because of economic necessity); *Glen Mills Sch. v. Unemp't Comp. Bd. of Review*, 665 A.2d 561, 564 (Pa. Commw. Ct. 1995) (allowing benefits when claimant moved because her husband took a job out of state and it became economically unfeasible to maintain two separate residences); *Judd v. Unemp't Comp. Bd. of Review*, 496 A.2d 1377, 1380 (Pa. Commw. Ct. 1985) (holding that economic difficulty constitutes good cause to leave employment when the worker has exhausted every possible alternative to separating from employment).

have been considered in determining whether Peterson's decision to end his employment with Spectrum was for a compelling personal reason.

¶11 We therefore remand this case for the ALJ to consider Peterson's uncontroverted testimony and apply these facts to the three part test in A.A.C. § R6-3-50155.E.1.⁴

Overpayment

¶12 Peterson also appeals the Appeals Board's determination that he was overpaid. After determining that Peterson was disqualified from benefits, ADES issued a "Determination of Overpayment" stating that as a result of the disqualification, Peterson had been overpaid for all benefits he had received. The initial determination classified the overpayment as "fraud." On appeal, the ALJ affirmed the determination of overpayment but changed the classification to "non-fraud." The determination of overpayment and the classification as "non-fraud" were affirmed by the Appeals Board and again on review.

¶13 A person who receives benefits to which he is not entitled is overpaid. A.R.S. § 23-787.A (Supp. 2011). However, because we remand for further proceedings consistent with this

⁴ Because we find that the appeals tribunal erred in its application of the relevant law, we do not address the State's argument that Peterson waived his contention that he quit work because of health issues by not raising it in the agency proceedings.

decision and a hearing on the merits, we vacate the overpayment order pending reconsideration by ADES of Peterson's eligibility for benefits.

CONCLUSION

¶14 We conclude that ADES erred in its application of the relevant law regarding Peterson's disqualification from benefits. We therefore reverse the decision of the Appeals Board and remand for consideration of A.A.C. § R6-3-50155.E.1 and application of the three-part housing test to consider whether Peterson had a compelling personal reason for leaving his employment. If on remand it is determined that Peterson did not have a compelling reason for leaving, then the overpayment determination may also be reinstated.

/S/

PATRICIA A. OROZCO, Judge

CONCURRING:

/S/

DIANE M. JOHNSEN, Presiding Judge

/S/

MAURICE PORTLEY, Judge