

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1998-CA-003028-MR

JOYCE T. RAMOS

APPELLANT

v. APPEAL FROM DAVIESS CIRCUIT COURT  
HONORABLE GARLAND W. HOWARD, JUDGE  
ACTION NO. 98-CI-00709

KENTUCKY UNEMPLOYMENT INSURANCE COMMISSION  
AND J'S LIQUOR & CHEESE SHOP

APPELLEES

OPINION  
REVERSING

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BEFORE: DYCHE, McANULTY, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: Joyce Ramos was denied unemployment insurance benefits because the Kentucky Unemployment Insurance Commission found that she had been discharged for misconduct - accepting five bad checks between 1995-1997. The circuit court affirmed, but we reverse because her conduct did not rise to the definition of misconduct under KRS 341.370 which requires wanton and willful violations of rules, not mere negligence or poor judgment.

Joyce Ramos began working for J's Liquor and Cheese Shop (J's) on November 17, 1985. Joyce Ramos was a clerk and a night closer. Her duties included waiting on customers, putting up stock, being in charge of the night shift, making night

deposits, and locking and securing the store. After working for J's for nearly 12 years, Joyce Ramos earned \$5.65 per hour, and received no health insurance or other benefits. It is undisputed that Joyce Ramos was a dedicated and hardworking employee, who was always willing to change shifts, work weekends, and fill in for other employees when asked to by her employer. J's admits that there were no problems with Joyce Ramos as far as tardiness or absenteeism was concerned.

In addition to accepting personal checks for purchases, J's also cashed payroll checks for customers. As a clerk, Joyce Ramos handled approximately 70 checks per week. J's had a check cashing policy which required employees to write down a customer's social security number on a check, and verify the number from the customer's license. J's did not require an employee to verify a social security number if the customer was known to the employee. Employees were also required to check the "do not cash check" lists before accepting a check from a customer. Joyce Ramos had read and signed the check cashing policy in 1996, the last sentence of which stated "Anyone who does not follow these guidelines and whose actions results in returned checks . . . will be asked to pay for the check or be terminated at the discretion of management."

In her 10 years of employment prior to 1995, J's admits that there were no problems with Joyce Ramos's work. Between 1995-1997, there were five incidents involving returned checks that Joyce Ramos had accepted from customers. Joyce was fired after the fifth incident, when a check for \$10.29 was returned

that she had accepted from a person whose name appeared on the "do not cash check" list. When the check was returned, Joyce explained to her employer that she had checked the list, but must have overlooked the name. She apologized for her mistake, and offered to pay for the check. J's, however, chose to fire her on October 21, 1997, after nearly 12 years of service.

Joyce Ramos applied for unemployment benefits. The Division of Unemployment Insurance decided that Joyce Ramos was discharged for misconduct connected with her work, and was, therefore, disqualified from receiving unemployment benefits pursuant to KRS 341.370(1)(b). Joyce Ramos appealed the decision, and a hearing was held before a Referee. The Referee made the following findings of fact:

On January 13, 1995, claimant was warned and suspended without pay for accepting a \$400.00 plus check without verifying the social security number. Claimant had not looked at the individual's social security number on that occasion. She had asked the person for it and he wrote it down. Another employee told claimant that she should accept the check.

There were two checks returned during calendar year 1996. One check was for \$426.24 and the other check was for \$90. Claimant checked the identification of each

person. But, concerning the check for \$426.24, she let the customer write the social security number on the check. The check proved to be bogus as did the social security number appearing thereon.

Claimant took a bogus check for \$293.57. The payroll check was dated July 21, 1997.

Claimant checked the social security number of that person and wrote the number on the check. But, [J's] determined that claimant utilized poor judgment in accepting the check. [J's] felt that she should have known that the check was bogus because of the lack of a watermark thereon. A notation on the check indicated that the reverse side thereof had an artificial watermark which the check did not have. As a result of her acceptance of that check, claimant was issued another warning. Per this warning, claimant was on notice that "further cashing of checks without following policy or using good judgment will result in disciplinary action."

On September 29, 1997, claimant received a check from an individual whose name appeared on the "do not cash" check list. The list is

posted by the drive-in window. Also, the person's name was posted on the cash register. The check was for [\$10.29]. This check, also, was returned. Claimant was not the only employee who took a check from that person. Other employees took checks from that individual in March 1997, on May 21, 1997 and September 20, 1997.

Claimant explained that she glanced over the list but failed to observe the individual's name on that list. She was busy at the time.

Each of the aforementioned checks were returned to the employer. Claimant offered to pay for the last check and for the other checks in full. But, because [J's] believed that claimant used poor judgment in the receipt of checks, [J's] was unwilling to allow claimant to pay for the checks or to retain her services. [J's] discharged claimant on October 21, 1997. (Emphasis added.)

The Referee concluded that Joyce Ramos had been discharged for misconduct connected with her work, and, as a result, she was not entitled to receive unemployment benefits

under KRS 341.370(1)(b). Joyce Ramos appealed the denial of benefits to the Kentucky Unemployment Insurance Commission, which affirmed the Referee's decision, adopting the Referee's findings as its own. Joyce Ramos appealed the Commission's decision to the Daviess Circuit Court. The court affirmed the Commission's decision, and this appeal followed.

On appeal, Joyce Ramos argues that her actions in accepting the five bad checks did not rise to Kentucky's definition of misconduct so as to disqualify her from receiving unemployment benefits pursuant to KRS 341.370(1)(b). We agree. An administrative board's decision will not be disturbed so long as its findings are supported by substantial evidence, and the agency applied the correct rule of law.<sup>1</sup> However, on reviewing the record, we conclude that there was not substantial evidence that Joyce Ramos's actions constituted misconduct within the meaning of the statute, and therefore the Commission erred in denying her unemployment benefits.

KRS 341.370(1)(b) provides that a worker is not entitled to receive unemployment benefits if the worker has been discharged for misconduct connected with his work. KRS 341.370(6), although not an all-inclusive list, provides some examples of misconduct, including a "knowing violation of a reasonable and uniformly enforced rule of an employer" and "refusing to obey reasonable instructions." In order to qualify as misconduct under the statute, however, an employee's actions

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<sup>1</sup>See Brown Hotel Co. v. Edwards, Ky., 365 S.W.2d 299, 302 (1962).

must be wanton and willful, not merely negligent or the result of poor judgment.<sup>2</sup>

In Shamrock,<sup>3</sup> this Court discussed the issue of negligent versus willful or wanton conduct in regards to disqualification from unemployment benefits pursuant to KRS 341.370(1)(b). Shamrock involved an employee who was fired and then denied unemployment benefits as a result of his turning over a bulldozer on the job. In holding that the employee was entitled to benefits, this Court stated:

we can only view Taylor's acts leading to the overturn of the dozer as constituting nothing more than an isolated case of poor judgment or minor and unintentional negligence. While such may well be a basis for terminating his employment, it falls far short of the type of conduct required under the statute in forfeiting benefits. (Citations omitted.) There is a total absence of bad faith or any inference of culpability in the form of willful or wanton conduct.<sup>4</sup> (Emphasis added.)

Applying the test from Shamrock to the instant case, we find no evidence of bad faith, or culpability in the form of willful or wanton conduct on the part of Joyce Ramos with regard to the bad checks which she accepted. Rather, the evidence shows that Joyce Ramos was fired for negligence and poor judgment,

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<sup>2</sup>See Shamrock Coal Co., Inc. v. Taylor, Ky. App., 697 S.W.2d 952 (1985); Kentucky Unemployment Insurance Commission v. Dye, Ky. App., 731 S.W.2d 826 (1987); Kentucky Unemployment Insurance Commission v. King, Ky. App., 657 S.W.2d 250 (1983).

<sup>3</sup>Id.

<sup>4</sup>Shamrock, 697 S.W.2d at 954. See also Kentucky Unemployment Insurance Commission v. Gooslin, Ky., 756 S.W.2d 464 (1988).

which is not misconduct under the statute.<sup>5</sup> As previously stated, the referee made the following finding concerning the reason for Joyce Ramos's firing:

because [J's] believed that claimant used poor judgment in the receipt of checks, [J's] was unwilling to allow claimant to pay for the checks or to retain her services.

Further, the Commission did not find misconduct on the part of Joyce Ramos regarding the first four checks. The Commission's decision that Joyce Ramos had engaged in misconduct was based on the fifth incident which resulted in her firing - her acceptance of the check for \$10.29 from an individual whose name appeared on the "do not cash check" list. The Referee stated:

It is obvious that the employer does not follow its check cashing policy as to requiring the employee to pay for the check and/or terminating him or her. But, even so, there exist enforcement although it is of a more lax nature than specified in the written word. [J's] own practice with claimant reflects that, through a series of discipline, the employer attempts to impress on the employee the need for compliance. Claimant was not required to make good on the checks from her own pocket.

Claimant did not set out to willfully neglect her duties with regard to the policy. While she may have been less than observant with regard to two of the checks, she erred when she failed to write down the social security number herself.

In any regard, claimant received warnings. Following the issuance of the last warning, equally applicable to the first, she had a duty to exercise more attention to detail in the performance of her duties regarding checks. She failed in that duty when she

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<sup>5</sup>See Shamrock, 697 S.W.2d at 954.



took the check from the person whose name was not only on the "do not cash check" list but on the list on the register. Following the warnings she received, her inattention to duty in that regard was wanton and her discharge was for misconduct connected with the work. (Emphasis added.)

From our review of the record, we cannot say that there exists substantial evidence that Joyce Ramos accepted the bad check in willful and wanton disregard of her employer's interests.<sup>6</sup> The evidence indicates quite the contrary, that Joyce Ramos was a conscientious employee who made a negligent mistake. She did not willfully neglect her duties. She handled approximately 43,000 checks in her 12 years with J's, out of which she accepted only one from a person on the "do not cash check" list. Joyce Ramos stated that she checked the list, and overlooked the name. We adjudge this to be nothing more than minor and unintentional negligence or poor judgment.<sup>7</sup> Further, the record shows that this was not an uncommon mistake at J's - three other employees also accepted a check from this same individual while his name appeared on the list. The fact that Joyce had been warned to be more careful did not cause this final mistake to rise to the level of willful and wanton. Joyce Ramos's lack of bad faith is further demonstrated by her apology and offer to pay for the check, as well as the other four returned checks which she had accepted.

While it was within J's discretion to terminate Joyce Ramos's employment as a result of her actions in accepting the

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<sup>6</sup>King, 657 S.W.2d at 251.

<sup>7</sup>Shamrock, 697 S.W.2d at 954.

bad checks, we conclude her actions were not willful and wanton so as to constitute misconduct under KRS 341.370(1)(b) and merit denial of unemployment benefits.<sup>8</sup>

For the aforementioned reasons, the judgment of the Daviess Circuit Court is reversed, with directions to remand the case to the Kentucky Unemployment Insurance Commission for an award of unemployment benefits to Joyce Ramos.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE, KENTUCKY  
UNEMPLOYMENT INSURANCE  
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BRIEF FOR APPELLEE, J'S LIQUOR  
& CHEESE SHOP:

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<sup>8</sup>Id.