

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-001758-MR

LINDA M. PORTER

APPELLANT

v. APPEAL FROM PULASKI CIRCUIT COURT
HONORABLE JEFFREY T. BURDETTE, JUDGE
ACTION NO. 04-CI-00853

MID-STATE AUTOMOTIVE REBUILDERS

APPELLEE

OPINION
REVERSING

** ** * * *

BEFORE: BARBER, JUDGE; HUDDLESTON AND PAISLEY, SENIOR JUDGES.¹

BARBER, JUDGE: Appellant Linda M. Porter appeals from a determination by the Pulaski Circuit Court reversing the decision by the Kentucky Unemployment Insurance Commission (Commission), finding Porter entitled to unemployment insurance benefits. We reverse the circuit court decision and find that the Commission's determination that Porter was sexually harassed

¹ Senior Judges Joseph R. Huddleston and Lewis G. Paisley sitting as Special Judges by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

and left her employment for good cause is supported by the record.

Linda Porter was employed by Appellee Mid-State Automotive Rebuilders, (Mid-State). Porter contended that a supervisory employee, Jason Wilson, sexually harassed her at work. Although she and Mid-State reached an agreement providing for her protection from further harassment, Mid-State failed to take the reasonable steps agreed upon. Porter continued to be adversely affected and harassed by Wilson. Porter was forced to quit her employment due to the harassment. On appeal, the Referee found that Porter did not quit her employment for good cause. This decision was reversed by the Commission, which held that Porter had good cause to quit her employment due to the harassment. This determination is supported by ample evidence in the record. The circuit court reversed the Commission's determination in error.

The record shows that Porter was hired to work in the alternator department of the factory. The department was not supervised by Jason Wilson, the individual alleged to have sexually harassed her. Later in her employment Porter was required to work with Jason Wilson, foreman of the starter department at Mid-State. The business is quite small, and contact between the departments is possible. Supervisory

employees testified that at times, employees from one department may be required to work with employees in another department.

Shortly after Porter was hired, Jason Wilson began to verbally harass her, making sexual comments to her and in her presence. These included multiple references to co-workers' genitalia and sexual practices, and comments regarding Porter's sex life. Prior to her employment at Mid-State, Porter had been the victim of a brutal beating and rape. She informed Wilson of this, and asked him to cease making such statements around her. Wilson did not stop the harassing behavior. At the hearing before the unemployment referee Porter testified that Wilson made lewd comments to her on many occasions. Porter made a formal complaint to the employer on May 15, 2003. She told her employers that Wilson's harassment was affecting her health. She was informed that the company had an "open door" policy, and that she was free to bring such complaints to management. Porter was assured that she would no longer have to be supervised by Wilson.

In June, Wilson approached Porter and informed her that he was writing her up for the unexcused absences. These were absences that occurred after the harassment and for which Ms. Owens had told her she would not need a doctor's excuse. Wilson signed the write up as her "supervisor." When Porter complained again, she was told by supervisor Burton that

"sometimes life isn't fair." Ms. Whitis informed Porter in January that she was "too busy" to listen to her complaints. Porter then informed Mr. Burton, another supervisor that she "couldn't take it anymore." There was an issue at the time she quit regarding Porter's communications with her boyfriend, who worked at the same manufacturer. Ms. Whitis testified that Porter would ask her boyfriend for his opinion on her work assignments. Whitis chastised Porter for this behavior. Porter testified that this made her worry that her boyfriend would lose his job if she stayed with the employer. She also had concerns that she would be fired.

Despite the employer's assurances that she would no longer have to work for Wilson, the record contains evidence showing that Wilson continued to supervise Porter. Mid-State scheduled a meeting with Wilson and Gregory for the purpose of improving the way Porter worked when she was in Wilson's section. The Commission found that this meeting should have been unnecessary, as Porter was not to work in Wilson's section or under his supervision at all. The parties testified that despite the earlier agreement, Porter was required to work in the starter section of the plant, supervised by Wilson, when that section fell behind on orders. The employer admitted that Porter was "crying and shaking" throughout this meeting, which was held just four days after Porter filed her formal complaint

of sexual harassment by Wilson. The Commission found that this meeting, required by the employer, was clear evidence that the employer failed to make the workplace safe for Porter. Mid-State also admitted in the record that Porter was required to occasionally speak to and work with Wilson following the reports of sexual harassment. The record shows that Porter reported the harassment to her supervisor, to her supervisor's supervisor, and then to the main office at Mid-State, yet nothing was done to protect her from further harassment.

Wilson continued to make lewd remarks to and in the presence of Porter. Porter was forced to work on inventory in a secluded section of the business under the direct supervision and control of Wilson. Wilson also came and got Porter to have her do office clean up on several occasions. On December 1, 2003, Porter complained that Wilson was acting sexually towards other employees in Wilson's presence and that these actions were upsetting to her. This was Porter's second formal complaint. When the complaint was made, the supervisor told Porter to just stay away from him. Two managerial employees testified that they made no attempt to check on whether Wilson was being kept away from Porter or whether he was still able to harass her during work hours. Ms. Owens testified that she did not consider Porter's complaint of Wilson's sexual contact with

other employees and flaunting of these actions in front of Porter to be a complaint of sexual harassment at all.

Ms. Whitis, Porter's supervisor, testified that she was unaware of any contact between Porter and Wilson after the complaint was filed. This contention is refuted by the record. Porter testified that from May, when the complaint was made, through October, Wilson continued to verbally harass her. Whitis also testified that after the complaint, "Wilson never did need Porter for much," and that she told Porter to just stay away from Wilson, and told her "don't talk to him and he won't talk to you." Whitis did admit during her testimony that Wilson was alone with Porter in a secluded building during the inventory. She also admitted that Wilson came on occasion to get Porter to do cleanup duties under his supervision. In January, when her supervisor refused to listen to anymore of her complaints, and she was barred from the main office, Porter had no recourse but to quit to save herself from further harassment.

Porter testified that she quit her employment with good cause. This testimony was found to be reliable by the Commission, which ruled in her favor. Porter testified that she was forced to seek medical treatment for her anxiety due to the harassment. The record shows that Porter was put on medication on May 15, 2003, and required ongoing treatment through the date

she left the employment of Mid-State Automotive Rebuilders on January 19, 2004.

Porter testified before Referee Clouse that she was then told never to come back to the office and informed that she could only make complaints to her supervisor. The employer failed to make clear to Porter that she could continue to file a complaint if she was harassed. Porter stated that she received reprimands for the absences required by medical treatment related to the harassment.

Porter testified that she was so upset by Wilson's presence that she would break into tears when he was around. When she was forced to attend a training session with Wilson, Porter testified that she was shaking and crying throughout the meeting. This testimony is supported by her supervisor who admitted that Porter was visibly upset.

The employer filed notice with the Commission that Porter had informed them that she wasn't being treated fairly, but had refused to talk to them about the situation. The employer also claimed before the Commission that Porter never had to work for or with Wilson after she made the initial complaint. This assertion is false, and refuted by the testimony of the employer's supervisory personnel.

Porter filed a claim for unemployment benefits. This claim was denied on March 2, 2004. Porter appealed that

decision and the Unemployment Appeals Referee found that Porter had voluntarily quit her employment without good cause. The Commission reversed that determination after a hearing, finding that Porter had quit her employment with good cause attributable to her employment, and was qualified to receive unemployment insurance benefits.

The issue before this Court is whether the Pulaski Circuit Court was in error in reversing the Commission's determination that Porter was entitled to unemployment insurance benefits. Employees who quit their employment with good cause related to the employment are entitled to such benefits pursuant to KRS 341.370(1) and KRS 341.530(3). A decision by the Commission shall not be set aside unless the court finds that the determination was arbitrary or clearly erroneous. Kentucky Commission on Human Rights v. Fraser, 625 S.W.2d 852, 856 (Ky. 1981).

The Pulaski Circuit Court reviewed the Commission's determination. The circuit court reversed the Commission. The circuit court found that Wilson had made improper statements to and in front of Porter. The circuit court found that Porter was required to attend training sessions with Wilson even when those caused her significant distress. The circuit court found that Porter had been criticized by supervisors for breaking the chain of command by making complaints about Wilson. The court held

that Wilson's assertions of harassment were not substantiated by the employer and that Porter's decision to quit was unrelated to the alleged sexual harassment.

The standard of review requires the circuit court determine whether the Commission's "findings of fact are supported by substantial evidence and whether the agency correctly applied the law to the facts." Thompson v. Kentucky Unemployment Insurance Commission, 85 S.W.3d 621, 624 (Ky.App. 2002). "Good cause [attributable to the employment] exists only when the worker is faced with circumstances so compelling as to leave no reasonable alternative but loss of employment." Thompson v. Kentucky Unemployment Insurance Commission, supra., quoting Unemployment Insurance Commission v. Murphy, 539 S.W.2d 293, 294 (Ky. 1976). The findings of an administrative agency will be upheld even where the record contains evidence to the contrary. Kentucky Commission on Human Rights v. Fraser, 625 S.W.2d 852, 856 (Ky. 1981).

In analyzing the evidence before the Commission, the trial court made the following findings: That Wilson's presence was necessary at the meeting regarding how to make Porter's work in his division less physically painful for her; that the employer "generally sought to reduce contact between Porter and Wilson"; that there "is certainly not substantial evidence in the record to suggest that Wilson still occasionally performed

the role of a supervisor with regard to Porter." These findings are in direct contradiction with the testimony of the victim and the testimony of her direct supervisor, Ms. Whitis. The employer admits in its brief before this Court that Wilson provided "a few" work assignments to Porter and supervised her on occasion following the complaint of sexual harassment. This supervision by Wilson and ongoing contact between Wilson and Porter was in violation of her direct request and the company's assurances that Wilson would no longer have contact with her or supervise her. This uncontroverted evidence shows that Mid-State did not insure that Ms. Porter would be free from harassment by Wilson, in direct violation of the agreement between the parties. Mid-State contends that there were no issues of harassment following the initial reports in May, 2003, and asserts that "it is undisputed that no further sexual harassment occurred relative to Appellant [Porter]." Far from being undisputed, this claim is refuted by the direct testimony of Porter, and by the complaints she made in December, 2003, as well as by the testimony given by supervisory employees during the hearing.

Referee Clouse found that "the testimony presented establishes that the employer took every action, short of terminating the supervisor [Wilson] to ensure that claimant was not subject to any forms of harassment." This finding is

refuted by the record, and the Commission correctly found that Mid-State had failed to take even minimal steps to protect Porter from further harassment. The trial court was in error in ignoring the Commission's factual findings, and determining that Porter did not quit her employment for good cause.

Where, as here, an employee has reported sexual harassment, the employer and supervisory employees are properly on notice of the alleged harassment. Bank One, Kentucky N.A. v. Murphy, 52 S.W.3d 540, 544 (Ky. 2001). The employer must then take reasonable care in protecting the employee or employees at risk of further harassment. Id., 52 S.W.3d at 545. In the present case, Mid-State knew of the allegations of harassment, but failed to take reasonable steps to protect Ms. Porter. The Commission's findings to that effect are well supported by the evidence. For this reason, the circuit court had a duty to affirm the factual findings of the Commission. Brewer v. Hilliard, 15 S.W.3d 1 (Ky.App. 1999).

The law provides that:

It has generally been held that the beneficent provisions of an unemployment compensation act should receive a liberal or broad construction in favor of claimants in order to afford employees the benefits intended by the act. The Kentucky Unemployment Compensation law provides that the act shall be liberally construed to accomplish its purposes.

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Commission, 798 S.W.2d 464, 467 (Ky.App. 1990), citation to authority deleted. The circuit court failed to properly protect the Commission's determination, and the reversal of that finding by the circuit court was in error. For the foregoing reasons, the circuit court's ruling is reversed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Deborah Spring
Somerset, Kentucky

BRIEF FOR APPELLEE:

Mary Dee Allen
Cookeville, Tennessee