

RENDERED: OCTOBER 21, 2011; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2010-CA-001460-MR

SOMERSET MANOR, LLC

APPELLANT

v. APPEAL FROM PULASKI CIRCUIT COURT  
HONORABLE JEFFREY T. BURDETTE, JUDGE  
ACTION NO. 09-CI-01497

KENTUCKY UNEMPLOYMENT  
INSURANCE COMMISSION AND  
MICHAEL E. HENSLEY

APPELLEES

OPINION  
AFFIRMING

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BEFORE: DIXON, STUMBO, AND VANMETER, JUDGES.

STUMBO, JUDGE: This is an appeal from a decision of the Pulaski Circuit Court affirming an award of unemployment benefits to Michael E. Hensley. Somerset Manor, the appellant, argues that Hensley was discharged for misconduct and not

eligible for unemployment benefits. We find no error and affirm the Pulaski Circuit Court.

There are no facts in dispute. Hensley worked as a certified nursing assistant for Somerset Manor from February 2, 2009, until May 20, 2009.

Somerset Manor is a nursing home. Hensley was discharged by Somerset Manor because of allegations of abuse, which were alleged to have occurred during Hensley's prior employment with Oakwood Nursing Home. These allegations are currently under investigation by the Office of the Inspector General ("OIG").

On May 11, 2009, the OIG sent Hensley a letter stating that an allegation of abuse by him was being investigated. The letter also stated that there was "a preliminary finding substantiating the allegation." The letter advised Hensley that he could submit a written response to the allegation and request a hearing. Hensley provided Somerset Manor with a copy of the letter. Based on the contents of the letter, Somerset Manor discharged him. The letter was the only reason for his discharge. At the time of this opinion, the Oakwood investigation has not been finished and Hensley is still able to practice nursing.

Hensley then filed a claim for unemployment insurance benefits. On June 9, 2009, the Division of Unemployment Insurance issued a notice determining that Hensley was discharged for reasons other than misconduct and was not disqualified from receiving unemployment benefits. Somerset Manor appealed this decision to a referee, arguing that Hensley was discharged for misconduct due to the allegation of abuse at Oakwood Nursing Home. The referee also found that

Hensley had been discharged for reasons other than misconduct and could receive benefits.

Somerset Manor then appealed that decision to the Kentucky Unemployment Insurance Commission. The Commission affirmed the decision of the referee. The Commission stated that the only evidence of misconduct is the OIG letter. The Commission found that Somerset Manor had not met its burden in showing Hensley had engaged in misconduct, especially since the Oakwood allegation was still under investigation.

Somerset Manor then sought review from the Pulaski Circuit Court. The circuit court affirmed the decision of the Commission. The court found that Hensley had not committed any misconduct at Somerset Manor and that the only alleged misconduct occurred at a separate facility and is still just an allegation under investigation. The court also reasoned that Somerset Manor did not have to fire Hensley right away; it could have put him on a leave of absence or suspension until the resolution of the abuse allegation. This appeal followed.

Upon review of an administrative agency's adjudicatory decision, an appeal court's authority is somewhat limited. The judicial standard of review of an unemployment benefit decision is whether the KUIC's findings of fact were supported by substantial evidence and whether the agency correctly applied the law to the facts. Substantial evidence is defined as evidence, taken alone or in light of all the evidence, that has sufficient probative value to induce conviction in the minds of reasonable people. If there is substantial evidence to support the agency's findings, a court must defer to that finding even though there is evidence to the contrary. A court may not substitute its opinion as to the credibility of the

witnesses, the weight given the evidence, or the inferences to be drawn from the evidence. A court's function in administrative matters is one of review, not reinterpretation.

*Thompson v. Kentucky Unemployment Ins. Comm'n*, 85 S.W.3d 621, 624 (Ky. App. 2002).

Kentucky Revised Statutes (KRS) 341.370(1) states that a worker discharged for misconduct in his most recent work cannot receive unemployment benefits. KRS 341.370(6) defines "discharge for misconduct." It is undisputed that had Hensley been found to have abused a patient at Oakwood, he would have been disqualified from the practice of nursing. A substantiated allegation of abuse, which is finalized after an investigation and hearing, would also be grounds for a discharge for misconduct.

In the case at hand, Hensley had not been found to have caused abuse to a patient at Oakwood and there is no allegation that there has been any misconduct in the course of his work for Somerset. There was a preliminary finding substantiating the abuse allegation, but Hensley was in the process of disputing the allegation and the investigation was ongoing.

Somerset Manor argues in the alternative that the matter should be put in abeyance until the abuse matter is fully resolved. We decline to take this action. Hensley was discharged for reasons other than misconduct. He is therefore entitled to unemployment benefits.

Based on the above, we affirm the order of the Pulaski Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE,  
KENTUCKY UNEMPLOYMENT  
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NO BRIEF FILED FOR APPELLEE,  
MICHAEL E. HENSLEY