

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-000066-MR

DEBBIE B. BENTLEY

APPELLANT

v.

APPEAL FROM SHELBY CIRCUIT COURT
HONORABLE CHARLES R. HICKMAN, JUDGE
ACTION NO. 09-CI-00132

MASONIC HOMES
OF SHELBYVILLE

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: TAYLOR, CHIEF JUDGE; DIXON, JUDGE; ISAAC,¹ SENIOR
JUDGE.

TAYLOR, CHIEF JUDGE: Debbie B. Bentley brings this appeal from a December
7, 2009, Opinion and Order of the Shelby Circuit Court which affirmed a decision

¹ Senior Judge Sheila Isaac sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

of the Kentucky Unemployment Insurance Commission (KUIC) that Bentley was disqualified from receiving unemployment insurance benefits. We affirm.

Bentley was employed by Masonic Homes of Shelbyville as a dietary aide and relief cook from September 22, 2004, until April 18, 2008. On April 14, 2008, the director of dining services at Masonic Homes informed Bentley that the full-time cook would be on vacation for a couple of weeks and that Bentley would be filling in as cook. The director testified that Bentley stated that she was “not f---ing cooking.” Bentley denied making such statement. Bentley testified that she stated “this s--t is crazy. We’ll have to see” and that “I would have to see, that I was not kissing no one’s a--.” As a result of this incident, Masonic Homes terminated Bentley’s employment.

Bentley filed a claim for unemployment benefits with KUIC. Ultimately, the KUIC determined that Bentley was disqualified from receiving benefits as Bentley was discharged for misconduct under Kentucky Revised Statutes (KRS) 341.370(1)(b). Being dissatisfied with the decision, Bentley sought judicial review with the Shelby Circuit Court. KRS 341.450. The circuit court affirmed the decision, thus precipitating our review.

This is an appeal from an administrative agency’s decision. In such an appeal, our review is limited to a determination of whether the agency’s decision is arbitrary. *Am. Beauty Homes Corp. v. Louisville and Jefferson Co.*

Planning and Zoning Comm'n, 379 S.W.2d 450 (Ky. 1964). Arbitrariness has many facets; however, in this case, we are called upon to determine whether KUIC's findings of fact are supported by substantial evidence of a probative value and whether KUIC correctly applied the law to the facts. *Thompson v. Kentucky Unemployment Ins. Comm'n*, 85 S.W.3d 621 (Ky. 2002). After considering the evidence and applicable law, we conclude KUIC's decision should be affirmed.

Bentley contends that she did not commit misconduct sufficient to deny her claim for unemployment benefits. We disagree.

Under KRS 341.370(1)(b), a worker is disqualified from receiving unemployment insurance benefits if that worker was "discharged for misconduct." A worker is deemed "discharged for misconduct" if that worker commits a "knowing violation of a reasonable and uniformly enforced rule of an employer." KRS 341.370(6).

KUIC noted that Masonic Homes' employment policy provided that a worker may be discharged for serious disrespect to any supervisor in the presence of others and that such was considered a "Class III offense." The record reveals that Bentley was aware of this policy. In finding that Bentley violated the policy, the KUIC specifically found:

The evidence . . . shows that claimant used profanity in a statement she made to the director of dining services on April 14, 2008. She spoke to the supervisor in a disrespectful manner in the presence of another cook, which was a violation of the employer's policy. The claimant was aware of the employer's policy regarding that issue. The claimant's actions rise to the level of

statutory misconduct. Therefore, a benefit disqualification is required.

We do not believe that KUIC misapplied the law or that its findings of fact lacked substantial evidence of a probative value. Moreover, the circuit court has aptly reviewed the law, the facts and rendered an excellent analysis of this case. We can add nothing more. In sum, we hold that KUIC's decision was not arbitrary.

For the foregoing reasons, the Opinion and Order of the Shelby Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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Louisville, Kentucky

BRIEF FOR APPELLEE:

Patrick B. Shirley
Education and Workforce
Development Cabinet
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