NO. COA01-1006

NORTH CAROLINA COURT OF APPEALS

Filed: 6 August 2002

CEDRIC R. PERRY T/A
CEDRIC R. PERRY, ATTORNEY
AT LAW,
Petitioner,

v.

Nash County
No. 00 CVS 2291

VALERIE J. OWENS AND
EMPLOYMENT SECURITY
COMMISSION OF NORTH CAROLINA,
Respondents.

Appeal by petitioner from judgment entered 19 March 2001 by Judge Cy A. Grant in Nash County Superior Court. Heard in the Court of Appeals 21 May 2002.

Cedric R. Perry, petitioner-appellant, pro se.

C. Coleman Billingsley, Jr., Chief Counsel, Employment Security Commission of North Carolina, by Charles E. Monteith, Jr., Deputy Chief Counsel, for respondent-appellee Employment Security Commission of North Carolina.

HUDSON, Judge.

Cedric R. Perry ("petitioner") appeals from an order of the superior court affirming a decision of the Employment Security Commission (the "ESC"). For the reasons given below, we affirm.

Valerie J. Owens worked for petitioner from 17 August 1998 until she left her job on 29 November 1999. Owens filed an unemployment compensation claim. An adjudicator for the ESC

determined that Owens was disqualified for benefits because she left her job for personal reasons, without good cause attributable to her employer. Owens appealed the adjudicator's determination. An appeals referee determined that Owens left her job for good cause attributable to her employer and, therefore, was not disqualified for unemployment benefits. Petitioner appealed the appeals referee's decision to the ESC.

The ESC determined that the appeals referee failed to enter all relevant evidence into the official record, failed to make sufficient findings of fact, and made conclusions of law that were not supported by the findings of fact. Thus, the ESC set aside the referee's decision and remanded the case for further proceedings.

On remand, the appeals referee again determined that Owens left her job for good cause attributable to petitioner and decided that she was not disqualified for unemployment benefits. Petitioner again appealed to the ESC. The ESC issued a decision stating that it "concludes that the facts found by the Appeals Referee are supported by competent and credible evidence contained in the record, and adopts them as its own. Furthermore, the [ESC] concludes that the Appeals Referee properly and correctly applied the Employment Security Law (G.S. § 96-1 et seq.) to the facts as found, and the resultant decision was in accordance with law and fact." Thus, the ESC affirmed and adopted the decision of the appeals referee as its own.

Petitioner appealed the ESC's decision to the superior court. The superior court affirmed the ESC's opinion. Petitioner now

appeals to this Court.

Pursuant to N.C. Gen. Stat. § 96-15(i) (2001), the superior court functions as an appellate court when reviewing a decision of the ESC. *See In re Enoch*, 36 N.C. App. 255, 256, 243 S.E.2d 388, 389 (1978). In that capacity,

> [t]he function of the superior court in reviewing a decision of the Employment Security Commission is twofold: "(1) To determine whether there was evidence before the Commission to support its findings of fact; and (2) to decide whether the facts found sustain the conclusions of law and the resultant decision of the Commission."

Id. at 256-57, 243 S.E.2d at 389-90 (quoting *Employment Security Com. v. Jarrell*, 231 N.C. 381, 384, 57 S.E.2d 403, 405 (1950)). In particular, N.C.G.S. § 96-15(i) provides that "[i]n any judicial proceeding under this section, the findings of fact by the [ESC], if there is any competent evidence to support them and in the absence of fraud, shall be conclusive, and the jurisdiction of the court shall be confined to questions of law."

Here, petitioner stated in his amended petition for judicial review that the grounds for his petition were: "(1) erroneous findings of fact; (2) omission of material facts; (3) inadequate findings of fact; (4) erroneous conclusions of law that the Employer created an intolerable working environment; and (5) a decision that is not based on employment security law." However, a petition for judicial review must "explicitly state what exceptions are taken." N.C. Gen. Stat. § 96-15(h) (2001). A general allegation that the ESC made "erroneous findings of fact" is insufficient, and we therefore hold that petitioner waived his

right to argue to the superior court that the ESC's factual findings were not supported by the evidence. *See Bunn v. N.C. State University*, 70 N.C. App. 699, 701, 321 S.E.2d 32, 33 (1984) (citing *In re Hagan v. Peden Steel Co.*, 57 N.C. App. 363, 364, 291 S.E.2d 308, 309 (1982)). "The scope of our inquiry, then, is limited to determining whether the ESC and the Superior Court correctly interpreted the law and properly applied it to the facts as found. In other words, we must say whether the ESC's findings of fact, in light of the applicable law, support its determination." *Id.* Accordingly, the only issue for us to consider is whether the ESC's factual findings support its conclusion that Owens left her job for good cause attributable to petitioner.

Pursuant to N.C. Gen. Stat. § 96-14(1) (2001), an individual is disqualified from receiving benefits "if it is determined by the [ESC] that such individual is, at the time such claim is filed, unemployed because he left work without good cause attributable to the employer." This Court has observed that "the disqualification rules [should] be applied strictly in favor of the claimant." *Bunn*, 70 N.C. App. at 701, 321 S.E.2d at 34 (citing *In re Watson*, 273 N.C. 629, 161 S.E.2d 1 (1968)). We have defined "good cause" as "a reason which would be deemed by reasonable men and women valid and not indicative of an unwillingness to work." *Id.* at 702, 321 S.E.2d at 34 (citing *In re Clark*, 47 N.C. App. 163, 266 S.E.2d 854 (1980)). We have stated that "attributable to the employer" means "'produced, caused, created or as a result of actions' by the

employer." *Id.* (quoting *In re Vinson*, 42 N.C. App. 28, 31, 255 S.E.2d 644, 646 (1979)).

The ESC adopted the following relevant findings of fact made by the appeals referee:

> 6. During the fall of 1998, claimant and employer exercised at a school track near claimant's residence. Perry, on at least eight occasions, showered at claimant's apartment after the track workout.
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> 7. On one of these occasions, Perry made an unsolicited sexual advance towards claimant. Claimant rebuffed the advance by indicating to Perry that she had been infected with the herpes virus. Perry then suggested that they practice safe sex.
>
> 8. Perry did not attempt to touch claimant on that day, but did make such an attempt on another day.
>
> . . . .
>
> 11. Employer brought up areas of perceived deficiency in claimant's performance and abilities. These observations were most frequently in the form of sarcastic and rude e-mail transmissions.
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> 12. Employer made comments about claimant's intelligence and on one occasion demanded that she "Think. Think. Think. Justify your presence."
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> . . . .
>
> 14. Employer made demeaning and insulting comments about claimant's size.
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> 15. On one occasion, employer informed claimant that an additional filing cabinet would be placed in her office. Claimant requested that she be allowed to leave the office space as it was and further offered that there may not be enough room to pass by a larger sized cabinet.
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> 16. Employer sarcastically responded,

> "Ever heard of Slim Fast?" Employer contends this was intended to be humorous.
>
> 17. Employer made other unflattering and demeaning statements about claimant's physical size and on one occasion opined that claimant's "behind was 4 acres wide."
>
> 18. On yet other occasions, Perry would enter the kitchen area while claimant was having a meal and would mimic her by moving his jaws up and down in an eating fashion.

Based on the factual findings, the ESC concluded that Owens "suffered an abusive and hostile work environment at the hand of employer, Perry." Additionally, the ESC concluded that Perry "engaged in behavior that no employee should have to tolerate." The ESC characterized petitioner's conduct as "demeaning, crude, belittling, unbecoming of an employer, and in nearly every way decidedly not funny." Ultimately, the ESC concluded, Owens "reached the point of no longer being able to tolerate the conditions created by employer, Perry, and left the job with good cause."

We agree with the ESC that a reasonable person would have found Owens' reason for leaving her job valid and not indicative of an unwillingness to work. Owens was subjected to inappropriate behavior in the form of a sexual advance, inappropriate touching, and rude, belittling, and offensive remarks. Refusal to work with an employer who treats one with such disrespect does not reflect an unwillingness to work. In *Bunn*, where an employee resigned after being told she was not qualified for the job and that her work was "pitiful," we held that

> [r]easonable men and women, placed in [the

> employee's] position, and exposed to the humiliation and embarrassment of knowing that supervisors and co-workers regarded their work as "pitiful," would reasonably seek other work. [The employee's] decision to leave, once notified that she was discharged, did not reflect an unwillingness to work and be self-supporting, or to live in compensated idleness.

Bunn, 70 N.C. App. at 703, 321 S.E.2d at 35. Here, too, a reasonable person, treated as petitioner treated Owens, would be justified in seeking other work.

Without citing any authority in support of his position, petitioner contends that "the standard for avoiding disqualification for unemployment compensation benefits . . . is essentially a constructive discharge standard." Additionally, petitioner argues that the ESC's conclusion that Owens had good cause for leaving her job was not based on sound public policy. The standard, however, is whether a reasonable person would consider the claimant's reason for leaving the job valid. Moreover, we have stated that the Employment Security Act "is to be liberally construed in favor of applicants." *Marlow v. N.C. Employment Security Comm.*, 127 N.C. App. 734, 735, 493 S.E.2d 302, 303 (1997).

Finally, petitioner contends that "[t]he [ESC's] decision in the present case is the more egregious . . . because . . . the employer would, in fact, have been fully justified in discharging the claimant for misconduct on any of several bases," which petitioner enumerated. However, N.C. Gen. Stat. § 96-14(2) (2001) specifies that an employee is disqualified for benefits if "such

individual is, at the time such claim is filed, unemployed because he was discharged for misconduct connected with his work." The statute does not disqualify an employee simply because the employer may have had grounds to discharge the employee for misconduct. *See Bunn*, 70 N.C. App. at 701, 321 S.E.2d at 34.

We hold that the ESC's conclusions of law and decision are supported by its factual findings. Accordingly, we affirm the superior court's order affirming the opinion and decision of the ESC.

Affirmed.

Judges GREENE and BIGGS concur.

Report per Rule 30(e).