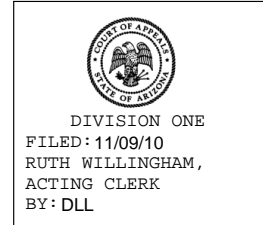


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



GREGORY T. BROADWAY,) No. 1 CA-UB 08-0130
)
)
)
)
Appellant,) DEPARTMENT B
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) Rule 28, Arizona Rules of
SECURITY, an Agency,) Civil Appellate Procedure)
)
)
&)
)
CHASE MANHATTAN BANK,)
)
)
Appellees.)
_____)

Appeal from the Appeals Board of the Department of
Economic Security of the State of Arizona

A.D.E.S. Appeals Board No. U-1071277-BR

Administrative Law Judge Nobuhiko Yonekura

REVERSED AND REMANDED

Gregory T. Broadway
Appellant *In Propria Persona*

Youngtown

Terry Goddard, Arizona Attorney General
By Eric Devaney, Assistant Attorney General
Attorneys for Appellee ADES

Phoenix

B R O W N, Judge

¶1 Gregory Broadway appeals from an Arizona Department of Economic Security ("ADES") decision denying his claim for unemployment benefits. For the following reasons, we reverse and remand.

BACKGROUND

¶2 Broadway was employed as a licensed personal banker by Chase Manhattan Bank ("Chase") at its branch in Peoria, Arizona. As a former employee of Chase, Broadway's wife had opened an investment account for her parents. In December of 2007, Broadway's wife called him and asked that he "have somebody in the annuity department complete a transaction [to] increase [his] mother-in-law's disbursement by 10 dollars each month [so] she would be able to pay her association dues."

¶3 Broadway sought the advice of L.V., a financial advisor at the bank. L.V. told Broadway to fill out a request form to have the transaction completed by the annuity department. Although the form is not in the record before us, testimony presented at the hearing indicated that Broadway faxed the form to the department. Broadway testified that the form did not require a signature. He also stated that a request such as this is handled by the annuity department calling the customer and asking if the request is an accurate representation of what the customer intended to have happen. After discovering Broadway's participation in the transaction, Chase discharged

him for failure to comply with one of the provisions of its code of conduct regarding bank transactions for family members. Broadway then filed a claim for unemployment compensation.

¶4 An ADES deputy initially allowed Broadway's claim and Chase filed a timely notice of appeal. Following a hearing, an administrative law judge at the Appeal Tribunal reversed, determining that Broadway was discharged for work-related misconduct and was therefore disqualified for benefits pursuant to Arizona Revised Statutes ("A.R.S.") section 23-775(2) (Supp. 2009). The Appeals Board affirmed the Appeal Tribunal, and Broadway filed a request for further review by the three-member Appeals Board. A majority of the board held that Broadway had violated the company code of conduct and committed misconduct by completing a bank transaction that involved a family member. The dissenting member believed that Chase had failed to show that Broadway violated the code of conduct because he consulted an authorized unrelated employee and did not transfer funds. The dissent also concluded that Chase's failures both to provide testimony by the financial advisor Broadway had consulted, and to provide the form Broadway had filled out, created negative inferences to the employer's theory of events. Broadway then timely requested judicial review. See A.R.S. § 41-1993 (Supp. 2009).

DISCUSSION

¶15 We view the evidence in the light most favorable to upholding the Appeals Board decision and will affirm the decision unless it is arbitrary, capricious, or an abuse of discretion. *Castaneda v. Ariz. Dep't of Econ. Sec.*, 168 Ariz. 491, 494, 815 P.2d 418, 421 (App. 1991). An agency abuses its discretion when it misapplies the law or fails to consider the relevant facts. *Rios Moreno v. Ariz. Dep't. of Econ. Sec.*, 178 Ariz. 365, 367, 873 P.2d 703, 705 (App. 1994). We are not bound by the legal conclusions of the board and may independently determine whether it properly interpreted the law. *Munguia v. Dep't of Econ. Sec.*, 159 Ariz. 157, 159, 765 P.2d 559, 561 (App. 1988).

¶16 In evaluating a claim for unemployment benefits, the Appeals Board must liberally interpret the law and facts to grant benefits, and narrowly interpret the same to deny benefits. *Munguia*, 159 Ariz. at 162, 765 P.2d at 564. Unemployment compensation from the State is intended to be protective of workers and their families.¹ A.R.S. § 23-601 (1995) (legislative intent in creating an unemployment compensation system is to "lighten [the] burden [of involuntary

¹ Employers pay contributions to an unemployment compensation fund to be administered by the State. Amounts of these payments are affected by past benefits paid to former employees. A.R.S. § 23-731 (Supp. 2009); see generally A.R.S. §§ 23-701, -709, -721, -751 (1995).

unemployment] that so often falls with crushing force upon the unemployed worker and his family"). Because benefits are limited to those who are unemployed through no fault of their own, employees are not entitled to benefits for work-related misconduct. A.R.S. § 23-775(2).

¶17 It was Broadway's burden to initially establish that he was eligible for unemployment benefits, but when Chase raised misconduct as the reason for termination, the burden shifted to Chase to establish the truth of the assertion. *Rios Moreno*, 178 Ariz. at 367, 873 P.2d at 705; A.A.C. R6-3-51190(B)(2)(b). Employee misconduct means any act or omission by an employee which constitutes a material or substantial breach of the employee's duties, such as violating a company rule without good cause. A.R.S. § 23-619.01(A)-(B)(8) (1995).

¶18 The code of conduct at issue states:

In general, *you may not act in behalf* of JPMorgan Chase in any transaction or business relationship involving yourself, members of your family, or other persons or organizations with which you or your family have any significant personal connection or financial interest. These matters should be handled *by an authorized unrelated employee*.

(Emphasis added.)

¶19 The plain language of this provision indicates that a violation occurs only when an employee acts on behalf of Chase. Here, it is undisputed that Broadway consulted a specialist in

investment matters with a question about changing an annuity amount. Broadway then filled out the form given him by the specialist. Chase did not introduce any evidence that in filling out the form, Broadway was acting on behalf of Chase; rather, the evidence indicates that he acted on behalf of his wife and in-laws. Perhaps the form would have shown otherwise, but it was Chase's burden to produce the form and introduce sufficient evidence that Broadway was acting on its behalf when he filled out the form and faxed it to the annuity department. A.A.C. R6-3-51190(C)(3) ("When the evidence . . . is evenly balanced, or weighs in favor of the claimant, misconduct has not been established and no disqualification is in order."). We find that Chase failed to meet its burden of proving that Broadway acted on behalf of Chase.

¶10 Moreover, Chase does not contest that the investment advisor Broadway consulted with was unauthorized to give him the form or that Broadway faxed it to anyone other than "an authorized unrelated employee." According to the record before us, Broadway did not input any information into Chase's computer system, make a change to the annuity disbursement, or authorize or participate in any disbursement of funds to anyone. Additionally, Chase failed to refute Broadway's testimony that a signature by the account owner was not required on the form he faxed because the annuity department's practice was to call the

account owner for verification. Thus, no change in status in the investment account occurred simply by Broadway faxing the form to the annuity department and therefore no transaction occurred at that time. Based on this record, Chase has failed to meet its burden of proving that Broadway's actions violated its code of conduct and therefore the Appeals Board abused its discretion in denying his claim for unemployment benefits. See *Castaneda*, 168 Ariz. at 496, 815 P.2d at 423 (reversing and remanding when the appeals board erred in its application of the law).

CONCLUSION

¶11 For the foregoing reasons, we reverse the decision of the Appeals Board and remand for an award of benefits.

/S/

MICHAEL J. BROWN, Judge

CONCURRING:

/S/

DIANE M. JOHNSON, Presiding Judge

/S/

JOHN C. GEMMILL, Judge