

RENDERED: JULY 30, 2004; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001852-MR

RUBEN VEGA

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE THOMAS B. WINE, JUDGE
ACTION NO. 02-CI-006782

KENTUCKY UNEMPLOYMENT INSURANCE
COMMISSION AND KELVIN CORPORATION,
D/B/A KELVIN COOPERAGE

APPELLEES

OPINION
AFFIRMING
** ** * * * * *

BEFORE: BARBER, KNOPF, AND TACKETT, JUDGES.

TACKETT, JUDGE: Ruben Vega appeals from the decision of the Jefferson Circuit Court affirming the order entered by the Kentucky Unemployment Insurance Commission ("Commission"). The Commission affirmed the Kentucky Division of Unemployment Insurance ("Division") Referee's decision finding that Vega was ineligible to receive benefits from November 5, 2000, through February 3, 2001, because he failed to properly report and claim

benefits during those time periods as required by the Kentucky Administrative Regulations (KAR). We conclude that the evidence does not compel a finding in favor of the appellant and, therefore, we are required to affirm the Board's decision.

On October 10, 2000, Vega was discharged from his employment with Kelvin Cooperage. He filed for unemployment benefits on October 13, 2000 and made a timely claim for continued benefits through the week ending November 4, 2000. On November 3, 2000, the Division mailed Vega a Notice of Determination that informed him that his initial claim for unemployment benefits had been denied; the letter also notified Vega that he was required to continue to claim benefits during the appeal of his initial claim. Vega was deemed eligible to receive benefits in a Referee decision issued on March 19, 2001. The decision was reversed on a procedural issue, but on June 26, 2001, another Referee decision awarded Vega benefits. On September 26, 2001, the Commission affirmed this decision. Vega then received two checks totaling approximately \$700.00 for the periods he was deemed eligible to receive benefits.

Two days following the March 19, 2001, Referee decision in his favor, Vega filed for the unemployment benefits for the 13-week period commencing on November 5, 2000, and ending on February 3, 2001. He was denied benefits in a determination dated November 16, 2001, because he failed to meet

the requirements set forth by 787 KAR 1:090 for timely filing of his continued claim benefits. This determination was affirmed by Referee decision after a hearing on January 4, 2002. On August 21, 2002, the Commission affirmed the Referee's decision. On appeal, the Jefferson Circuit Court held that the opinion of the Commission was supported by substantial evidence of probative value and affirmed the denial of benefits to Vega. This appeal followed.

Vega argues that the Circuit Court erred in finding that the Referee correctly applied the regulations to his claim. He further claims that the Referee misinterpreted the evidence and incorrectly applied the facts to the law in deciding to deny him unemployment benefits. Judicial review of a denial by the Division Referee is controlled by the substantial evidence standard of review applicable to administrative actions. An excellent summary of this general rule is laid out in Kentucky Unemployment Insurance Commission v. Landmark Community Newspapers of Kentucky, Inc., which states as follows:

"If the findings of fact are supported by substantial evidence of probative value, then they must be accepted as binding and it must then be determined whether or not the administrative agency has applied the correct rule of law to the facts so found." Southern Bell Tel. & Tel. Co. v. Kentucky Unemployment Ins. Comm'n, Ky., 437 S.W.2d 775, 778 (1969). The administrative agency's findings will be upheld even though there exists evidence to the contrary in the

record. Kentucky Comm'n on Human Rights v. Fraser, Ky., 625 S.W.2d 852, 856 (1981). Substantial evidence is defined as "evidence of substance and relative consequence having the fitness to induce conviction in the minds of reasonable [persons]." Owens-Corning Fiberglas Corp. v. Golightly, Ky., 976 S.W.2d 409, 414, 45:7 Ky. L. Summary 14 (1998). We must also determine whether the decision of the administrative agency was arbitrary or clearly erroneous, which is defined as "unsupported by substantial evidence." Danville-Boyle County Planning and Zoning Comm'n v. Prall, Ky., 840 S.W.2d 205, 208 (1992). "If there is any substantial evidence to support the action of the administrative agency, it cannot be found to be arbitrary and will be sustained." Taylor v. Coblin, Ky., 461 S.W.2d 78, 80 (1970).

Ky. Unemployment Ins. Comm'n v. Landmark Cmty. Newspapers of Ky., 91 S.W.3d 575, 578-579 (Ky., 2002). Vega contends that the evidence does not support the Referee's finding that he was ineligible for benefits. We disagree.

In order to be eligible for unemployment benefits, Kentucky Revised Statute (KRS) 341.350(1) requires an unemployed worker to make a claim for benefits. Vega appeared at two Referee hearings on four separate occasions. These hearings were conducted at his local unemployment office and focused solely on the facts regarding Vega's initial eligibility for benefits. The hearings did not concern Vega's continuing eligibility for benefits and he made no representations concerning his continuing eligibility. KRS 341.350(8) requires

strict construction of the prerequisite that a claimant actually make a claim for benefits. We are unable to say that Vega has offered evidence that compels a finding in his favor and, therefore, we are required to uphold the determinations made by the Referee, the Commission, and the Jefferson Circuit Court.

Vega further argues that the Circuit Court erroneously affirmed the Referee's finding that he filed his claim for benefits for the period of November 5, 2000, through February 3, 2001. He further claims that he has shown good cause for failing to file his claim at an earlier date and thus his claim should be backdated pursuant to 787 KAR 1:090 Section 3. Vega is primarily Spanish-speaking; however, the Referee concluded that his language barrier was not good cause for allowing Vega to file his claim late. Vega competently filed a claim for initial benefits as well as for continuing benefits through November 4, 2000. We believe the Referee's finding regarding good cause was not erroneous; therefore, we are bound to uphold the circuit court's finding that the claimant remain ineligible to receive benefits.

For the foregoing reasons, the judgment of the Jefferson Circuit Court is affirmed.

BARBER, JUDGE, CONCURS.

KNOFF, JUDGE, CONCURS AND FILES SEPARATE OPINION IN WHICH BARBER ALSO JOINS.

KNOFF, JUDGE, CONCURRING: I concur in the reasoning and result of the majority opinion, but I write separate because I question the Unemployment Insurance Commission's interpretation of the statutory and regulatory scheme. As noted by the majority, 341.350(1) requires that a worker will be eligible for benefits with respect to any week of unemployment only if he has made a claim for benefits. Furthermore, 787 KAR 1:090 § 3 provides that a worker who has filed his initial claim for benefits must file claims for continued claims for benefits on a weekly or bi-weekly basis. Failure to file continued claims will bar an applicant from receiving benefits unless he or she proves good cause for failing to do so.

The Commission has interpreted this regulation to mean that all applicants must establish their eligibility for benefits on a continuing basis, even if his application has been denied and an appeal from the denial is pending. Thus, in the Commission's view, even though Vega prevailed on appeal, he is barred from receiving benefits because he failed to file claims for each period during the interim. But while this interpretation is not entirely implausible, the statutes and regulations cited by the Commission do not clearly impose such a requirement. Furthermore, the Commission's interpretation requires a worker to file futile claims for continued benefits which have already been denied, while at the same time pursuing a

separate appeal from that denial. This rule seems designed to confuse applicants and impede otherwise valid applications for unemployment benefits. Finally, given the prior two points, there is a reasonable argument that a prior denial of unemployment benefits and a pending appeal from that denial constitutes "good cause" for an applicant's failure to file claims for continued benefits.

Nevertheless, Vega has not challenged the Commission's interpretation of its regulations. Therefore, that issue is not directly before this Court. Furthermore, the notice of determination denying the initial claim for benefits clearly advised Vega that he must continue to claim benefits while his claim was under appeal, and that benefits would be payable only for the weeks properly claimed. Rather, Vega has argued that he established good cause for his failure to file continued claims. Vega does not speak English, and he notes that he needed interpreters both to claim benefits and to pursue his appeal. He also notes that he appeared at the Referee hearing on January 8, 2001, but the hearing was continued to February 19 because there was no interpreter in the office. Consequently, he asserts that his lack of proficiency in English and the problems with translation at the hearings excuses his failure to file claims.

As the majority correctly notes, however, a determination of good cause is an issue of fact that must be

decided by the referee. The referee noted that, despite Vega's lack of proficiency in English, he was able to obtain sufficient assistance to file his initial claim and he should have been able to have someone explain his obligation to file continued claims. Although a different fact-finder might have reached another conclusion, I agree with the majority that the referee's decision was supported by substantial evidence and was not clearly erroneous as a matter of law. Accordingly, while the Commission's interpretation of its regulations might require closer scrutiny in the future, I agree with the majority's conclusion to affirm in this case.

BRIEF FOR APPELLANT:

Ray H. Stoess, Jr.
Louisville, Kentucky

BRIEF FOR APPELLEE KENTUCKY
UNEMPLOYMENT INSURANCE
COMMISSION:

E. Jeffrey Mosley
Frankfort, Kentucky

NO BRIEF FOR KELVIN
CORPORATION