

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2011-CA-001316-MR

KENTUCKY UNEMPLOYMENT  
INSURANCE COMMISSION

APPELLANT

v. APPEAL FROM BOURBON CIRCUIT COURT  
HONORABLE ROBERT G. JOHNSON, JUDGE  
ACTION NO. 08-CI-00140

BOURBON COUNTY BOARD  
OF EDUCATION

APPELLEE

OPINION  
REVERSING AND REMANDING

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BEFORE: COMBS, DIXON, AND VANMETER, JUDGES.

COMBS, JUDGE: The Kentucky Unemployment Insurance Commission (the Commission) appeals an opinion and order of the Bourbon Circuit Court reversing the Commission's decision to award unemployment benefits to Larry A. Tapp. Because we agree that substantial evidence supports the Commission's

findings of fact and that it correctly applied the relevant law, we reverse the decision of the circuit court and order reinstatement of the Commission's award.

On July 1, 2003, Larry Tapp was hired by the Bourbon County School System as principal of the county's middle school. He resigned his position as principal effective June 30, 2007. The superintendent made him a subsequent offer for employment as a second (2nd) grade teacher, which Tapp declined. He submitted his resignation as an employee of the county school system on July 3, 2007, and applied for unemployment insurance benefits.

Following its investigation, the Education Cabinet, Office of Employment and Training, Division of Unemployment Insurance issued two different administrative determinations on Tapp's claim -- both dated August 22, 2007. In its first determination, the Division of Unemployment Insurance concluded that Tapp was qualified to receive benefits since his discharge from his position as principal was for reasons other than misconduct in connection with the work. This administrative determination has never been appealed. However, in a separate Notice of Determination, the Division of Unemployment Insurance concluded that Tapp was disqualified from receiving benefits since he subsequently refused an offer of suitable employment without good cause.

Tapp appealed the adverse determination to a referee, who conducted an evidentiary hearing and considered Tapp's testimony with respect to the teaching position offered to him for the 2007-2008 school year. In a decision mailed on February 1, 2008, the referee concluded that Tapp did not have good cause for

refusing the job offer and, on that basis, affirmed the determination that he was disqualified from receiving unemployment insurance benefits. Tapp appealed this decision to the Kentucky Unemployment Insurance Commission.

In a unanimous order mailed March 20, 2008, the Commission reversed the referee's decision and found in Tapp's favor. The Board of Education's request for reconsideration was denied on April 14, 2008.

On May 1, 2008, the Board of Education filed a complaint in the Bourbon Circuit Court pursuant to Kentucky Revised Statute[s] (KRS) 341.450(1) seeking judicial review of the Commission's order. On June 24, 2011, the Bourbon Circuit Court reversed the order of the Commission. This appeal followed.

Our review of the decision of an administrative agency is narrowly circumscribed. *See American Beauty Homes Corp. v. Louisville & Jefferson County Planning & Zoning Comm'n*, 379 S.W.2d 450 (Ky.1964). If an administrative agency's findings of fact are supported by substantial evidence, they are binding upon a reviewing court. *Kentucky Unemployment Ins. Comm'n v. Landmark Cmty. Newspapers of Kentucky*, 91 S.W.3d 575 (Ky.2002). *Substantial evidence* is defined as evidence that has sufficient probative value to induce conviction in the minds of reasonable people. *Owens-Corning Fiberglas Corp. v. Golightly*, 976 S.W.2d 409 (Ky.1998). A reviewing 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. *Burch v. Taylor Drug Store, Inc.*, 965 S.W.2d 830 (Ky.App.1998). However, we are not bound by the agency's

determination on questions of law. *Hutchison v. Kentucky Unemployment Ins. Comm'n*, 329 S.W.3d 353 (Ky.App.2010). Instead, we review the application of the law to the facts under a *de novo* standard. Furthermore, we must construe the unemployment insurance act liberally in favor of claimants. *See Dept. of Educ. v. Kentucky Unemployment Ins. Comm'n*, 798 S.W.2d 464, 467 (Ky.App.1990).

This controversy concerns the application of the provisions of KRS 341.370. That statute provides that a worker shall be disqualified from receiving benefits when he has failed “without good cause” to accept “suitable work” that has been offered. KRS 341.370(1)(a). When deciding whether any work is “suitable,” the Commission is required to consider: a claimant’s prior earnings; his experience; his length of unemployment; and his prospects for securing work in his customary occupation. KRS 341.100. The Kentucky Supreme Court has recognized that the statute “allows the commission considerable latitude in deciding whether or not any employment is suitable for a worker.” *Kentucky Unemployment Ins. Comm'n v. Henry Fischer Packing Co.*, 259 S.W.2d 436 (Ky. 1953).

From the evidence presented, the Commission found that Tapp earned eighty thousand dollars (\$80,000.00) annually as the principal of the Board of Education’s only middle school. It found that Tapp had approximately twenty-five (25) years of experience teaching in grades four (4) through eight (8) but no experience teaching preschool through third (3rd) grade. It found that Tapp was uncomfortable teaching second (2nd) grade due to his lack of experience with that age group and that he would have taken a thirty-two percent (32%) reduction in

pay if he had accepted the position. The Commission also considered that Tapp had not been unemployed for long when he decided to decline the job offer. Based upon these findings, the Commission concluded that the position offered to him was not suitable and, consequently, that Tapp was not disqualified from receiving unemployment insurance benefits by declining the offer of work.

The Commission's decision was wholly proper. Its findings of fact were amply supported by the record, and it did not misapply the law to those facts. We conclude that the circuit court erred by reversing the Commission's ruling.

Therefore, the judgment is reversed and remanded with directions that the court reinstate the decision of the Kentucky Unemployment Insurance Commission.

ALL CONCUR.

BRIEF FOR APPELLANT:

James C. Maxson  
Education and Workforce  
Development Cabinet  
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Sam P. Burchett  
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