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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2012-CA-000917-MR

JOSEPH MICHAEL CUNNINGHAM

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE IRV MAZE, JUDGE
ACTION NO. 11-CI-002599

KENTUCKY UNEMPLOYMENT INSURANCE
COMMISSION AND CITY OF LYNNVIEW

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: STUMBO, TAYLOR AND THOMPSON, JUDGES.

STUMBO, JUDGE: Joseph Michael Cunningham appeals from the Jefferson Circuit Court's opinion affirming an order of the Kentucky Unemployment Insurance Commission (KUIC). That order affirmed and adopted a decision of an Unemployment Insurance Referee which found Cunningham was discharged from

his employment as the City of Lynnview's Police Chief for misconduct; therefore, he was ineligible for unemployment benefits. We find no error and affirm.

On May 19, 2010, Cunningham received a letter of termination from Mayor Lawrence Shaughnessy. The letter stated he was being terminated for unsatisfactory performance and for actions that reflected discredit upon the City of Lynnview. The termination was effective May 11, 2010. Cunningham requested a termination hearing before the City Council citing Kentucky Revised Statutes (KRS) 95.765 and KRS 15.520. Cunningham was denied a hearing and sought injunctive relief from the Jefferson Circuit Court.

The circuit court granted Cunningham's injunction finding that KRS 95.765 applied and a hearing before the City Council was required. On July 22, 2010, a hearing was held before the City Council. The City Council ultimately upheld Cunningham's termination. On August 3, 2010, Cunningham filed a complaint in the circuit court arguing that his termination violated KRS 95.765 and KRS 15.520 and that it was arbitrary. On November 21, 2011, the circuit court affirmed the termination. That action is currently on appeal to another panel of this Court.

On July 18, 2010, Cunningham filed a claim for unemployment benefits and he was granted those benefits. The City of Lynnview appealed this award and a hearing was held before an Unemployment Insurance Referee on January 18, 2011. Mayor Shaughnessy and Cunningham both testified during the hearing. The hearing before the City Council was referenced multiple times during

the unemployment hearing.¹ In its decision, the Referee found that on February 28, 2010, Cunningham was involved in an automobile accident. He was driving his police cruiser at the time. Mayor Shaughnessy testified that Cunningham told him he was alone in the vehicle at the time of the accident. The official report of the police officers who responded to the scene of the accident indicates that there were two passengers in the vehicle at the time of the accident. Due to the inconsistency between Cunningham's statement and the police report, Mayor Shaughnessy directed Mark Edison, attorney for the City of Lynnview, to discover what transpired the night of the accident. Edison sent two letters to Cunningham instructing him to provide information about the passengers involved in the accident. Cunningham did not respond to the letters.

Following the hearing, the Referee found that Cunningham was discharged for misconduct due to providing false information to Mayor Shaughnessy and failing to respond to the two letters sent to him by the city attorney. Because he was discharged for misconduct, he was not entitled to unemployment benefits. Cunningham appealed this decision to the KUIC and the Jefferson Circuit Court, both of which affirmed. This appeal followed.

Upon review of an administrative agency's adjudicatory decision, an appeal court's authority is somewhat limited. The judicial standard of review of an unemployment benefit decision is whether the KUIC's findings of fact were supported by substantial evidence and whether the agency correctly applied the law to the

¹ It appears as though there may have been a transcript of the hearing before the City Council introduced during the unemployment hearing, but this Court cannot find a copy of that transcript in the record before us.

facts. Substantial evidence is defined as evidence, taken alone or in light of all the evidence, that has sufficient probative value to induce conviction in the minds of reasonable people. If there is substantial evidence to support the agency's findings, a court must defer to that finding even though there is evidence to the contrary. A 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. A court's function in administrative matters is one of review, not reinterpretation.

Thompson v. Kentucky Unemployment Ins. Com'n, 85 S.W.3d 621, 624 (Ky. App. 2002) (citations omitted). “[A] reviewing court, whether it be one of the circuit courts, the Court of Appeals, or [the Kentucky Supreme Court], should refrain from reversing or overturning an administrative agency’s decision simply because it does not agree with the agency’s wisdom.” *Kentucky Unemployment Ins. Com'n v. Landmark Community Newspapers of Kentucky, Inc.*, 91 S.W.3d 575, 582 (Ky. 2002) (citation omitted).

In the case at hand, Cunningham raises a number of issues regarding whether he was properly terminated pursuant to KRS 95.765 and KRS 15.520. He argues that he did not receive proper notice of any charge of misconduct, that the mayor had no authority to unilaterally discharge him, that the hearing he sought before the City Council was held outside the time set in the statutory framework, and that because of those errors, he was illegally fired. Appellant then reasons that an illegal discharge cannot be a basis for a finding that he is not entitled to unemployment benefits.

While these are interesting issues, we cannot consider them here. As was noted in *Board of Educ. of Covington v. Gray*, 806 S.W.2d 400 (Ky. App. 1991), the authority of Kentucky's unemployment compensation is limited. The system's sole function is to determine whether or not the affected employee meets the statutory criteria to qualify for benefits, not to inquire or make any judgments regarding the reasons behind an employee's termination. The proceedings below concern whether Cunningham is entitled to unemployment benefits, not whether he was properly terminated. In fact, as mentioned previously, these issues have been litigated in a separate proceeding; therefore, we shall not address them.

KRS 341.370 states in relevant part:

(1) A worker shall be disqualified from receiving benefits for the duration of any period of unemployment with respect to which:

.....

(b) He has been discharged for misconduct or dishonesty connected with his most recent work[.]

.....

(6) "Discharge for misconduct" as used in this section shall include but not be limited to, separation initiated by an employer for falsification of an employment application to obtain employment through subterfuge; knowing violation of a reasonable and uniformly enforced rule of an employer; unsatisfactory attendance if the worker cannot show good cause for absences or tardiness; damaging the employer's property through gross negligence; refusing to obey reasonable instructions; reporting to work under the influence of alcohol or drugs or consuming alcohol or drugs on employer's premises during working hours; conduct

endangering safety of self or co-workers; and incarceration in jail following conviction of a misdemeanor or felony by a court of competent jurisdiction, which results in missing at least five (5) days work.

An employer alleging misconduct to defeat recovery of unemployment benefits carries the burden of proof. *Brown Hotel Co. v. Edwards*, 365 S.W.2d 299, 301 (Ky. 1963). In this case, the Referee, KUIC, and circuit court all found that Cunningham was discharged for misconduct. As the Referee stated in its decision, Cunningham

did not offer correct and factual information to his employer initially upon providing information in regard to the accident on February 28, 2010. The employer's instructions to claimant on two (2) occasions to submit correct and truthful information in regard to the accident are reasonable. Claimant's reasons for refusing to obey these reasonable instructions must be viewed as self-serving and lacking credibility. The employer has met the burden of proof by a preponderance of evidence in this case.

This finding is supported by substantial evidence. Mayor Shaughnessy testified that Cunningham gave him false information regarding the car accident and provided that same false information to the City Council. The evidence also showed that Cunningham was instructed on at least two occasions by the Lynnview City Attorney to provide information regarding the accident, which he did not do. The Referee was in the best position to judge the credibility of the witnesses and the weight of the evidence submitted. The Referee found Mayor

Shaughnessy's testimony more credible and we cannot substitute our opinion for that of the Referee on this issue.

For the foregoing reasons we affirm the judgment of the Jefferson Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Daniel J. Canon
Louisville, Kentucky

BRIEF FOR APPELLEE
KENTUCKY UNEMPLOYMENT
INSURANCE COMMISSION:

Patrick B. Shirley
Frankfort, Kentucky

BRIEF FOR APPELLEE CITY OF
LYNNVIEW:

Mark E. Edison
Shepherdsville, Kentucky