

RENDERED: AUGUST 9, 2013; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-001266-MR

ANDRE NEWBY

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE MARY M. SHAW, JUDGE
ACTION NO. 11-CI-005824

ENERGY ECONOMICS, INC.; KENTUCKY
UNEMPLOYMENT INSURANCE COMMISSION;
EDUCATION AND WORKFORCE DEVELOPMENT
CABINET, OFFICE OF EMPLOYMENT AND
TRAINING, DIVISION OF UNEMPLOYMENT
INSURANCE APPEALS BRANCH;
AND EDUCATION AND WORKFORCE
DEVELOPMENT CABINET, OFFICE OF
EMPLOYMENT AND TRAINING,
DIVISION OF UNEMPLOYMENT INSURANCE

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: LAMBERT, MOORE, AND VANMETER, JUDGES.

VANMETER, JUDGE: Andre Newby appeals from the May 1, 2012, opinion and order of the Jefferson Circuit Court. That order affirmed the Kentucky Unemployment Insurance Commission's ("KUIC") decision which denied benefits to Newby. We affirm.

Newby was employed by Energy Economics, Inc. ("EEI") from February 2010 to March 2011 as a meter repair employee. His position required that he operate a company vehicle. Pursuant to company policy, any employee who became uninsurable due to a violation of a motor vehicle law was terminated. All employees, including Newby, were required to sign a copy of the policy.

On March 20, 2011, Newby was charged with the offense of Driving Under the Influence ("DUI"), while operating his personal vehicle in Meade County, Kentucky. Three days later, Newby was terminated from his position with EEI. On April 26, 2011, Newby pled guilty to the DUI charge. Following his termination, Newby applied for unemployment insurance benefits but was disqualified. Newby appealed the denial of benefits. Following a hearing, the Appeals Referee affirmed the denial and found that Newby had become uninsurable due to his DUI charge. Newby then appealed to the KUIC, which adopted the referee's findings and conclusions and affirmed the denial. Next, Newby appealed to the Jefferson Circuit Court. In an opinion and order entered on May 1, 2012, the circuit court affirmed the KUIC's order. Newby filed a motion to alter, amend, or vacate, which was subsequently denied. This appeal followed.

The standard of review of an unemployment benefit decision is whether the KUIC's findings of fact were supported by substantial evidence and whether it correctly applied the law to those facts. *Thompson v. Kentucky Unemployment Ins. Com'n*, 85 S.W.3d 621, 624 (Ky. App. 2002). A reviewing court must defer to the KUIC's findings if they are supported by substantial evidence. *Id.* Substantial evidence is evidence, "that has sufficient probative value to induce conviction in the minds of reasonable people." *Id.* A reviewing court may not substitute its opinion as to the credibility or weight of the evidence, including the inference to be drawn therefrom. *Id.*

Newby's first argument on appeal is that the KUIC's determination that Newby was discharged for misconduct in connection with the work is void of evidentiary support. More precisely, Newby maintains that a mere DUI charge, as opposed to a DUI conviction, would not render him uninsurable. He further argues that EEI failed to produce evidence to the contrary. We disagree. EEI filed an employer's statement which indicated that Newby was no longer insurable by EEI's insurance carrier. "As the fact-finder, the KUIC has the exclusive authority to weigh the evidence and the credibility of the witnesses." *Thompson*, 85 S.W.3d at 626. Newby does not challenge this evidence, but merely argues that it does not constitute substantial evidence. Given the discretion with which KUIC may weigh the evidence and draw inference therefrom, it is not unreasonable for the KUIC to believe EEI's statement that Newby was uninsurable at the time of his charge. As both the employer and the holder of the policy, it is practical that EEI would have

exclusive knowledge as to its employees' insurability. Thus, EEI's statement serves as substantial evidence that Newby was uninsurable immediately following his charge. A copy of the policy, contrary to Newby's line of reasoning, is not a prerequisite to the fact-finder's authority to accept EEI's statement as true. We further note that Newby's guilty plea makes his argument both disingenuous and immaterial. Accordingly, Newby's argument fails.

Newby's second, and last, argument on appeal is that the KUIC's denial of benefits was wrong as a matter of law. In short, Newby argues that there could be no finding of "misconduct connected to work" absent a finding of willfulness or bad motive. Again, we disagree. Under Kentucky Revised Statutes (KRS) 341.370, an employee shall be disqualified for receiving benefits if he has been "discharged for misconduct." KRS 341.370(1)(b). The definition of "discharge for misconduct" includes the "knowing violation of a reasonable and uniformly enforced rule of an employer." KRS 341.370(6). There is no requisite finding of willfulness or bad motive. There is no dispute that EEI's policy regarding motor vehicle violations was both reasonable and uniformly enforced. Indeed, Newby himself acknowledged and signed a copy of the policy at the time he was hired. Accordingly, Newby's argument is without merit.

For the foregoing reasons, the May 1, 2012, opinion and order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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