

RENDERED: AUGUST 15, 2014; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-000888-MR

KENTUCKY UNEMPLOYMENT
INSURANCE COMMISSION

APPELLANT

v. APPEAL FROM ALLEN CIRCUIT COURT
HONORABLE JANET J. CROCKER, JUDGE
ACTION NO. 11-CI-00368

DEBORAH CARTER

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, MOORE, AND NICKELL, JUDGES.

NICKELL, JUDGE: The Kentucky Unemployment Commission has appealed from an order reversing its decision to deny benefits to Deborah Carter. The Commission argues the trial court erred in its application of law to the facts in determining Carter did not voluntarily quit her employment. We affirm.

Carter began working for Dollar General Corporation on November 8, 2001, as an auditor/scanner on the shipping dock. After leaving work from her regular shift on October 17, 2010, but before her next scheduled work day on October 20, 2010, Carter sustained injuries to her neck and back in a car wreck unrelated to her employment. She promptly notified her employer that she was under a doctor's care and would be unable to return to work. Dollar General allowed Carter twelve weeks of family medical leave. At the end of that period, Carter was still unable to return to work so Dollar General granted her an additional five weeks of medical leave. On February 6, 2011, Carter had still not recovered and was granted an additional four weeks of personal leave. All available leave was exhausted on or about March 6, 2011.

On February 23, 2011, Carter was released by her treating physician to return to light-duty work consisting of one-third of her regular shift with restrictions on pushing, pulling and lifting objects over thirty-five pounds, two-handed carrying of objects over twenty pounds, and was prohibited from climbing and squatting. The restrictions were to remain in place until she was evaluated by her doctor on March 24, 2011. Carter presented the medical documentation to Dollar General. Pursuant to a published employment policy, Dollar General denied her request for light-duty work because her medical restrictions were due to non-work related injuries. Carter was advised unless she was released to return to her normal work responsibilities without restrictions within ten days, her

employment would be terminated. Carter was unable to obtain a full medical release within the allotted time period. She was terminated on March 6, 2011.

Carter filed a claim for unemployment compensation. On April 6, 2011, the Division of Unemployment Insurance issued a Notice of Determination denying her claim, stating she was disqualified from receiving benefits because she voluntarily quit her job without good cause attributable to her employment. Carter appealed and a referee hearing was conducted. Carter testified on her own behalf and challenged the finding that she had voluntarily quit, arguing she had been terminated based on her inability to return to work without restrictions. She contended she was discharged for reasons other than work-related misconduct and should therefore not be disqualified from receiving benefits. No one appeared on behalf of Dollar General. The Unemployment Referee affirmed the earlier Notice of Determination upon finding Carter's failure to return to work due to her non-work related injuries constituted a voluntary quitting without good cause attributable to the employment. Carter appealed to the Commission.

In its order affirming the referee's decision, the Commission examined the evidence and determined Carter had voluntarily quit her job and, because her injuries were unrelated to her employment, the quitting was not attributable to the work environment. The order found Carter's job separation occurred on February 23, 2011, when her physician released her to perform light-duty work and Dollar General informed her that such accommodations could not be provided. Based on its determination Carter voluntarily quit at that time, the

Commission found she was disqualified from receiving benefits for the duration of her unemployment.

Carter did not file a motion for reconsideration but instead filed an action in the Allen Circuit Court seeking judicial review of the Commission's determination, contending the decision was unsupported by substantial evidence and was contrary to applicable law. Following briefing and oral argument, the trial court entered an order reversing the Commission's determination on April 13, 2012. In its seven-page ruling, the trial court reviewed and analyzed the facts, applicable law, and arguments of the parties, ultimately concluding Carter had not voluntarily quit, but rather was not permitted to return to work by Dollar General because of medical restrictions over which she had no control. As her termination was due to reasons other than misconduct, she was not disqualified from receiving benefits. The trial court concluded the Commission's determination was contrary to the evidence and was, therefore, clearly erroneous. The matter was reversed and remanded to the Commission for entry of an order consistent with the trial court's judgment. This appeal followed.

The Commission argues its decision was supported by substantial evidence, constituted the correct application of the law, and the trial court erred in ruling to the contrary. We disagree.

The applicable standard of review was set forth in *Thompson v. Kentucky Unemployment Ins. Comm'n*, 85 S.W.3d. 621, 624 (Ky. App. 2002), as follows:

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 [Commission's] findings of fact were supported by substantial evidence and whether the agency correctly applied the law to the 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.

(Internal citations omitted).

The crux of this appeal is whether the Commission erred in its application of KRS¹ 341.370 to determine Carter voluntarily quit her job and was therefore disqualified from receiving benefits. KRS 341.370 provides, in pertinent part:

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

. . . .

(c) He has left his most recent suitable work or any other suitable work which occurred after the first day of the worker's base period and which last preceded his most recent work voluntarily without good cause attributable to the employment. . . .

¹ Kentucky Revised Statutes.

Carter had the burden of proof to establish she did not voluntarily quit without good cause attributable to her employment. *Thompson*, 85 S.W.3d at 625. See also *Brownlee v. Commonwealth*, 287 S.W.3d 661, 664 (Ky. App. 2009). The term “voluntarily” means the claimant’s decision to leave her employment was “freely given” and resulted from the claimant’s “own choice or full consent.” *Kentucky Unemployment Ins. Comm’n v. Young*, 389 S.W.2d 451, 453 (Ky. 1965).

In addition, “good cause” for voluntarily leaving suitable work “exists only when the worker is faced with circumstances so compelling as to leave no reasonable alternative but loss of employment.” *Kentucky Unemployment Ins. Comm’n v. Murphy*, 539 S.W.2d 293, 294 (Ky. 1976). “The primary key in resolving conflicts such as this must be based on who causes the employee to quit.” *Kentucky Unemployment Ins. Comm’n v. Blakeman*, 419 S.W.3d 752, 754 (Ky. App. 2013) (quoting *Kentucky Unemployment Ins. Comm’n v. Melvin’s Grocery Co., Inc.*, 696 S.W.2d 791, 792 (Ky. App. 1985)).

The Commission asserts Carter was disqualified from receiving benefits because she chose to not return to work following her non-work related injury. Because Carter exhausted her leave and did not present herself to return to work without restrictions, the Commission reasons the termination must be viewed constructively as a voluntary quit initiated by Carter rather than a discharge initiated by any action on the part of the employer. The Commission contends quitting work due to a non-work related illness or injury is not “attributable to the

employment.” *Broadway & Fourth Ave. Realty Co. v. Allen*, 365 S.W.2d 302, 305 (Ky. 1963).

Following a careful review, we believe the Commission’s arguments disregard the concept of voluntariness noted in *Young*. It is misleading and disingenuous for the Commission to characterize Carter as freely choosing not to return to work for medical reasons. According to Carter’s undisputed testimony, she contacted Dollar General to inform them of her condition and ongoing treatment. Prior to receiving the termination letter, Carter was released to return to work under light-duty restrictions but Dollar General refused to accommodate those restrictions. Dollar General gave her ten days to obtain a medical release or be terminated. It extended no further opportunities for Carter to return to work. She was not medically cleared to return to her normal work until after she had been terminated based on her failure to obtain such a release. Compliance with Dollar General’s demand was clearly impossible and beyond Carter’s control. Dollar General did not participate in the administrative hearing or present any evidence contradicting Carter’s testimony. The evidence clearly established Dollar General terminated Carter’s employment on March 6, 2011.

As previously stated, the burden of proof was on Carter to establish she did not voluntarily quit without good cause attributable to her employment.

Thompson, 85 S.W.3d at 625; *Brownlee*, 287 S.W.3d at 664. “[A] person cannot quit voluntarily unless the decision to do so is ‘. . . freely given and proceeding from one’s own choice or full consent.’” *Nichols v. Kentucky Unemployment Ins.*

Comm'n, 677 S.W.2d 317, 321 (Ky. App. 1984) (quoting *Young*, 389 S.W.2d at 453). We believe the trial court correctly determined Carter did not freely choose to leave her employment but “was prohibited from returning to work by her employer because of temporary medical restrictions over which she had no control.” We reject the Commission’s contentions to the contrary. Further, it is uncontroverted that Carter was not relieved of her position due to any misconduct. Therefore, we hold the trial court correctly determined Carter was not disqualified from receiving unemployment benefits and properly reversed the decision of the Commission. There was no error.

For the foregoing reasons, the decision of the Allen Circuit Court is affirmed.

ALL CONCUR.

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