

RENDERED: DECEMBER 5, 2014; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2013-CA-001648-MR

WHITNEY FALLON

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE A.C. MCKAY CHAUVIN, JUDGE
ACTION NO. 13-CI-000108

KENTUCKY UNEMPLOYMENT
INSURANCE COMMISSION; AND
NORTON HEALTHCARE, INC.

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: DIXON, JONES, AND KRAMER,¹ JUDGES.

DIXON, JUDGE: This appeal concerns a judgment rendered by the Jefferson Circuit Court, which affirmed a decision of the Kentucky Unemployment Insurance Commission denying benefits to Whitney Fallon. After careful consideration, we affirm.

¹ Judge Joy A. Kramer, formerly Judge Joy A. Moore.

Fallon was employed by Norton Healthcare, Inc. as a registered nurse. Following a work-related ankle injury, she was restricted to light duty work. Norton assigned Fallon to light duty administrative work to accommodate her injury. Norton offered light duty administrative work as part of a transitional duty program for its employees that were receiving workers' compensation. Shortly thereafter, Fallon's primary care physician restricted her from having direct contact with patients, due to a non-work-related medical condition that caused her to faint unexpectedly. On August 2, 2012, Fallon's workers' compensation physician released her from "light duty" work restrictions; however, she remained under the restriction imposed by her primary care physician. Brenda Craig, the Employee Relations Manager for Norton, informed Fallon that Norton could not accommodate the restriction because administrative work was only available to employees in the workers' compensation transitional duty program. Craig advised Fallon to apply for a leave of absence while she was restricted from direct contact with patients. Fallon was granted a leave of absence under the Family and Medical Leave Act; thereafter, she was on "job placement leave" through Norton. Although the leave of absence period was unpaid, Fallon retained her health insurance and related benefits during that time.

On August 12, 2012, Fallon applied for unemployment benefits, alleging Norton placed her on a leave of absence due to her medical restrictions. Benefits were denied based on a determination that Fallon was not unemployed. Fallon appealed that decision, arguing that she did not voluntarily accept a leave of

absence. At the evidentiary hearing, Fallon testified on her own behalf, and Brenda Craig testified on behalf of Norton.

The referee affirmed the denial of benefits, concluding that Fallon was not unemployed when she filed her claim for benefits. The referee concluded, in relevant part:

The claimant had the choice to risk discharge or take a leave of absence. While such a choice may be difficult, the claimant chose to apply for and received several different leaves of absence. During this time, she has continued to receive health insurance and other benefits from the employer. Such factors indicate that the employment relationship continues to exist.

Fallon appealed the referee's decision to the Commission. The Commission affirmed, adopting the referee's decision with additional factual findings. Specifically, the Commission noted Fallon admitted she was "still considered an employee with Norton Healthcare."

Fallon sought judicial review of the Commission's decision in Jefferson Circuit Court. The court affirmed, and Fallon now appeals.

In *Thompson v. Kentucky Unemployment Ins. Com'n*, 85 S.W.3d 621 (Ky. App. 2002), this Court stated the relevant standard of review:

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 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.

Id. at 624 (internal citations omitted).

As the claimant, it was Fallon's burden to prove she was eligible for unemployment benefits under Kentucky Revised Statutes (KRS) 341.350.

Broadway & Fourth Ave. Realty Co. v. Allen, 365 S.W.2d 302, 304 (Ky. 1963).

KRS 341.350 sets forth the criteria for eligibility, stating, in relevant part,

An unemployed worker shall, except as provided in KRS 341.360 and 341.370, be eligible for benefits with respect to any week of unemployment only if . . . [.]

In other words, KRS 341.350 "requires a claimant to be unemployed in order to receive unemployment benefits." *Coomer v. New Farmers Nat. Bank of Glasgow*, 611 S.W.2d 805, 807 (Ky. App. 1981). In the case at bar, the Commission specifically found that Fallon admitted she was "still considered an employee" of Norton; accordingly, the Commission determined she was not "unemployed" as required by KRS 341.350.

On appeal, Fallon ignores the requirements imposed by KRS 341.350. Fallon attempts to create ambiguity in the meaning of the term "unemployed" by referring to a different statute, KRS 341.080(3), which defines the phrase "week of

unemployment.”² She contends she was “unemployed” because she was neither working any hours, nor being paid by Norton during her leave of absence.

We are not persuaded that the term “unemployed” as used in KRS 341.350 is ambiguous. “When the statute is plain and unambiguous, the language of the statute is to be given full effect as written.” *Mohammad v. Commonwealth*, 202 S.W.3d 589, 590 (Ky. 2006). Under the facts presented here, since Fallon remained an employee of Norton during her medical leave, she was not unemployed; consequently, she was not eligible for benefits under KRS 341.350.

Finally, Fallon contends that her leave of absence was not voluntary.

The circuit court addressed this issue as follows,

The Commission found, more particularly, that Ms. Fallon was employed during those periods of time she was on a leave of absence, and that she took those leaves voluntarily. The Court finds that the Commission’s determination was not made arbitrarily.

The Court appreciates that, because the options available to her were limited to taking leave or risk being discharged, Ms. Fallon feels genuinely aggrieved by her circumstances. The choice to take leave rather than risk discharge was nevertheless a choice and, more importantly, the choice she made under the circumstances dictated by her non-work-related medical condition.

² KRS 341.080(3) states: “‘Week of unemployment’ means any period of seven (7) consecutive days, as prescribed by the Education and Workforce Development Cabinet in administrative regulations, during which a worker performed less than full-time work and earned less than an amount equal to one and one-fourth (1-1/4) times the benefit rate determined for him in accordance with the provisions of subsection (2) of KRS 341.380.”

We agree with the trial court's resolution of this issue, and we are not persuaded by Fallon's argument that her leave of absence was involuntary.

After careful review, we conclude the Commission correctly determined that Fallon was not entitled to benefits, and the circuit court properly affirmed the Commission's decision.

For the reasons stated herein, we affirm the judgment of the Jefferson Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Peter J. Naake
Louisville, Kentucky

BRIEF FOR APPELLEE:

Clay J. Lamb
Frankfort, Kentucky