

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000168-MR

THOMAS MILLER

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE OLU A. STEVENS, JUDGE
ACTION NO. 12-CI-002925

JEWISH HOSPITAL & ST. MARY'S
HEALTHCARE, INC. D/B/A JEWISH
HOSPITAL AND KENTUCKY
UNEMPLOYMENT INSURANCE COMMISSION

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, D. LAMBERT AND NICKELL, JUDGES.

NICKELL, JUDGE: Thomas Miller has appealed from a Jefferson Circuit Court's July 25, 2013, Opinion and Order affirming a decision of the Kentucky Unemployment Insurance Commission ("KUIC") upholding a Referee's determination that Miller was ineligible for benefits because he had voluntarily quit his position. Following a careful review, we affirm.

Miller was employed by Jewish Hospital and St. Mary's Healthcare, Inc., d/b/a Jewish Hospital ("Jewish") as a registered nurse beginning in December 2003. On September 3, 2011, Miller began a period of requested and approved leave under the Family and Medical Leave Act, 29 U.S.C. §2601 *et seq.* ("FMLA"). The medical condition underlying Miller's request was unrelated to his work at Jewish. Miller returned to work on November 29, 2011, after using almost all of his protected FMLA leave time.

On December 29, 2011, without first procuring approval from Jewish for additional leave, Miller underwent elective foot surgery, again a condition unrelated to his employment. He expected to return to work on January 30, 2012, but was actually released from medical restrictions approximately two weeks earlier, on January 16, 2012. However, on January 9, 2012, Jewish notified Miller it could no longer hold his position open as no communication had been received from him since December 28, 2011, and his FMLA leave had been exhausted shortly thereafter. Jewish placed Miller on inactive status, giving him thirty days to secure additional employment within the hospital which he was unable to do.

Miller filed for and received unemployment benefits for four consecutive weeks ending February 25, 2012. Shortly thereafter, the Division of Unemployment Insurance issued its determination that Miller had voluntarily quit his position without good cause attributable to employment and was therefore disqualified from receiving benefits pursuant to KRS¹ 341.370(1)(c). Miller

¹ Kentucky Revised Statutes.

appealed and following a hearing at which he was the sole participant, the Referee affirmed the decision to deny benefits. Miller then appealed to KUIC which affirmed the Referee's decision. On May 24, 2012, Miller appealed KUIC's decision to the Jefferson Circuit Court. Following a period of motion practice, the trial court denied Miller's motion for summary judgment and affirmed KUIC's decision by order entered on July 25, 2013. Miller's subsequent motion to alter, amend or vacate was denied and this appeal followed.

Miller contends the decisions below—which concluded he voluntarily quit and was therefore disqualified from receiving benefits pursuant to KRS 341.370(1)(c)—are infirm and he urges reversal. In support, Miller argues as he did below that he did not “voluntarily” leave his position, but rather was forced to do so because of a medical condition. In addition, he contends he did not leave “suitable work” as that term is defined in KRS 341.100(1), nor did he commit misconduct related to his employment. While Miller's arguments are multi-faceted on their face, when stripped of their prose they are, in fact, intertwined and center on two basic propositions—that the decisions below were based on incorrect interpretations of the applicable statutory language or were unsupported by substantial evidence. We reject both arguments.

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 [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.

(Internal citations omitted). Furthermore, judicial review of a decision by KUIC is to proceed in summary fashion and is limited to the certified record provided by the agency. KRS 341.450(3). Courts have "no authority to consider evidence outside the record or to incorporate new proof into the record." *Travelodge Intern. Inc. v. Kentucky Unemployment Ins. Comm'n*, 710 S.W.2d 232, 234 (Ky. App. 1986). Thus, like the trial court, we are constrained to consider only the evidence presented to the Referee to determine the propriety of the decision to deny Miller unemployment benefits.

As we have previously stated, the decision of an administrative agency will not be disturbed if substantial evidence exists in the record supportive of the determination, even though conflicting evidence may have been presented.

It is important to note that "the fact that [we] may not have come to the same conclusion regarding the same findings of fact does not warrant substitution of [our]

discretion for that of an administrative agency.”
Kentucky Unemployment Insurance Commission v. Landmark Community Newspapers of Kentucky, Inc., 91 S.W.3d 575, 582 (Ky. 2002). As fact-finder, the Board is afforded great latitude in its evaluation of the evidence heard and the credibility of the witnesses appearing before it. *Kentucky State Racing Commission v. Fuller*, 481 S.W.2d 298, 308 (Ky. 1972). The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. KRS 13B.150.

Carreer v. Cabinet for Health and Family Services, 339 S.W.3d 477, 484 (Ky. App. 2010), *as modified* (July 2, 2010).

The record before us contains conflicting evidence related to the events culminating in Miller’s termination. Contrary to Miller’s contention, we cannot say the evidence supported his claim without question. Rather, it appears the Referee, being tasked with determining the weight and credibility of the evidence presented, found Miller’s testimony and evidence unconvincing. Based on this assessment, the Referee concluded Miller voluntarily left his employment without good cause attributable to the work, a decision echoed by two other state agencies. Clearly, Miller disagrees with the Referee’s decision, but a mere disagreement with the assessment of the evidence and the weight to be given thereto constitutes an insufficient basis upon which to reverse. We are likewise unconvinced by Miller’s contention the Referee and KUIC misinterpreted and misapplied the statutory language in finding his separation constituted a “voluntary quit.” Miller appears to argue that any separation from employment due to illness can never disqualify an employee as same cannot be said to be voluntary. We

simply cannot countenance such an expansive view. To do so would foist a virtually insurmountable burden on all employers, a burden obviously not deemed appropriate by the Legislature as such was not included in the statutory language. Further, Miller's vehement argument that his position was supported by substantial evidence before the Referee is likewise insufficient for us to substitute our judgment for that of an administrative body. *See Thompson*, 85 S.W.3d at 624.

We have reviewed the record and conclude the Referee's decision was supported by substantial evidence as the trial court correctly found. We also conclude the Referee appropriately interpreted and utilized the applicable statutory factors in reaching its decision. The task of the court in an administrative matter is one of review, not reinterpretation. *Id.* Because the Referee received and relied upon substantial evidence of probative value to support its decision, we are without authority to alter that determination. The Referee, KUIC and the trial court properly applied the correct rule of law, and we are unable to discern any arbitrariness or capriciousness in the administrative decision. *Lindall v. Kentucky Retirement Systems*, 112 S.W.3d 391, 394 (Ky. App. 2003). There has been no showing of a sufficient basis to disturb the decision of the Referee—or the affirmance thereof by KUIC—as the trial court correctly concluded based on the same arguments presented below. Miller is simply not entitled to the relief he seeks.

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

ALL CONCUR.

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