IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-135

Filed: 3 September 2019

Wilson County, No. 18 CVS 241

VEDA WOODARD, Petitioner,

v.

NC DEPARTMENT OF COMMERCE, DIVISION OF EMPLOYMENT SECURITY AND ZEBULON CHAMBER OF COMMERCE, INC., Respondents.

Appeal by Petitioner from judgment entered on 6 July 2018 by Judge A. Graham Shirley in Wilson County Superior Court. Heard in the Court of Appeals 7 August 2019.

Perry & Associates, by Cedric R. Perry, for Petitioner-Appellant.

North Carolina Department of Commerce, Division of Employment Security, by Sharon A. Johnston and R. Glen Peterson, for Respondent-Appellees.

BROOK, Judge.

Veda Woodard ("Petitioner") appeals from the trial court's judgment entered on 6 July 2018. In its 6 July 2018 judgment, the trial court affirmed the following findings of fact and conclusions of law: (1) the North Carolina Department of

Commerce, Division of Employment Security's ("DES" or "Division")[1] findings of fact were based upon competent evidence contained in the record; (2) the DES properly applied the law to those facts; and (3) Higher Authority Decision No. 18(UI)0115 should be affirmed in its entirety. Petitioner contends the trial court erred because certain findings of fact found by the Board of Review for the DES ("Board") are not supported by competent evidence found in the record, and the facts do not sustain the Board's resulting conclusions of law that Petitioner was discharged from her job for misconduct connected with her work. In contrast, the DES and Zebulon Chamber of Commerce, Inc. (collectively, "Respondents") argue that the trial court's findings of fact are supported by competent evidence in the record. Respondents further argue that the trial court properly affirmed the Board's holding that Petitioner was ineligible for unemployment benefits because she was discharged for misconduct connected with the work.

We affirm the trial court's order.

I. Background

A. Factual Background

[1] Pursuant to 2011 N.C. Sess. Laws 401, effective 1 November 2011, the Employment Security Commission of North Carolina ("Commission") became the Division of Employment Security of the North Carolina Department of Commerce. Decisions that would have been made by the Commission are now made by the Division. Any references to "Commission" or "ESC" in Division decisions refer to exhibits, publications, and proceedings of the Commission prior to 1 November 2011. Appellate court decisions, and precedent decisions and interpretations issued by the Commission may be referenced in decisions issued by the Division: their value as governing authority continues to apply to Division decisions. Any changes in the Employment Security Law became effective 1 November 2011, and Division decisions reflect the Employment Security Law in force as of that date.

On or about 31 October 2016, Petitioner began employment as a title clerk with the Zebulon Chamber of Commerce, Inc. ("Employer"). Her job included collecting money from customers and placing the money in her cash drawer.

On 19 October 2017, $495 was discovered missing from Petitioner's unlocked cash drawer at Employer's location. Petitioner met with the President/CEO of Employer, Denise Nowell ("Nowell"), as well as her supervisor and a police official about the missing money.[2] While Employer investigated the missing money, it provided Petitioner with opportunities to meet with the police officials, which she declined.

Based on the recommendation of her physician, Petitioner was placed on medical leave from 25 October 2017 through 31 October 2017. On 1 November 2017, Employer again questioned Petitioner about the missing money. Petitioner asked Employer to direct all communication to her attorney. That same day, Employer put Petitioner on administrative leave, pending discussion with her attorney. Nowell testified that "from the first day up until the time that [Petitioner] asked us to direct

[2] The Record is unclear as to the number of police officials who met with Petitioner. The Record reflects Petitioner met with "local authorities," the term police "department" is used, and the Board's findings, provided *infra*, include the term "police officials." The Record also reflects, however, that Petitioner specifically met with an Officer Curry. When subsequently asked to speak to a Lieutenant Dixon, Petitioner had hired her attorney and declined that meeting. Further, the Record states that Petitioner met with "someone" from the local police department. Here, we adopt the singular term "official."

questions to her attorney . . . she initially said she didn't know what happened to the money and then in all subsequent conversations . . . she didn't want to talk about it."

After Petitioner directed Employer to address questions to her attorney, Employer reached out to the attorney on multiple occasions. Employer informed Petitioner of this and the fact that her attorney had not responded. Ultimately, Petitioner's attorney never responded to Employer's outreach.

Employer extended Petitioner's administrative leave for an additional two weeks twice as it awaited a response from Petitioner or her attorney. Based on this failure to respond, Employer terminated Petitioner's employment on 11 December 2017.[3] The missing $495 was not recovered.

B. Procedural Background

During her suspension, Petitioner filed a New Initial Claim ("NIC") for unemployment insurance benefits effective 29 October 2017. Upon referral for adjudication on the issue of disciplinary suspension from last employment, the adjudicator issued a 29 November 2017 Determination by Adjudicator, Docket No. 558230 ("Determination"), finding Petitioner ineligible for benefits pursuant to N.C. Gen. Stat. § 96-14.10.

[3] Higher Authority Decision No. 18(UI)0115, Finding of Fact 6, discussed *infra*, states that the date of discharge was "[o]n or about November 11, 2017." Respondent asserts this was a scrivener's error and that the undisputed correct date of discharge was 11 December 2017.

On 6 December 2017, Petitioner appealed from the Determination. A DES Appeals Referee ("Referee") heard the matter on 3 January 2018 under Appeals Docket No. VII-A-50905. On testimony and competent evidence submitted, the Referee modified the Determination, and found Petitioner was ineligible for unemployment insurance benefits for the period of 29 October 2017 through 9 December 2017, given that she was on a disciplinary suspension during that time. Further, the Referee concluded that, because Petitioner had been discharged from employment by the date of the appeals hearing for misconduct connected with the work, she was disqualified to receive unemployment insurance benefits beginning 10 December 2017.

Petitioner then appealed the Referee's decision to the Board.[4] The Board considered the evidence previously submitted to the Referee and issued Higher Authority Decision No. 18(UI)0115 on 31 January 2018. In its decision, the Board set forth findings of fact pertaining to Petitioner's employment as follows:

> 1. The claimant has filed continued claims for unemployment insurance benefits for the period October 29, 2017 through November 26, 2017. The claimant has registered for work with the Division, has continued to report to an employment office as requested by the Division, and has made a claim for benefits in accordance with N.C. Gen. Stat. § 96-15(a).

[4] 2011 N.C. Sess. Laws 401 established the Board of Review effective 1 November 2011. As applicable in this matter, the statutory authority of the Board of Review is found in N.C. Gen. Stat. §§ 96-15(e) and 96-15.3 (2017). Higher Authority Decisions are made by the Board of Review and are the Division's decisions referred to in N.C. Gen. Stat. § 96-15(h) (2017).

2. The claimant began working for the employer on or about October 31, 2016. She last worked for the employer on October 24, 2017 as a title clerk.

3. The employer operates a local Division of Motor Vehicles office under a contract with the North Carolina Department of Transportation.

4. The claimant's job included collecting money. She was assigned her own cash drawer. On or about October 19, 2017, a shortage of $495.00 from the claimant's cash drawer was discovered. The claimant and supervisor tried to determine the problem but were unable to find the money.

5. The claimant met with her supervisor, Denise Nowell, President/CEO, and police officials about the missing money. The claimant offered no explanation of how her cash drawer could have been $495.00 short, merely stating she did not know what happened. Eventually, the claimant refused to discuss the situation or assist in the investigation. The claimant was placed on medical leave by her doctor beginning October 25, 2017 through October 31, 2017. When the claimant returned she referred all questions about the missing money to her attorney. As a result, the claimant was placed on a two-week administrative suspension beginning November 1, 2017. The suspension was extended twice for another two-weeks each time while the employer waited to receive information from the claimant's attorney about the missing money.

6. During the suspension, the employer heard nothing further from the claimant or her attorney. On or about November 11, 2017, the employer discharged the claimant from the job because of the claimant's failure to cooperate in the investigation of the missing money for which she had been responsible.

> 7. The claimant was given sufficient opportunity to assist the employer in investigating the missing money but refused to do so.

The Board affirmed the decision of the Referee that Petitioner was ineligible to receive unemployment insurance benefits for the thirty (30) days of her disciplinary suspension and was discharged thereafter for misconduct connected with the work. In addition, the Board modified the Referee's decision as to the dates that Petitioner was ineligible to receive benefits to 29 October 2017 through 2 December 2017 and found that Petitioner was disqualified for benefits beginning 3 December 2017.

On 21 February 2018, Petitioner filed a Petition for Judicial Review in the Office of the Clerk of Superior Court for Wilson County. Following a hearing on 25 June 2018, Superior Court Judge A. Graham Shirley entered a Judgment on 6 July 2018 affirming the findings of fact, conclusions of law and ultimate decision in Higher Authority Decision No. 18(UI)0115. On 6 August 2018, Petitioner filed a Notice of Appeal to this Court.

II. Standard of Review

"The standard of review in appeals from the ESC, both to the superior court and to the appellate division, is established by statute. 'In any judicial proceeding under this section, the findings of fact by the Commission, if there is any competent evidence to support them and in the absence of fraud, shall be conclusive, and the jurisdiction of the court shall be confined to questions of law.'" *Binney v. Banner*

Therapy Prods., Inc., 362 N.C. 310, 315, 661 S.E.2d 717, 720 (2008) (quoting N.C. Gen. Stat. § 96-15(i) (2007)). Competent evidence is evidence "that a reasonable mind might accept as adequate to support the finding." *Eley v. Mid/East Acceptance Corp. of N.C., Inc.*, 171 N.C. App. 368, 369, 614 S.E.2d 555, 558 (2005) (internal marks and citation omitted). We review the DES's conclusions of law *de novo*. *Housecalls Nursing Servs. v. Lynch*, 118 N.C. App. 275, 278, 454 S.E.2d 836, 839 (1995).

III. Analysis

On appeal, Petitioner first argues that the trial court erred in affirming the decision of the Board, Higher Authority Decision No. 18(UI)0115, as the evidence before the Board did not support its findings of fact. More specifically, Petitioner contests Findings of Fact 5, 6, and 7. Petitioner also argues that the findings of fact did not support the conclusions of law that she was discharged from her job for misconduct connected to her employment.[5] We first review the contested findings of fact before turning to the conclusions of law.

A. Findings of Fact

A review of Findings of Fact 5, 6, and 7 reveals that each is supported by competent evidence.

Finding of Fact 5:

[5] Petitioner does not contest on appeal the Board's decision that she was ineligible to receive unemployment insurance benefits beginning 29 October 2017 and ending 2 December 2017; this aspect of the Board's decision is final.

In Finding of Fact 5, the Board found that Petitioner could not explain the missing $495. The Board further found that she subsequently refused to discuss the situation or assist in the investigation pertaining to the missing funds. Finally, the Board found Petitioner's intransigence led to her being suspended from work by the employer.

Petitioner argues on appeal that she did assist in the investigation by meeting with Nowell as well as her supervisor and a police official. She further argues that the fact that she "could not offer an answer to how the short of money resulted is not the same as a refusal to cooperate with the employer during the investigation."

According to the competent testimony, though she met with Nowell as well as her supervisor and a police official, Petitioner offered no explanation for the missing $495. She simply stated that "she didn't know what happened to the money."

Competent evidence further supports the finding that Petitioner ultimately refused to assist in the investigation. Nowell testified that, after the aforementioned initial investigatory meeting, Petitioner would not discuss the missing money and referred all questions to her attorney. Nowell further testified that, as a result of this, Petitioner was placed on administrative leave on 1 November 2017. This leave was subsequently extended for two additional weeks twice while Employer waited to receive information from Petitioner's attorney about the missing money. Despite

Employer's outreach seeking information from Petitioner's attorney, and Petitioner's knowledge of the same, Employer received no response.

Based on the above, we hold that Finding of Fact 5 is supported by competent evidence.

Finding of Fact 6:

In Finding of Fact 6, the Board found that Employer terminated Petitioner for failure to cooperate in the investigation of the missing money after neither Petitioner nor her attorney communicated with Employer during Petitioner's suspension.

Petitioner argues on appeal that "nothing in the record . . . shows that during her suspension . . . she was contacted to meet again with the employer." She further asserts that she "had nothing else to offer in the investigation" after previously stating that she "could not explain the shortage" of the missing money.

According to Nowell's testimony, and confirmed by Petitioner, Employer did not hear from Petitioner or from her attorney during Petitioner's suspension—even though Employer reached out to the attorney seeking information multiple times.

Nowell further testified that as a result of this failure to cooperate in the investigation of the money missing from the cash drawer for which she was responsible, Petitioner was terminated on or about 11 December 2017.

Based on the above, we hold that Finding of Fact 6 is supported by competent evidence.

Finding of Fact 7:

In Finding of Fact 7, the Board found that Petitioner "was given sufficient opportunity to assist the employer in investigating the missing money but refused to do so."

Petitioner argues on appeal that this is not supported by the evidence because she "met and conversed about the missing money[.]" She argues that "stating that she . . . could not offer an answer to how the shortage of money resulted is not the same as a refusal to cooperate with [Employer] during the investigation." Further, Petitioner argues that the DES "erroneously" found the "lack of a confession as a 'refusal to cooperate[.]'"

Nowell testified that Employer asked Petitioner repeatedly to assist in its investigation of the missing money. After the 20 October 2017 meeting, Petitioner refused to speak with the police department about their investigation. Yet Employer did not immediately terminate Petitioner, instead placing her on administrative leave for six weeks. Nowell testified that Employer only terminated Petitioner after it had received no response to its inquiries from Petitioner or from her attorney over the course of this six-week leave.

Based on the above, we hold that Finding of Fact 7 is supported by competent evidence.

B. Conclusions of Law

Having held that Findings of Fact 5, 6, and 7 are supported by competent evidence, we turn now to the question of whether the Board's findings of fact support its conclusions of law and decision. *See* N.C. Gen. Stat. § 96-15(i) (2017); *Binney*, 362 N.C. at 315, 661 S.E.2d at 720. In denying Petitioner's claim for benefits, the Board concluded, in pertinent part, "that the claimant was discharged from employment during the benefit week beginning December 3, 2017 . . . [and] the reason for the discharge[] amounted to misconduct[] connected with the work." Petitioner argues that the facts do not support the conclusion that she engaged in misconduct and further that there was good cause justifying her conduct. We review the challenged conclusions *de novo* and affirm.

A claimant is "ordinarily . . . presumed to be entitled to benefits under the Unemployment Compensation Act[.]" *Binney*, 362 N.C. at 315, 661 S.E.2d at 720 (citation and brackets omitted). This presumption is rebuttable, and the employer has the burden to show the circumstances that disqualify the claimant. *Id.* An employee who is discharged for "misconduct connected with her work" is disqualified from receiving unemployment benefits. *Id.* (citing N.C. Gen. Stat. § 96-14(2) (2007)).[6] "Misconduct connected with the work" is further defined by statute as either of the following:

[6] Most cases were decided under former N.C. Gen. Stat. § 96-14, prior to revision of Article 2, by Session Laws 2013-2. Statutory requisites for disqualification for misconduct are now found in N.C. Gen. Stat. § 96-14.6 (2017).

> (1) Conduct evincing a willful or wanton disregard of the employer's interest as is found in deliberate violation or disregard of standards of behavior that the employer has the right to expect of an employee or has explained orally or in writing to an employee.
>
> (2) Conduct evincing carelessness or negligence of such degree or recurrence as to manifest an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

N.C. Gen. Stat. § 96-14.6(b) (2017). Misconduct includes violations of an employer's work rules, unless an employee's actions are shown to be "reasonable" and "taken with good cause." *Binney*, 362 N.C. at 316, 661 S.E.2d at 720 (citing *Intercraft Indus. Corp. v. Morrison*, 305 N.C. 373, 375, 289 S.E.2d 357, 359 (1982)). "Good cause" is "a reason which would be deemed by reasonable men and women valid and not indicative of an unwillingness to work." *Intercraft*, 305 N.C. at 376, 289 S.E.2d at 359. Even without a work rule violation, "'misconduct' may consist in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee." *Binney*, 362 N.C. at 316, 661 S.E.2d at 720 (quoting *Hagan*, 57 N.C. App. at 365, 291 S.E.2d at 309); *see* N.C. Gen. Stat. § 96-14.6(b)(1) (2017).

We first conclude that Petitioner's behavior constitutes misconduct connected to her work. *See* N.C. Gen. Stat. § 96-14.6 (2017). Petitioner's job included collecting money for Employer. On 19 October 2017, Petitioner's work drawer was short $495. Employer had an interest in recovering the money once it had learned the money had gone missing. Though she initially met with a representative of Employer and the

local police department, Petitioner referred all further questions to her attorney on 1 November 2017. Employer only placed Petitioner on administrative leave at this point. Over the course of the next six weeks, Employer sought Petitioner's cooperation by repeatedly contacting her attorney. These efforts were to no avail as they did not result in a response from Petitioner or her counsel. Only at this point did Employer fire Petitioner. We conclude that Petitioner's refusal to cooperate with Employer's investigation of money missing from her cash drawer evinces "willful . . . disregard of [her] employer's interest" by disregarding the "standards of behavior that the employer has the right to expect of an employee" such that it constitutes misconduct. N.C. Gen. Stat. § 96-14.6(b)(1) (2017).

We also find unpersuasive Petitioner's argument that seeking assistance of counsel "constituted just cause evidence" explaining her "refusal to cooperate." Specifically, Petitioner argues that she "acted reasonably in the face of being a suspect regarding the missing money in consulting legal advice." Petitioner may well have acted reasonably in seeking legal advice and ceasing communications with her Employer in light of potential legal exposure she faced relating to the investigation. That, however, does not mean, and nothing in our case law suggests, that Petitioner showed "good cause" as the term is used in the unemployment benefit context in stymieing Employer's valid interest in investigating these missing funds. *See Helmandollar v. M.A.N. Truck & Bus Corp.*, 74 N.C. App. 314, 317, 328 S.E.2d 43, 45

(1985) (finding "good cause" when "a combination of unfortunate circumstances prevented claimant from meeting the strict requirements of his employer's rule").

IV. Conclusion

We hold that the DES Board of Review's challenged findings of fact were supported by competent evidence. We further hold that the Board's findings of fact supported its conclusions of law that Petitioner was terminated for work-related misconduct where she failed to cooperate with Employer's investigation of funds missing from her workplace. Accordingly, we affirm the trial court's judgment holding that the Board correctly denied Petitioner's request for unemployment benefits.

AFFIRMED.

Judges DILLON and ZACHARY concur.

Report per Rule 30(e).