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Chapman v. NYK Line North America, Inc. Respondent's Brief Dckt. 35014

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IN THE SUPREME COURT OF THE STATE OF IDAHO

MERRIE E. CHAPMAN,

Claimant-Appellant,

vs.

NYK LINE NORTH AMERICA INC,

Employer-Respondent,

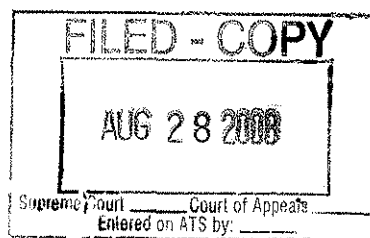
and

IDAHO DEPARTMENT OF LABOR,

Respondent.

Case No. 35014

**EMPLOYER-RESPONDENT'S
BRIEF**



BRIEF OF EMPLOYER-RESPONDENT

APPEAL FROM THE IDAHO INDUSTRIAL COMMISSION

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I. STATEMENT OF THE CASE

A. Nature of the Case.

The appellant, Merrie Chapman (herein after "Ms. Chapman"), has appealed the Idaho Industrial Commission's Decision and Order in this case of January 9, 2008 which upheld the Appeal's Examiner's Decision of November 2, 2007 denying Ms. Chapman unemployment benefits as she had been discharged from her employment with NYK Line North America, Inc. (hereinafter "NYK Line") for misconduct.

B. Course of the Proceedings.

On July 20, 2007, Ms. Chapman applied for unemployment benefits and received an eligibility determination in her favor. (R. Exhibit 3) On August 14, 2007, NYK Line timely requested an appeal of the August 3, 2007 eligibility determination. (R. Exhibit 4) A telephonic hearing was held by an Appeals Examiner on October, 23, 2007. (T. p I Ls I) The Appeals Examiner reversed the eligibility determination, in a decision dated November 11, 2007, having concluded Ms. Chapman was terminated from her employment with NYK Line for misconduct. (R., p. 1)

Ms. Chapman requested permission to file a brief and present oral argument during a hearing before the Industrial Commission. (R., pp. 15-18) On December 3, 2007, the Industrial Commission issued an order establishing the briefing schedule and denying Ms. Chapman's request for hearing. (R., pp.21-23)

The Industrial Commission issued its Decision and Order in this case affirming the decision of the Appeals Examiner on January 9, 2008. (R., p. 38) Ms. Chapman has appealed the decision of the Industrial Commission to the Idaho Supreme Court. (R., pp. 49 - 52)

C. Appeals Examiner's Findings of Fact.

NYK Line agrees with the Appeals Examiner's Finding of Fact, as set out in the Decision of Appeals Examiner dated November 2, 2007. (R. Vol. 1, p. 2). The Appeals Examiner's Findings of Fact accurately reflects the evidence presented during the appeals hearing.

More specifically, the Appeals Examiner found NYK Line hired an outside attorney, Ms. Tamsen Leachman, to investigate a complaint filed by Ms. Chapman. (*Id.*) As part of Ms. Leachman's investigation, she interviewed Ms. Chapman (*Id.*)¹ At the beginning of the interview, Ms. Chapman asked if she could record the interview and Ms. Leachman denied her request. (*Id.*) Ms. Leachman explained her reasons for denying the request: (a) the potential for a breach of confidentiality and (b) based on her experience regarding interviewees' forthrightness when being recorded. (*Id.*)

One hour into the interview, Ms. Leachman left the room to retrieve documents. (*Id.*) After Ms. Leachman had returned and resumed the interview, she heard a "beep" sound that

¹ Appellant, Merrie Chapman (hereinafter "Ms. Chapman"), has set out a detailed statement of facts in her brief. For the most part, Respondent, NYK Line North America, Inc. (hereinafter "NYK Line"), agrees with Ms. Chapman's statement of facts. However, Ms. Chapman alleges NYK Line told her that it had hired an attorney to represent her, purportedly Ms. Tamsen Leachman, to support her in the filing of several complaints against co-workers. (Brief of Appellant, p. 1) This statement is incorrect and not supported by the record. At all times, Ms. Tamsen Leachman was an attorney retained by NYK Line as an outside investigator to determine the validity of Ms. Chapman's complaints against other employees of NYK Lines. (Tr. Vol. 1, p. 11, ll. 12 – p. 12, ll. 20)

appeared to come from Ms. Chapman's purse. Ms. Leachman recognized the sound as similar to the sound of a tape coming to an end when recording dictation. (*Id.*)

Ms. Leachman asked Ms. Chapman if she had been recording the interview. Ms. Chapman denied she was recording the interview and took the recorder out of her purse. When the tape was rewound and played back two female voices were heard. (*Id.*)

Ms. Leachman believed Ms. Chapman had lied to her about recording the interview. (*Id.*) Ms. Chapman gave Ms. Leachman the tape and when Ms. Leachman listened to the tape at a later time she heard Ms. Chapman state at the beginning of the recording "OK, I'm recording now." (*Id.*)

Ms. Leachman prepared a written summary of her investigation and gave it to her client, NYK Line. In the summary, she described the incident with the tape recorder. (*Id.*) She also spoke to NYK Line's general counsel and advised him she did not believe the tape recording was activated accidentally. (*Id.*)

NYK Line then made the decision to discharge the claimant for being untruthful and for failure to comply with an investigation. (*Id.*) Ms. Chapman filed for unemployment benefits, as outlined above. When she was granted benefits, NYK Line appealed the determination.

The Appeals Examiner conducted a hearing and determined Ms. Chapman should be denied unemployment benefits as she was discharged for misconduct. (*Id.*) The Industrial Commission affirmed the Appeals Examiner's decision and Ms. Chapman filed this appeal with the Idaho Supreme Court.

II. ATTORNEY'S FEES ON APPEAL

NYK Line requests its costs and reasonable attorney fees on appeal as the appeal is frivolous. I.A.R. 40, 41; I.C. § 12-121. Ms. Chapman's arguments have absolutely no merit and border on the ridiculous. The Appeals Examiner and the Industrial Commission both rendered determinations based on substantial and competent evidence. Thus, there is no legitimate basis for this appeal and NYK Line should be reimbursed for the time and expense it has occurred to oppose the appeal.

III. STANDARD OF REVIEW

When a decision of the Industrial Commission is appealed to the Idaho Supreme Court, the Court exercises free review of the Commission's legal conclusions, but will not disturb findings of fact if they are supported by substantial and competent evidence. *See Giltner, Inc. v. Idaho Department of Commerce and Labor*, 145 Idaho 415, 179 P.3d 1071 (2008); *Slaven v. Road to Recovery*, 143 Idaho 483, 148 P.3d 1229 (2006). Substantial and competent evidence is relevant evidence a reasonable mind might accept to support a conclusion. *Id.* The conclusions reached by the Industrial Commission regarding the credibility and weight of the evidence will not be disturbed unless the conclusions are clearly erroneous. *Id.* The Court will not re-weigh the evidence or consider whether it would have drawn a different conclusion from the evidence presented. *Id.*

Based on the above standard of review, the Industrial Commission's decision to affirm the Appeals Examiner's determination and deny Ms. Chapman unemployment benefits should be upheld and Ms. Chapman's appeal should be denied.

IV. ARGUMENT

A. The Industrial Commission Did Not Abuse Its Discretion When It Ruled on the Record.

Ms. Chapman claims the Industrial Commission abused its discretion when it failed to grant her a hearing so she could show it the tape recorder she allegedly unintentionally activated during her interview with Ms. Leachman. (Brief of Appellant, p. 3). However, her argument has no merit because nothing in the rules provides a right to a hearing and the Industrial Commission provided a well-reasoned analysis for denying her request.

Ms. Chapman has failed to meet her burden of proving that the Industrial Commission abused its discretion when it denied her a hearing. In determining whether the Industrial Commission has abused its discretion, the Court employs a three-part test:

1. Whether the Commission correctly perceived the issue as one of discretion;
2. Whether it acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it; and
3. Whether it reached its decision by an exercise of reason.

Super Grade, Inc. v. Idaho Dept. of Commerce and Labor, 144 Idaho 386, 162 P. 3d 765 (2007).

In this case, the Industrial Commission's decision to deny a hearing meets all three of the above requirements.

More specifically, in the Order Establishing Briefing Schedule, the Commission sets forth detailed reasoning as to why it determined a hearing was not warranted in this matter. (R. Vol.1, p. 21). Most importantly, it explains:

Claimant [Ms. Chapman] has not demonstrated that the only way in which the Commission can understand the functioning of the tape recorder at issues is to actually view it. After a careful review of the issue, we are satisfied that the tape recorder and its operation can be accurately and sufficient explained through the documentary appeals record.

The Commission takes the position that conducting a new hearing at this level of review is an extraordinary measure and should be reserved for those cases when due process or other interests of justice demand no less. Claiming had a full and fair opportunity to present evidence supporting its contentions about her separation of employment. Therefore, we find no reason to conduct an additional hearing in this case to allow either party to present additional evidence.

(R. Vol.1, p. 22)

Consequently, the Commission (a) understood the decision whether to grant a hearing was within its discretion; (b) it acted within the bounds of its discretion when denying the hearing; and (c) the decision was based on a reasoned review of the issue. Hence, the Commission's decision to determine the appeal on the record without a hearing was not an abuse of discretion and its decision should be affirmed.

B. The Industrial Commission's Decision was Based on Findings of Fact Supported by Substantial and Competent Evidence.

Ms. Chapman attempts to argue in her brief that the Industrial Commission did not have substantial and competent evidence to affirm the Appeals Examiner's decision. (Brief of Appellant, p. 13) However, this argument has no basis in fact as the Industrial Commission provided an in-depth analysis of the evidence and the applicable law in its decision to affirm the Appeals Examiner's decision.

Idaho Code Section 72-1366(e) provides that a claimant is rendered ineligible for unemployment benefits if she voluntarily left her employment without good cause connected to her employment, or was discharged for misconduct in connection with her employment. *Id.* The burden of proving discharge is on the claimant, and only if the claimant proves discharge does the employer have the burden of proving misconduct. *Quinn v. J.R. Simplot Co.*, 131 Idaho, 955 P.2d 1097 (1998).

In the present case, there is no dispute Ms. Chapman was discharged from her employment. Therefore, the sole issue is whether Ms. Chapman was discharged for employment related misconduct.

The Appeals Examiner determined Ms. Chapman's employment was terminated by NYK Line for misconduct and, thus, she was ineligible for unemployment benefits. (R. Vol.1, p. 1-6) The Industrial Commission conducted a *de novo* review of the record and affirmed the Appeals Examiner's decision. (R. Vol.1, p. 38-47)

During its review, the Industrial Commission evaluated the Appeals Examiner's findings of fact and outlined the three grounds for determining whether Ms. Chapman engaged in misconduct resulting in the denial of eligibility for unemployment benefits. *Id.*

The decision is 10 pages long and includes an in-depth analysis of the reasons why Ms. Chapman's actions constituted misconduct making her ineligible for unemployment benefits. Consequently, the decision is based on substantial and competent evidence and Ms. Chapman has presented no viable argument in her attempt to convince the Court that the Commission's findings are clearly erroneous. Hence, the Industrial Commission's conclusions should not be

disturbed. *See Uhl v. Ballard Medical Products, Inc.*, 138 Idaho 653, 67 P.3d 1265 (2003)(holding the court will not disturb Industrial Commission's conclusions regarding credibility and weight of the evidence in unemployment benefits proceedings unless conclusions are clearly erroneous).

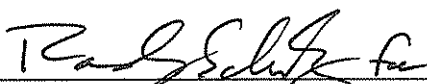
Thus, there is no legitimate basis for Ms. Chapman's contention that the Industrial Commission's decision was not supported by substantial and competent evidence. Hence, her appeal must be denied.

V. CONCLUSION

For the foregoing reasons, NYK Line respectfully requests this Court affirm the decision of the Industrial Commission and uphold the Appeals Examiner's denial of Ms. Chapman's eligibility for unemployment benefits.

RESPECTFULLY SUBMITTED this 28th day of August, 2008.

HALL, FARLEY, OBERRECHT
& BLANTON, P.A.

By  _____
Keely E. Duke - Of the Firm
Karen O. Sheehan - Of the Firm
Attorneys for Respondent

CERTIFICATE OF SERVICE

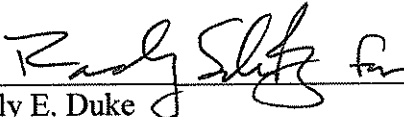
I HEREBY CERTIFY that on the 28th day of August, 2008, I caused to be served a true copy of the foregoing EMPLOYER-RESPONDENT'S BRIEF, by the method indicated below, and addressed to each of the following:

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