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Muchow v. Varsity Contractors, Inc. Respondent's Brief Dckt. 40559

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IN THE SUPREME COURT OF THE STATE OF IDAHO

DEANNE MUCHOW,

Claimant/Appellant

v.

VARSITY CONTRACTORS, INC.,

Employer/Respondent,

and

IDAHO YOUTH RANCH,

Cost Reimbursement Employer,

and

IDAHO DEPARTMENT OF LABOR,

Respondent.

SUPREME COURT NO. 40559

(IDOL DOCKET NO. 5715-2012)

RESPONDENT'S BRIEF

Appeal from the Idaho State Industrial Commission

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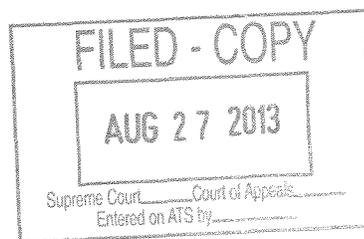


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Idaho Code § 72-13661

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I. INTRODUCTION

At issue in this appeal is whether Appellant engaged in workplace misconduct in connection with her termination from employment such that she is ineligible for unemployment benefits under Idaho Law.

II. STATEMENT OF THE CASE

A. Nature of The Case

DeAnne Muchow was discharged from employment with Varsity Contractors, Inc. on June 26, 2012. From that termination she seeks an award of unemployment benefits under Idaho Code § 72-1366. Varsity has objected to her receipt of benefits since her termination was for cause that falls within the definition of employee misconduct; thus rendering her ineligible for benefits. Idaho Code § 72-1366(5).

B. Course of Proceedings

Muchow applied for and initially received unemployment benefits following her termination. Varsity objected to Muchow's award of benefits on the basis that she was terminated for misconduct and was ineligible for benefits under Idaho's Employment Security Law. The Department of Labor reversed the initial award finding she committed workplace misconduct and was ineligible for benefits. Muchow appealed.

Following a telephonic hearing, an Appeals Examiner for the Department of Labor concluded in an order issued August 29, 2012 that Muchow was eligible for benefits. Varsity then appealed that order to the Industrial Commission.

The Industrial Commission issued its Decision and Order on November 20, 2012 concluding that Muchow engaged in workplace misconduct and held she was ineligible for unemployment benefits. Muchow appeals from that Order.

C. Statement of Facts

Deanne Muchow started to work for Varsity on February 2, 2011 as a Human Resources Assistant. Transcript, p. 6, ll. 3-10. She received a Varsity Employee Handbook and executed an Acknowledgement of that handbook as part of her employment. Exhibit 8, p. 6. Muchow's direct supervisor was Jennifer Knapp who, in turn, was supervised by Shane Campbell, Director of Human Resources. Transcript, p. 5, ll. 17-21, p. 6, ll. 13-14, p. 30, ll. 12-14.

Muchow had difficulty maintaining appropriate levels of professional interaction with co-workers, particularly with Knapp. Transcript, p. 22, l. 14 – p. 23, l. 4; Exhibit 8, pp. 8-9, 11, 16. Muchow received a written warning on March 22, 2012 regarding her unprofessional workplace behavior. Exhibits 4, p. 4 and 8, p. 7. Under Varsity's policies, insubordination is grounds for immediate termination, regardless whether a prior warning is given. Exhibit 8, p. 5, ¶ 5.

On June 26, 2012, Campbell held a meeting in his office with Muchow and Knapp to resolve complaints regarding Muchow's behavior toward co-worker Heather Muhlfeith as well as her continuing unprofessional demeanor toward Knapp. Exhibits 4, p. 8 and 8 pp. 14-15. During that meeting, Muchow raised concerns she had with Knapp and also volunteered she had maintained documentation of those concerns. Knapp stated that she too had maintained documentation of Muchow's unprofessional conduct. Campbell felt it important to understand specifics of the workplace issue and so he requested they each bring their documentation to him after a short break so they could resolve the workplace disputes. Transcript, p. 10, l. 3 – p. 11, l. 1.

Muchow, while on company time and in response to a direct request by her Varsity manager, went back to her company cubicle, logged back onto her company computer, accessed the document stored on company hardware written on her company computer (about workplace issues she experienced with co-workers) that she had previously written on her company computer while at work and during work hours, and printed the document on a company network printer with company paper. *See and compare* Transcript, p. 39, ll. 9, 22 – p. 40, l. 1 and Exhibit 6, p. 15 of 17 *with* Exhibit 6, p. 16 of 17; *see also* Exhibit 6, pp. 4-10 (diary entries made during regular company business hours).

Campbell, while walking past Muchow's cubicle, asked Muchow if she was ready to proceed with her documentation. She replied affirmatively and, after Campbell notified Knapp they were ready, Campbell and Muchow walked toward Campbell's office.

On the way, Muchow showed the papers to Campbell from a distance and said "Here is the documentation ... I just want you to know that I'm not a liar, that I have it, and I'm going to shred it." Transcript, p. 11, ll. 2-8.

Campbell replied "No, DeAnne, ... don't shred the documents, bring them into my office like we discussed ... so I can look at ... your documentation. Jennifer is coming in with hers. Bring it in." Transcript, p. 11, ll. 8-12.

Muchow continued past Campbell's office toward the desk of Carol Rudolph, a Varsity payroll clerk, where a company shredder was located. Muchow replied to Campbell's directive not to shred the document by stating "[a]nd I deleted it off my hard drive." Transcript, p. 11, ll. 5-14.

Rudolph heard Muchow state she had deleted the document off her computer. Exhibit 8, p. 10.

Muchow went to the payroll department shredder and began to put the company paper in the company shredder when her manager again stated “[d]o not shred those documents.” Transcript, p. 11, l. 18 – p. 12, l. 18. By this time, Knapp was on her way to Campbell’s office and heard Campbell tell Muchow not to shred the document. Transcript, p. 53, l. 25 – p. 54, l. 10.

Campbell twice directed Muchow not to shred the document. Muchow heard Campbell both times. In response to the first, she told Campbell that she had deleted the document from her computer. In response to the second, she stood by the Payroll Department shredder and shredded the document.

Apparently, Muchow disregarded Campbell’s clear directives because she did not want to discuss workplace issues she had with Knapp but simply wanted to wipe the slate clean and start over. Transcript, p. 12, ll. 5-13; p. 26, ll. 24-25.

III. ISSUES PRESENTED ON APPEAL

1. Whether substantial and competent evidence supports the Industrial Commission’s finding that Appellant committed misconduct under Idaho Code Section 72-1366(5) and is ineligible for unemployment benefits.
2. Respondent does not seek an award of attorney fees on appeal but reserves the right to later seek an award of costs under Idaho Appellate Rule 40.

IV. COSTS ON APPEAL

Respondent objects to Appellant’s request for costs on appeal in Appellant’s Opening Brief, p. 4. Such request is premature and improper and costs for the prevailing

party in this matter should not be considered prior to this Court's ultimate resolution of this matter.

V. ARGUMENT

A. Standard of Review

The Idaho Supreme Court's standard of review of decisions by the Industrial Commission is well-settled and limited only to a review of questions of law. *Huff v. Singleton*, 143 Idaho 498, 500, 148 P.3d 1244, 1246 (2006) (citing IDAHO CONST. ART. V, § 9; *Pimley v. Best Values, Inc.*, 132 Idaho 432, 434, 974 P.2d 78, 80 (1999)).

Under this standard, the Court will give deference to and will not disturb factual findings by the Industrial Commission as long as those findings are supported by substantial and competent evidence. *Id.* (citing *Frank v. Bunker Hill Co.*, 142 Idaho 126, 130, 124 P.3d 1002, 1006 (2005)). Substantial and competent evidence sufficient to support the Commission's findings is "relevant evidence that a reasonable mind might accept to support a conclusion." *Id.* (quoting *Jensen v. City of Pocatello*, 135 Idaho 406, 412, 18 P.3d 211, 217 (2000)).

Such deference applies even where there exists conflicting evidence in the record since the Commission's findings "must be sustained regardless of whether this Court may have reached a different conclusion." *Id.* (quoting *Harris v. Electrical Wholesale*, 141 Idaho 1, 3, 105 P.3d 267, 269 (2004)).

Although an appellant may attempt to have this Court review the factual findings, this Court will only review questions of law and "will not reweigh the evidence or consider the credibility of witnesses." *Id.* (citing *Pimley*, 132 Idaho at 435, 974 P.2d at 81). That is because "it is up to the Commission to weigh the conflicting evidence and

determine the credit and the weight to be given the testimony admitted.” *Adams v. Aspen Water, Inc.*, 150 Idaho 408, 412-13, 247 P.3d 635, 639-40 (2011) (quoting *Henderson v. Eclipse Traffic Control & Flagging, Inc.*, 147 Idaho 628, 631, 213 P.3d 718, 721 (2009)).

“Furthermore, all facts and inferences are viewed in favor of the prevailing party before the Commission.” *Id.* at 150 Idaho at 413, 247 P.3d at 640 (citing *Higgins v. Larry Miller Subaru-Mitsubishi*, 145 Idaho 1, 4, 175 P.3d 163, 166 (2007)).

Finally, “[t]his Court adheres to the rule that persons acting *pro se* are held to the same standards and rules as those represented by attorneys. ... [and w]hen issues presented on appeal are not supported by propositions of law, citations to legal authority, or argument they will not be considered by this Court.” *Huff*, 143 Idaho at 500, 148 P.3d at 1246 (citing *Langley v. State*, 126 Idaho 781, 784, 890 P.2d 732, 735 (1995)).

B. Substantial and Competent Evidence Supports the Decision Reached by the Industrial Commission

In this matter, the Industrial Commission considered all three grounds recognized under Idaho law to determine whether Muchow engaged in misconduct to render her ineligible for unemployment benefits. The Commission found that Muchow did, in fact, engage in misconduct under the “standards-of-behavior” analysis. Decision and Order, pp. 5-6.

Muchow does not appear to argue that the Commission applied the wrong test, but that the Commission could neither find Varsity communicated its expectations to her nor could the Commission find that those expectations were reasonable. On these points, Muchow argues the Commission’s findings cannot be sustained because “(1) the documentation was already in the shredder and (2) the documentation belonged to the

claimant and therefore she was free to do with it as she saw fit.” Appellant’s Opening Brief, p. 5.

i. The Timing of the Directive Not to Shred

The evidence in the record shows two very different versions of when and how many times Campbell told Muchow not to shred the documents. For her part, Muchow maintains that she was not told until after she had placed the documents in the shredder and the shredding process had started.

As noted earlier, the record also contains relevant evidence that the Commission could have reasonably relied upon to support its conclusion that Campbell twice directed Muchow not to shred the documents: (1) before she was at the shredder; and (2) as she began to place the paper in the shredder.

The Commission noted that “[w]hile Claimant maintains that she started shredding her documentation before Mr. Campbell told her not to do it, both Mr. Campbell and Ms. Knapp testified that Mr. Campbell told her not to shred the documents before she even got to the shredder.” Decision and Order, p. 6.

Again, according to Campbell, after showing him the papers from a distance, Muchow said, “[h]ere is the documentation ... I just want you to know that I’m not a liar, that I have it, and I’m going to shred it.” Transcript, p. 11, ll. 5-8.

Campbell replied “No, DeAnne, ... don’t shred the documents, bring them into my office like we discussed ... so I can look at ... your documentation. Jennifer is coming in with hers. Bring it in.” Muchow replied to Campbell’s directive not to shred the document by stating “And I deleted it off my hard drive.” Transcript, p. 11, ll. 8-14.

Carol Rudolph, a payroll clerk, also heard this part of the exchange between Campbell and Muchow. Rudolph heard Muchow state that she had deleted the document while walking toward the shredder and that Campbell told Muchow not to shred the documents as she was placing the document in the shredding machine. Exhibit 8, p. 10. Muchow does concede that she could have told Campbell she deleted the document while she was walking to the shredder further corroborating Campbell's testimony as well as Rudolph's statement. Transcript, p. 41, ll. 15-23.

Knapp also heard Campbell tell Muchow not to shred the document. Transcript, p. 53, l. 25-p. 54, l. 10.

The evidence in the record contained in hearing testimony provided by Campbell and Knapp is relevant. It is corroborated by Rudolph's statement. And their testimony is certainly probative and sufficient to allow a reasonable person to conclude that Campbell directed Muchow not to shred the document before she reached the shredder and while she was in the beginning stages of shredding the document.

The Industrial Commission considered all three possible grounds to determine whether Muchow engaged in workplace misconduct; concluding that the case was resolved under the "Standards of Behavior" test. Decision and Order, pp. 5-6. The Commission also applied the appropriate standard to the facts of this case and determined that Muchow's conduct did, in fact, constitute misconduct. Substantial and competent evidence supports the Commission's finding that Muchow engaged in workplace misconduct and is ineligible for unemployment benefits. That finding must be upheld.

ii. Muchow Did Not Have a Right to Disregard Campbell's Order

Throughout the entire incident that led to her termination, Muchow was at work and was being paid by Varsity. Varsity management directed her to bring her documentation of workplace complaints to a company meeting. And Varsity management twice directed her not to shred a document that was needed in connection with a company investigation. Varsity had a reasonable expectation, clearly communicated to Muchow, that she would not shred the document and would, in fact, provide the document as requested, regardless of what the document contained.

Even though she was on company time and Campbell issued a reasonable, clearly communicated order, Muchow states that the document “belonged to her and she was free to do with it as she saw fit.” Appellant’s Opening Brief, p. 5. Varsity disputes Muchow’s claim of personal ownership of the documentation she shredded. But what is completely undisputed and is a matter of record, is that she did not own the shredder and was not free to use it to shred anything contrary to a manager’s direct order.

The paper shredder located near Rudolph is the Payroll Department shredder. Exhibit 6, p. 15; Transcript, p. 11, l. 23 – p. 12, l. 2. Muchow had no right to use the shredder; especially where, as here, a Varsity manager directly ordered her, while she was on company premises and while being paid by the company, not to shred a document in the company-owned shredder.

Muchow simply did not have the right to shred the document.

Additionally, all facts and inferences should be drawn in Varsity’s favor. In that light, Muchow clearly had no right to disregard Campbell’s order. After all, Muchow used a company computer while at work to record concerns she had with company

personnel regarding issues she faced at work. On the day in question, and while being paid by the company, she went to her company cubicle and logged onto her company computer at the company's direction and pulled up the document from a company-owned hard-drive, printed the document using the company network and company printer, and printed the document with company paper. *See and compare* Transcript, p. 39, ll. 9, 22 – p. 40, l. 1 and Exhibit 6, p. 15 of 17 *with* Exhibit 6, p. 16 of 17. And she was being paid by Varsity throughout the entire incident.

All the facts and inferences must be drawn in Varsity's favor. Certainly, the record contains substantial and competent evidence to support the Commission's findings that Campbell's direct order to Muchow not to shred the document was reasonable. It's decision should be upheld.

C. Appellant Seeks to Have this Court Improperly Weigh Evidence and Make Credibility Determinations

Muchow asserts a number of arguments that are irrelevant to the Commission's decision or that represent her attempt to have this Court improperly weigh evidence and make credibility determinations contrary to those reached by the Commission.

For example, Muchow seeks to have this Court consider evidence of Campbell's business trip (Appellant's Opening Brief, p. 7, ¶ 1); the purpose of the June 26, 2012 meeting (Appellant's Opening Brief, p. 8, ¶ 2); and seeks to have this Court consider the facts surrounding her previous warning for misconduct (Appellant's Opening Brief, p. 14-15, ¶ V). And Muchow attempts to have this Court weigh evidence and find that the probative value weighs in her favor. *See* Appellant's Opening Brief, pp. 9-13, ¶ III; and pp. 15-17, ¶ VI.

Muchow's attempt to have this Court consider irrelevant evidence or weigh credibility of evidence is similar to the appeal made by the appellant in *Huff v. Singleton*, who raised numerous arguments attacking the credibility and weight of evidence relied upon by the Industrial Commission. But as this Court explained in *Huff*, this Court will simply "not reweigh the evidenced or consider the credibility of witnesses." *Huff*, 143 Idaho at 501, 148 P.3d at 1246. Consequently, this Court should follow its reasoning in *Huff* and not consider Muchow numerous arguments that fail to raise legal issues for this Court's review.

D. Appellant Engaged in Workplace Misconduct

As found by the Commission and as revealed in the Department of Labor's initial call interview to obtain Muchow's statement, Cambell expressly directed Muchow to go to her desk, obtain the notes and bring them back to his office to resolve a workplace issue.

During her phone interview, Muchow responded affirmatively to the question: "You were told to go and get your notes and bring them back to the meeting. You went to your office and got the notes, but you walked right by his office and shredded them? Her answer: "Yes." Exhibit 3, p. 2.

In addition to finding Muchow engaged in misconduct in shredding the document contrary to Campbell's direct order, the Commission also found "Claimant received a previous warning for disrespectful behavior and should have realized that shredding the documentation in direct disregard of her superior's order would result in further discipline." Decision and Order, pp. 6-7.

The Commission also found that while Muchow may have felt she did not have to show the documents to Campbell if she did not want to, under Varsity's policy "refusing to obey or carry out legitimate orders of a team leader or other management personnel, or engaging in other acts of gross insubordination' is grounds for immediate dismissal." Decision and Order, p. 7 (quoting Exhibit 8, pp. 3-5).¹

Varsity had a reasonable expectation, clearly communicated to Muchow, that she would bring the requested documentation to Campbell's office. She deliberately refused to do so and that refusal was employee misconduct sufficient to render her ineligible for unemployment benefits.

VI. CONCLUSION

Substantial and competent evidence supports the Industrial Commission's findings that Muchow engaged in workplace misconduct under the standards of behavior test. Consequently, the Commission's decision should be affirmed.

DATED this 26th day of August, 2013.

Varsity Contractors, Inc.

By 
Nathan R. Long, Esq.
General Counsel and Chief Legal Officer

¹ Evidence shows Muchow received the Varsity Employee Handbook upon her hire date but at least by March 23, 2013, approximately three months before her termination. See Exhibit 6, p. 6; Exhibit 8, p. 6; Transcript, p. 13, ll. 23-25; p. 29, l. 12 - p. 30, l. 10.

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of August, 2013, I caused to file the original and seven (7) true and correct copies of the foregoing by email and UPS Overnight Delivery to:

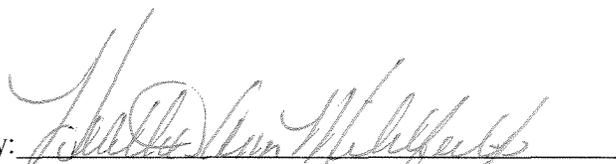
Idaho Supreme Court
Attn: Clerk
451 West State Street
Boise, Idaho 83702

I hereby certify that on this 26th day of August, 2013, I caused to be served two (2) true and correct copies of the foregoing by Regular U.S. Mail, addressed to the following:

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