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Barr v. Citicorp Credit Service, Inc Appellant's Brief Dckt. 43122

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IN THE SUPREME COURT OF THE STATE OF IDAHO

JESSICA E. BARR,)	
)	
Claimant-Appellant,)	Supreme Court Docket No. 43122-2015
)	
v.)	
)	
CITICORP CREDIT SERVICE, INC. USA,)	APPELLANT’S BRIEF
Employer, and IDAHO DEPARTMENT OF)	
LABOR.)	
)	
Respondents.)	

APPELLANT’S BRIEF

APPEAL FROM THE INDUSTRIAL COMMISSION
OF THE STATE OF IDAHO
Industrial Commission #421000423-2015

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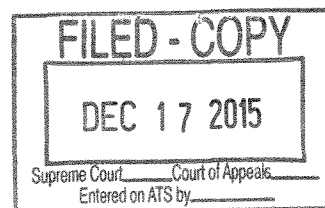


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STATEMENT OF THE CASE

Nature of the Case

This case comes before the Court based upon determination of revoking unemployment benefits by the Appeals Examiner for the Idaho Department of Labor. Jessica Barr (Ms. Barr) worked for Citi Bank Credit Services Inc, USA (Citi Bank) from August 10th, 2009 until August 25th, 2014. Ms. Barr's position at Citi Bank was terminated for accusations of misconduct. Ms. Barr filed for unemployment in which she originally was granted based on the employer did not submit any policy stating the employee, Ms. Barr had done any such misconduct. The employer, Citi Bank, then filed for an appeal of the Department of Labor's decision granting benefits. A telephone hearing was scheduled in October, 2014 in which new information was brought into account by representatives of Citi Bank, Tiffany Endicott and Isaac Downey. The statements that were made in this hearing are ones in which the appeals examiner based his final decision upon. Jessica was not prepared for the new allegations brought up by the employers and facts that were never submitted to the labor department or any other party. Specifically emails they discussed and coaching notes and dates. After the phone interview the appeals examiner then reversed the decision made by the Labor Department, denying benefits and ordering repayment. Ms. Barr later filed for an appeal and was directed on which avenues to pursue by the Labor Department, in which case was the incorrect appeals process. Time frames had lapsed and thereby the only other option was to bring the case directly to the Supreme Court. On Appeal, Ms. Barr asserts that the employer abused its discretion when they provided inaccurate and false information based on a personal vendetta in which the employer has retaliated upon Ms. Barr and her benefits. The new evidence showing contradictory information relating directly to the audio recording of the telephone hearing, in which the statements were made by Tiffany Endicott and Isaac Downey, was not considered based on the inaccurate appeal being filed. Ms. Barr requests

that the information including copies of emails that directly contradict statements made during the telephone hearing in testimony provided by Citi Bank representatives which was submitted to the Industrial Commission be considered and that the unemployment benefits be reversed back to an approved status in which a waiver of repayment would be granted.

Statement of the Facts and Course of Proceedings

Ms. Barr began working for Citi Bank on August 10th, 2009. She was a top employee not only excelled at her job and coached peers, Ms. Barr had won several awards and recognitions during her employment with Citi Bank. Sometime in early July of 2014, Ms. Barr and Mrs. Endicott had a disagreement in which Ms. Barr became worried about her job thereafter. A day or so later, on July 7th, 2014, Ms. Barr was put on a final warning. Ms. Barr did not agree with the final warning nor did she understand why they were doing so and did not sign the final warning. The final warning stated if Ms. Barr did not show immediate improvement then she could be terminated. After the final warning was in effect it became clear that they were retaliating upon Ms. Barr so she then contacted the human resources department within Citi Bank. Once Tiffany Endicott and Isaac Downey found out about the complaint made by Ms. Barr they called her into Mr. Downey's office in mid-August at which time a conversation occurred about the final warning and the complaint made to Human Resources. A short time later On August, 24th, 2014, Ms. Barr was called into the office of Isaac Downey where they discussed an instant message that was sent to the department of TCC. The final warning Ms. Barr was placed on stated she could not request voluntary time off (VTO) through the workforce management group (TCC) but only through a manger or the employee schedule planner (ESP) system. Jessica explained how she did not request for VTO but was asking if there were problems with the ESP system. However, the employer then sent Ms. Barr home for the day. The

next day on August 25th, 2014, Isaac Downey called Ms. Barr over the telephone and terminated her employment with Citi Bank. After which Ms. Barr quickly filed for unemployment due to the financial issues losing her job so suddenly would cause.

The Department of Labor conducted their investigation and received information from both parties concerning the termination. The employer stated Ms. Barr had been put on a final warning for asking for VTO as listed above and sent a copy of the instant message that was sent on Sunday, July 27th 2014. The message included was in full and showed Ms. Barr discussing the system with a TCC employee by the name of Paula Green. Not once in the instant message did Ms. Barr ask for her to give any sort of VTO to Ms. Barr. The Department of Labor also asked for Citi Bank to provide the policy in which they stated Ms. Barr was not following however, the policy was never submitted at any time during this investigation or at any appeal level. Based on the facts presented at that time the Department of Labor determined Ms. Barr to be eligible for benefits.

However, after the benefits were granted to Ms. Barr, Citi Bank then filed an appeal to reverse the decision made by the Department of Labor. A telephone hearing was scheduled for October 7th, 2014.

During the telephone hearing new statements and facts made by Citi Bank representatives Isaac Downey and Tiffany Endicott were discussed without any notice to Ms. Barr. Ms. Barr was not prepared for the new allegations and was representing herself therefore she did her best to explain and argue the false statements that were made against her. However, the next day October 8th, 2014 the appeals examiner granted in favor of the employer Citi Bank and reversed the decision made by the Department of Labor thereby denying unemployment benefits and ordering repayment.

Ms. Barr was shocked at the outcome and knew the information said on testimony in the audio recording of the telephone hearing where libelous statements. Later Ms. Barr searched her personal email because she knew she could no longer access her work email. Upon doing so Ms. Barr found several emails contradicting information stated in the hearing. Ms. Endicott stated that she had coached Ms. Barr on the dates of January 13th, 15th, and the 21st of 2014. However, the emails submitted to the industrial commission which were not considered based on the wrong appeal being filed show not only did Ms. Endicott know Ms. Barr was contacting TCC for VTO but that Ms. Endicott was completely helpful and willing.

Many emails were submitted and included in the agency record on pages 13 through page 25. Emails which are between Ms. Endicott and Ms. Barr from as early as October 30th, 2013 to as late as March of 2014. Emails which specifically discuss Ms. Barr asking TCC for VTO and then discussing that she had gotten VTO through TCC directly with Ms. Endicott. It is clear in the email conversations that not only is Ms. Endicott completely fine with Ms. Barr contacting TCC but also very helpful in doing so. Showing no indication that Ms. Barr was doing anything wrong or conducting any misconduct.

On February 25, 2015 a decision and order was filed affirming the appeals examiners decision to deny Ms. Barr benefits. On page 30 of the agency record in this case it states as follows:

The Claimant could have requested that the Appeals Examiner reopen the hearing to admit the additional evidence. This procedure provides a means for admitting additional evidence that was not available for the original hearing. Information about this process was supplied to the parties with the Notice. However, there is nothing in the record to suggest that Claimant made such a request.

The Commission takes the position that conduction a new hearing at this level of review is an extraordinary measure and is reserved for those cases when the interests of justice

demand no less. No such circumstances exist here. Claimant's request for a new hearing to argument the case record is DENIED. Pursuant to Idaho Code § 72-1368(7), the

Commission will consider only the evidence in the record as established by the Appeals Examiner.

FINDINGS OF FACT

The Commission sets forth its own Findings of Facts as follows:

1. Claimant worked for Employer as a customer service representative from August 10, 2009 through August 26, 2014.
2. On December 23, 2013, Employer sent out a company-wide email regarding Employer's voluntary time off (VTO) policy. The email notified employees that they should not contact the workforce management group (TCC/ICC) to request VTO.
3. Claimant continued to contact the TCC to request VTO.
4. Claimant was coached by Employer regarding VTO policy on January 13, 2014, January 15, 2014, and January 21, 2014. Specifically, Employer coached Claimant that Claimant was not to contact TCC to request VTO and that VTO should be requested through a manager or Employer's ESP system.
5. Claimant was aware of the VTO policy, understood the VTO policy, and had demonstrated that she knew how to request VTO correctly per Employer's VTO policy.
6. In early July 2014, Employer received an email from TCC that Claimant was continuing to contact them about VTO.
7. On July 7, 2014, Employer gave Claimant a Final Warning advising her that VTO must be requested through the ESP system and that she should not be contacting TCC to request VTO. Claimant was advised that any further occurrence could result in her termination.
8. On August 25, 2014, TCC told employer that Claimant's conduct was continuing and that Claimant was continuing to contact TCC for VTO.
9. On August 26, 2014 Employer discharged Claimant.
10. In the first four of the five calendar quarters preceding the one in which Claimant applied for benefits, Employer paid Claimant more wages than any other Employer.

Ms. Barr was denied the chance to even have her new evidence considered and now has had to file an appeal to the Supreme Court being that is the only other option available. Ms. Barr will continue to fight to prove she did not commit any sort of misconduct by representing herself as long as it takes.

ISSUE

Did Citi bank representatives, Mr. Downey and Mrs. Endicott, retaliate upon Ms. Barr and her benefits by providing false information to the appeals examiner causing her to be denied benefits based on false facts? Should her unemployment benefits be reversed back to the original finding where she was granted said benefits?

ARGUMENT

Citi bank representatives, Mr. Downey and Mrs. Endicott, retaliate upon Ms. Barr and her benefits by providing false information to the appeals examiner causing her to be denied benefits based on libelous statements. Ms. Barr's benefits should be reversed back to an approved status.

Ms. Barr asserts that the employers, who represented Citi Bank Credit Services INC, USA, abused their discretion when it retaliated upon the employee (Ms. Barr) which resulted in termination of employment as well as retaliation upon benefits. While the labor department approved the benefits after their own investigation, the appeal was made and the appeals examiner based his decision off of inaccurate information and the false information provided knowingly by Mr. Downey and Mrs. Endicott.

The court records in this case include documents and materials containing facts or statements that might be libelous. Specifically, the reason for termination and the statements made that Ms. Barr committed any workplace misconduct.

Ms. Barr asserts that she was not knowingly doing anything wrong and based on her manager Mrs. Endicott being helpful and fine with her contacting TCC as well as all employees could also do so and did. Therefore, she was not aware she was doing any misconduct nor does she believe she did. The manager Mrs. Endicott was simply retaliating upon Ms. Barr for the argument in which they had a disagreement. Once placed on the final warning Ms. Barr knew that Mr. Downey and Mrs. Endicott were upset with her strong will and determination and because of the disagreement put Ms. Barr on a Final Warning for actions that where not against policy. They then made libelous statements regarding coaching Ms. Barr where they stated she was told not to contact TCC though Ms. Barr does not recall these coaching's as well as has emails that directly contradict that statement. Such as an email made on February 6, 2014 not

even a month after alleged coaching's took place to not contact TCC email is between Ms. Barr and Ms. Endicott submitted in the agency record page 13, which states as follows:

>-----Original Message-----

>From: jessica barr [mailto:barr.jessica@live.com]

>Sent Thursday, February 06, 2014 1:50 PM

>To: Endicott, Tiffany M [GCG-NAOT]

>Subject:

>>Hey not worries checking on that cause when I called tcc to see if the planned time was in there TCc gave me all day vto :) see ya Sunday or Monday :)

>>Sent from my iPhone

>On Feb 6, 2014, at 2:48 PM, "Endicott, Tiffany M" tiffany.m.endicott@citi.com wrote:

>Hey Jess. The VTO isn't in your schedule. Do you remember who in TCC you talked to?

Thanks,

Tiffany

Another example was an email sent on Wednesday, February 26, 2014, once again the email is after alleged coaching's to not contact TCC took place. This email is submitted in the agency record on page 17 and is as follows:

>-----Original Message-----

>From: jessica barr [mailto:barr.jessica@live.com]

>Sent: Wednesday, February 26, 2014 2:09 PM

>To: Endicott, Tiffany M [GCG-NAOT]

>Subject:

>

>

>So they said I had vto all day but I always check to make sure since the last time especially and it's not showing yet... Can you check to make sure it goes in? I had a planned day requested for today too but that didn't get approved I don't think.

>Sent from my iPhone

>On Feb 26, 2014 at 4:59 PM "Endicott, Tiffany M" tiffany.m.endicott@citi.com wrote:

>It's showing UNSU right now. No VTO or planned time. Who did you talk to in TCC?

From: jessica barr (barr.jessica@live.com)

Sent: Wed 2/26/14 6:29 PM

To: Endicott, Tiffany M (tiffany.m.endiott@citi.com)

Ugh well hopefully it goes through tonight like last time.. I wasn't paying attention since they been giving it to me a lot lately

Sent from my iPhone

These emails above are some examples of the emails submitted on pages 13 through 25 in the agency record that were not considered by the Commission and are evidence of how Ms. Barr was under the understanding that she was not doing any misconduct. In fact no coaching's ever took place that Ms. Barr can recall and if they did then why would Ms. Barr be talking directly to Mrs. Endicott after said coaching's about calling TCC? Why would Mrs. Endicott be completely fine with Ms. Barr contacting them and stating so if she were told not to three separate times in January as alleged by Mrs. Endicott during the telephone hearing with the Appeals Examiner. Wouldn't Ms. Barr have been put on a Final Warning at this time instead of months later in July. These emails directly contradict statements made by Mr. Downey and Mrs. Endicott. Specifically those on which the Appeals Examiner based his decision as listed in the agency record page 2 of 5 DECISION OF APPEALS EXAMINER Findings of Fact number 4 through 9:

4. In spite of the directive, the claimant continued to contact the TCC to request VTO.

5. The claimant was coached by her supervisor regarding this issue on January 13, 2014 and again on January 15th and January 21st. The supervisor, Tiffany Endicott, testified that the claimant just laughed and remarked that the directive "didn't apply to her," or would use other measures, including the use of her sister, to attempt to circumvent the directive.

6. In early July 2014, Employer received an email from TCC that Claimant was continuing to contact them about VTO on almost a daily basis.

7. On July 7, 2014, Employer gave Claimant a “Final Warning” for this continued conduct. The claimant was advised that VTO “must” be requested using the ESP system and that she should “not” be contacting the TCC for this purpose. The claimant was further advised that any further occurrence could result in her termination.

8. On August 25, 2014, the employer was contacted by TCC and advised that the claimant’s conduct was continuing.

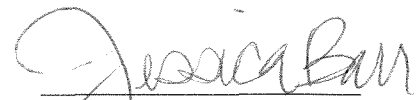
9. As a result of the claimant’s continued failure to abide by the directive, the claimant was discharged.

The information listed in the Findings of Facts is directly determined from testimony given by Mr. Downey and Mrs. Endicott in which no evidence was ever submitted. The emails that supposedly came from TCC were never submitted as evidence or proof. The coaching notes from coaching’s that allegedly occurred three separate times in a week in January were never submitted. A policy stating that employees cannot contact VTO through TCC was never submitted. The decision in whole is based upon statements made in the testimony given libelously by Mr. Downey and Mrs. Endicott.

CONCLUSION

For the above reasons, Ms. Barr respectfully requests that this court vacate the Appeals Examiners decision denying Unemployment Benefits to Ms. Barr, and to remand the case to the Department of Labor with instructions to grant the benefits with a lump sum payment for all missed benefits.

DATED this 17th day of December, 2015.



JESSICA E. BARR
Respondent/Appellant