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## Summary of Hohenstein v. State Emp't Sec. Div., 131 Nev. Adv. Op. 17 (Apr. 2, 2015)

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EMPLOYMENT LAW: DRUG USE & UNEMPLOYMENT BENEFITS

**Summary**

The Court determined that NRS 453.3363 prevents the Nevada Employment Security Division from using a guilty plea for a first-time drug offense, which led to a suspended sentence pending completion of probation, to justify denying unemployment benefits on the grounds of misconduct.

**Background**

While serving as a teacher for the Washoe County School District, Clinton Hohenstein was arrested for possessing marijuana. He pled guilty and—because this was his first offense—his sentence was suspended and he was placed on probation for up to three years. The School District suspended Hohenstein after his arrest and completed termination proceedings after his guilty plea. He was officially terminated for: “(1) immorality, (2) conviction of a felony or of a crime involving moral turpitude, and (3) any cause which constitutes grounds for revocation of a teaching license.” When Hohenstein applied for unemployment benefits, the Nevada Employment Security Division denied his request on the grounds that he had been terminated for “workplace misconduct.”

NRS 453.3363<sup>2</sup> allows first-time drug offenders, who plead guilty and complete probation, to avoid having a criminal conviction by having the charges dropped. NRS 453.3363(4) also specifies: “[D]ischarge and dismissal under this [statute] is without adjudication of guilt and is not a conviction for purposes . . . of employment, civil rights, or any statute or regulation or license or questionnaire or for any other public or private purpose . . . Discharge and dismissal restores the person discharged, in the contemplation of the law, to the status occupied before the arrest, indictment or information.”

**Discussion**

Although the judge in Hohenstein’s criminal case suspended the sentence—in order to give Hohenstein time to complete probation and avail himself of NRS 453.3363—at the time the unemployment benefits were denied, he was only midway through the probationary period, and consequently a “dismissal and discharge” had not yet occurred. This raised the issue of whether the statute protected Hohenstein during the interim period before the case was discharged and dismissed. Maryland addressed a similar issue in *Tate v. Board of Education of Kent County*,<sup>3</sup> under the law<sup>4</sup> upon which NRS 453.3363 was indirectly modeled.<sup>5</sup> Their court held allowing

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<sup>1</sup> By Walter Fick.

<sup>2</sup> NEV. REV. STAT. § 453.3363 (2013).

<sup>3</sup> 485 A.2d 688 (Md. Ct. Spec. App. 1985).

<sup>4</sup> MD. CODE, Art. 27, § 292 (1987).

<sup>5</sup> The Uniform Law Commission drew upon § 292 when drafting § 414 of the 1990 Uniformed Controlled Substances Act, which in turn was the model for NRS 453.3363.

the guilty plea to be used during the interim period would “deprive[] the statute of effect” because its “obvious goal” was “to afford a degree of protection to first offenders.”<sup>6</sup>

Following the *Ybarra v. State* precedent, which provides that “a statute adopted from another jurisdiction will be presumed to have been adopted with the construction placed upon it by the courts of that jurisdiction before its adoption,”<sup>7</sup> the court adopted *Tate*’s reasoning and interpretation for NRS 453.3363(4). Consequently, it held under the statute, a “guilty plea may not be used to establish misconduct-based grounds for termination for purposes of denying unemployment compensation during the probationary period.”

Returning to Hohenstein’s case, the Washoe County School District used the guilty plea, which it equated to a felony conviction, as justification for both the actual termination and the denial of unemployment benefits on the grounds that the termination was misconduct-based. At the unemployment hearing, the School District focused only on “the felony label attached to the acts, not the acts themselves.” Thus, the Employment Security Division’s conclusion that Hohenstein was terminated for workplace misconduct did not have evidentiary support once the guilty plea was excluded.

## **Conclusion**

NRS 453.3363(4) prevents the use of a guilty plea in related civil proceedings, during the interim probationary period before a first-time drug offense is discharged and dismissed. Consequently, the court reversed the district court’s order denying judicial review and remanded the case with instructions that it be further remanded to the Employment Security Division to determine, without considering the guilty plea, whether the School District met its burden to demonstrate that Hohenstein was terminated for misconduct.

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<sup>6</sup> *Tate* at 689–90.

<sup>7</sup> 97 Nev. 247, 249, 628, P.2d 297, 298 (1981).