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State, Emp't. Sec. Div. v. Murphy, 132 Nev. Adv. Op. 18 (Dec. 17, 2015)

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Recommended Citation

Coggeshall, Michael, "State, Emp't. Sec. Div. v. Murphy, 132 Nev. Adv. Op. 18 (Dec. 17, 2015)" (2015).
Nevada Supreme Court Summaries. 972.
<https://scholars.law.unlv.edu/nvscs/972>

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EMPLOYMENT: ELIGIBILITY FOR UNEMPLOYMENT BENEFITS

Summary

The Court determined that employees who are terminated from employment for absence due to incarceration, and are later convicted of a crime, are not eligible for unemployment benefits. These employees are contrasted with those who are incarcerated, but remained incarcerated due to indigence, or were not convicted due to unsupported charges. The latter group may be eligible for unemployment benefits.

Background

Calvin Murphy (“Murphy”) was employed by Greystone Park Apartments. Murphy was arrested for possession of stolen property and remained in pre-trial detention due to his inability to pay bail. Murphy pleaded guilty to the charge and served about one year in jail. Murphy was terminated by Greystone Park Apartments due to the unexcused absences created by his incarceration.

Murphy failed in his attempt to secure unemployment benefits once released. The Nevada Employment Security Division (“ESD”), the appeals referee, and the ESD Board of Review all determined Murphy’s incarceration constituted disqualifying misconduct pursuant to NRS 612.385, leaving Murphy ineligible for unemployment benefits. Murphy petitioned for judicial review from the Eighth Judicial District Court.

The Eighth Judicial District Court reversed the ESD’s decision and found the only misconduct committed by Murphy was absenteeism. Absenteeism alone, reasoned the court, could not justify a denial of benefits. Nevada’s Supreme Court here reverses.

Discussion

Standard of Review

Administrative unemployment decisions are reviewed “to ascertain whether the Board acted arbitrarily or capriciously, thereby abusing its discretion” and the boards factual findings are conclusive when sufficiently supported.² However, pure legal issues like statutory construction are reviewed de novo.³

Murphy’s Absenteeism Due to His Incarceration was Disqualifying Misconduct

¹ By Michael Coggeshall.

² *Clark Cty. Sch. Dist. v. Bundley*, 122 Nev. 1440, 1444, 148 P.3d 750, 754 (2006).

³ *Id.* at 1445, 148 P.3d at 754.

Unemployment benefits are for those that are “unemployed through no fault of their own.”⁴ Termination alone does not entitle a worker to unemployment benefits. The disqualifying statute here, NRS 612.385, explains “a person is ineligible for benefits...if he or she was discharged...for misconduct connected with the person’s work.”⁵ Murphy was terminated as a result of his absenteeism, which occurred as a result of Murphy’s incarceration.

The Court distinguishes Murphy’s case from *Evans*⁶, where it found in favor of the defendant, granting unemployment benefits. In *Evans*, the Court found that Evans’ absences were due to pretrial detention and her inability to pay bail, not her criminal conduct. The Court also found Evans dutifully notified her employer and that her absences were not a result of voluntary or deliberate conduct.⁷

Murphy argues for a bright-line rule from *Evans* to say employees that have missed work due to incarceration commit no disqualifying misconduct for the purposes of obtaining unemployment benefits. The Court disagrees, choosing instead to narrow and clarify the *Evans* holding to make existing case law more compatible with NRS 612.385.

NRS 612.385’s Plain Language

NRS 612.386 states an employee is ineligible for unemployment benefits when the employee is terminated “for misconduct connected with the person’s work.”⁸ Misconduct requires deliberate or careless action in “disregard of the employer’s interests” so that there is “an element of wrongfulness” in the employee’s actions.⁹ Incarceration because of criminal conduct shows wrongful, or improper behavior. Committing the criminal act shows the employee’s disregard of his employer’s interests in maintaining an available workforce.

Connected is defined as “joined; united by junction...[or] by dependence or relation.”¹⁰ Committing criminal acts resulting in incarceration is connected to employment in that it burdens the employers ability to run an effective business.

Evans can be read as compatible with the plain language of NRS 612.385. *Evans* applied for unemployment benefits before being adjudicated on the charged crimes. Her absences resulted from pre-trial incarceration, which was due to her inability to pay bail, not her criminal conduct.

Evans is clarified and narrowed, to hold that when an employee seeks benefits because of incarceration caused by an inability to pay bail, and when the employee notifies the employer, there is no disqualifying conduct. However, where the employee is convicted of a crime, the employee’s criminal conduct prevents workplace presence, and the employee is disqualified from receiving unemployment benefits.

⁴ Anderson v. State, Emp’t Sec. Div., 130 Nev., Adv. Op. 32, 324 P.3d 362, 368 (2014).

⁵ NEV. REV. STAT. § 612.385

⁶ State, Emp’t Sec. Div. v. Evans, 111 Nev. 1118, 901 P.2d 156 (1995).

⁷ *Id.* at 1119, 901 P.2d at 156–157.

⁸ NEV. REV. STAT. § 612.385

⁹ *Bundley*, 122 Nev. At 1445–46, 148 P.3d 754–55.

¹⁰ *Connected*, *Black’s Law Dictionary* (6th ed. 1990).

The District Court Erred

The district court erred in holding that absenteeism alone is insufficient as a matter of law to deny unemployment benefits, implying Murphy's absenteeism was not sufficiently connected to his employment. A presumption of disqualifying misconduct is established by a pattern of absenteeism. The employee can rebut the presumption by showing incarceration not as a result of criminal conduct, but indigence, or unsupported charges.

The district court did not need to address dutiful notification by the employee, to the employer, where misconduct was already established. Dutiful notification becomes relevant only where the employee has demonstrated that his incarceration was a result of indigence, or unsupported charges.

Conclusion

The Court found that employees who have been incarcerated as a result of criminal conduct are disqualified from receiving unemployment benefits. *Evans* remains and stands for the proposition that incarceration as a result of indigence, or unsupported charges, does not constitute disqualifying misconduct in the context of unemployment benefits, where the employee dutifully notifies the employer of the absences.

The district court's grant of Murphy's petition for judicial review is reversed and the ESD properly distinguished Murphy's case from *Evans*' on the basis of actual criminal conduct.