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Goodwin v. Jones, 132 Nev. Adv. Op. 12 (Mar. 03, 2016)

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UNEMPLOYMENT COMPENSATION: MISCONDUCT

Summary

The Court of Appeals held that because the employee did not provide sufficient evidence to demonstrate she made a reasonable, good-faith attempt to maintain her certification, the employee's failure to maintain certification required by her employer constituted misconduct within the meaning of NRS 612.385.

Background

Nadine Goodwin initially enrolled at Truckee Meadows Community College (TMCC) in 1999 was certified as an alcohol and drug abuse counselor intern in January 2001. Under state regulations, a certified intern must complete certification education requirements, including a bachelor's degree, within ten years of the date on which the person applied for intern certification. In September 2003, Bristlecone Family Resources (Bristlecone) hired Goodwin as a counselor intern. Goodwin was notified of her responsibility to maintain her certification when she signed a job description in 2006 and when she received a letter informing all staff that, effective March 1, 2008, failure to maintain proper licensure may result in termination.

On May 6, 2011, Goodwin was informed by a letter from the State of Nevada Board of Examiners for Alcohol, Drug & Gambling Counselors (the Board) that her intern certification would expire and she would be unable to renew it unless she completed her bachelor's degree by June 30, 2011. Goodwin sought an extension of her certification from the Board at a July 8, 2011, meeting, but the Board denied her request.

Goodwin applied to respondent State of Nevada, Department of Employment, Training & Rehabilitation, Employment Security Division (ESD) for unemployment benefits, but her claim was denied because she was terminated for misconduct connected with her work. Goodwin appealed that decision to an appeals referee, but did not submit any documentary evidence. The appeals referee found that Goodwin used nine years of the designated ten-year period to earn her associate's degree, leaving only one year to complete her bachelor's degree; that Goodwin's failure to maintain her intern certification violated Bristlecone's employment policy; and that Goodwin's conduct included an element of wrongfulness.

After ESD's Board of Review denied Goodwin's appeal of the appeals referee's decision, Goodwin sought judicial review in the district court. The district court concluded Goodwin's failure to attain her bachelor's degree within ten years constituted misconduct connected with her work and denied Goodwin's petition for judicial review.

Discussion

Goodwin was required to maintain her certification

¹ By Robert Schmidt.

The Court first addressed the threshold questions of whether Bristlecone had a policy requiring Goodwin to maintain certification, and if so, whether that policy had a reasonable relationship to the work performed. NRS Chapter 641C governs intern certification for alcohol and drug counseling. If Goodwin's job duties required her to practice counseling, and she engaged in any counseling, the law required her to maintain her intern certification or to obtain counselor certification.² The Court concluded that Goodwin's job description and her testimony provided substantial evidence to support the appeals referee's findings that Bristlecone's certification requirement applied to Goodwin, and that this requirement was reasonably related to Goodwin's employment.

Failure to maintain required certification constituted disqualifying misconduct

Initially, the employer bears the burden of showing that the employee engaged in disqualifying misconduct under NRS 612.385, but if the employer meets this burden, the burden then "shifts to the former employee to demonstrate that the conduct cannot be characterized as misconduct..."³

The Nevada Supreme Court has generally determined that an employee's violation of an employment policy is an intentional violation or willful disregard when the employee knows of the policy yet deliberately chooses not to follow the policy⁴ and that a substantial disregard of the employer's interest may be demonstrated when the violation of an employment policy is the result of a lack of action,⁵ but the Nevada Supreme Court has never addressed whether an employee's failure to maintain a certification in accordance with an employer policy constitutes disqualifying misconduct. Other jurisdictions have concluded that the burden of demonstrating a good-faith effort is on the employee and the employee does not meet this burden unless they support their good-faith claim with evidence.⁶

Given the clear requirement and the length of time available to comply, the Court concluded that ESD met its initial burden of showing that Goodwin's failure to maintain her certification constituted misconduct. The burden shifted to Goodwin to provide evidence demonstrating that she made a reasonable, good-faith attempt to comply with the certification requirement. Goodwin argued that her work and family responsibilities prevented her from completing her coursework, but there was no evidence she did not understand her responsibilities at the time she applied for the intern certification.

The Court examined the record that was before the administrative agency to ascertain whether the agency acted arbitrarily or capriciously,⁷ but the record is devoid of any documentary evidence of the Goodwin's educational progress. No evidence demonstrates that Goodwin sought

² NEV. REV. STAT. § 641C.900; NEV. REV. STAT. § 641C.950.

³ Clark County School Dist. v. Bundley, 122 Nev. at 1447-48, 148 P.3d at 755-56.

⁴ Fremont Hotel & Casino v. Esposito, 104 Nev. 394, 398, 760 P.2d 122, 124 (1988); Barnum v. Williams, 84 Nev. at 42, 436 P.2d at 222.

⁵ Kraft v. Nevada Employment Security Department, 102 Nev. 191, 194-95, 717 P.2d 583, 585 (1986).

⁶ Chacko v. Commonwealth, Unemployment Comp. Bd. of Review, 410 A.2d at 419; *Bundley*, 122 Nev. at 1447-48, 148 P.3d at 755-56.

⁷ *Bundley*, 122 Nev. at 1444, 148 P.3d at 754.

an extension until after the ten-year period had expired, and therefore she did not take timely and reasonable steps to try to comply with the certification requirement.

Conclusion

Substantial evidence supported the appeals referee's finding that Goodwin's failure to comply with Bristlecone's certification policy amounted to disqualifying misconduct. Because the administrative agency's decision was not arbitrary, capricious, or an abuse of discretion, the Court affirmed the district court's decision denying judicial review of the administrative agency's denial of appellant's application for unemployment benefits.