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Dolores v. State, Dep't of Employment Sec. Div., 134 Nev. 34 (May 3, 2018)

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CIVIL APPEAL: ADMINISTRATIVE AGENCY

Summary

The Court considered whether, pursuant to NRS 612.380, an employee that resigns when faced with a resign-or-be-fired option does so voluntarily, and is thereby disqualified from unemployment benefits. The Court determined that where the record shows that the appellant's decision to resign was freely given and stemming from his own choice, the resignation is voluntary.

Background

Eugenio Dolores worked at the airport as a ground agent for Southwest Airlines. As an airport employee, Dolores was required by TSA to wear a Security Identification Display Area (SIDA) badge. The policy was changed in July 2015. Due to a misunderstanding resulting from the new policy, TSA improperly confiscated Dolores's badge. After failing to resolve the issue, Southwest informed Dolores that he could either resign or he would be fired. Dolores subsequently submitted a letter of resignation.

Dolores filed a claim for unemployment insurance benefits with the Employment Security Division (ESD), which was denied after a finding that he had voluntarily resigned. Dolores appealed the decision and an administrative referee ultimately denied the claim. After the Board of Review affirmed the administrative referee's decision, Dolores filed a petition for judicial review in district court, which was denied. This appeal followed.

Discussion

Dolores voluntarily resigned

Questions of statutory constructions are reviewed de novo, based on the plain language of the text and according to its fair meaning.² Nevada has not yet defined "voluntary" for the purposes of unemployment benefits, but other jurisdictions have determined that it is "a decision to quit that is freely given and proceeding from one's own choice or full consent."³ Based on that definition, an employee that is given the option to either resign or be terminated, voluntarily resigns under NRS 612.380 when the employee submits a resignation rather than exercising the right to have the allegations resolved through other means.

Here, Dolores consciously chose to resign rather than wait and resolve the issue through other means. He further testified that he resigned in order to maintain his vacation pay and profit sharing benefits, and because he did not want to wait for the union to clear his case. These reasons demonstrate that his resignation was a conscious decision. As such, his resignation was voluntary pursuant to NRS 612.380.

¹ By Xheni Ristani

² *Cox Constr. Co., LLC v. CH2 Invs., LLC*, 129 Nev. 139, 142, 296 P.3d 1202, 1203 (2013).

³ 76 AM. JUR. 2d *Unemployment Compensation* § 104 (2016) (citing *Thompson v. Kentucky Unemployment Ins. Comm'n*, 85 S.W.3d 621 (Ky. Ct. App. 2002) and *Ward v. Acoustiseal, Ins.*, 129 S.W.3d 392 (Mo. Ct. App. 2004)).

Dolores lacked good cause to resign

Dolores argued that the TSA SIDA badge requirements were a substantial change in his working conditions, thus constituting good cause for him to resign. However, since Dolores failed to argue this below, the issue is deemed to have been waived and will not be considered on appeal.⁴ Further, based on the factors that Dolores considered when deciding to resign, there is substantial evidence that he lacked good cause to resign, which rendered him ineligible for unemployment benefits.⁵

Conclusion

The Court affirmed the district court's order denying Dolores's petition for judicial review for unemployment benefits.

⁴ Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981).

⁵ NEV. REV. STAT. § 612.380 (2017); Edwards v. Indep. Servs., 104 P.3d 955, 957 (Idaho 2004).