

IN THE SUPREME COURT
OF THE STATE OF FLORIDA

GULF COUNTY SCHOOL BOARD,

Petitioner,

vs.

CASE NO. 74,339

ERNEST S. WASHINGTON and
FLORIDA UNEMPLOYMENT APPEALS
COMMISSION,

Respondents.

Petition for Discretionary Review
Of a Decision of the First District Court of Appeal
Certified Direct Conflict

ANSWER BRIEF

OF

RESPONDENT, UNEMPLOYMENT APPEALS COMMISSION

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PREFACE

The following reference words will be used throughout this brief:

"School Board" will designate Petitioner, Gulf County School Board.

"Claimant" will designate Respondent, Ernest S. Washington.

"Commission" or "UAC" will designate Respondent, Florida Unemployment Appeals Commission.

SUMMARY OF ARGUMENT

Ernest S. Washington (the claimant) was employed as a school teacher by the Gulf County School Board for three years. The claimant did not possess a Florida Teacher's Certificate, but was able to obtain temporary certificates pending passage of the Florida Teacher's Examination. Three times the claimant sat for the exam and failed. Since he had not obtained a regular certificate and could not obtain another temporary certificate, the school board terminated the claimant's employment. When the claimant filed a claim for unemployment benefits the school board protested and this controversy ensued.

The school board argues that the claimant should be disqualified from receiving benefits pursuant to Section 443.101(1)(a), Florida Statutes (1987), which disqualifies unemployment compensation claimants who voluntarily leave their employment without good cause attributable to their employers. In support of its position, the school board cites School Board of Lee County v. Unemployment Appeals Commission, 500 So.2d 253 (Fla. 1st DCA 1986) and Florida Sheriffs Youth Fund v. Department of Labor and Employment Security, 436 So.2d 332 (Fla. 2d DCA 1983). In the opinion below, the First District Court of Appeal distinguished the case before it and its prior holding in Lee County on the basis of factual differences. The court held that the unemployment compensation statute does not disqualify from

benefits a worker who makes a good faith effort to meet the conditions of his employment if those efforts fail. The court certified that its decision directly conflicted with Florida Sheriffs Youth Fund which held that a worker who fails to meet the conditions of his employment is disqualified regardless of whether he is at fault.

The following discussion will demonstrate that the opinion of the First District Court of Appeal is consistent with the specific provision of the unemployment compensation statute applicable to the facts of this case, the declared public purpose of the statute, and the statute's rule of liberal construction. It will also be shown that Florida Sheriffs Youth Fund was wrongly decided and must be disapproved.

ARGUMENT

FLORIDA'S UNEMPLOYMENT COMPENSATION STATUTE DOES NOT DISQUALIFY A WORKER WHO IS UNABLE TO MEET A KNOWN CONDITION OF HIS EMPLOYMENT, PROVIDED HE MAKES A GOOD FAITH EFFORT AND THEREFORE IS UNEMPLOYED THROUGH NO FAULT OF HIS OWN. THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL WHICH ENDORSES THIS PRINCIPLE MUST BE AFFIRMED. CONFLICTING DECISIONS OF OTHER DISTRICT COURTS OF APPEAL MUST BE DISAPPROVED.

The declared public purpose of Florida's Unemployment Compensation Law, Chapter 443, Florida Statutes, is to provide financial assistance to persons unemployed through no fault of their own. §443.021, Fla. Stat. (1987). The statute therefore disqualifies workers who are discharged from employment for misconduct connected with work. §443.101(1)(a), Fla. Stat. (1987). Workers who voluntarily leave their jobs are also disqualified from receiving benefits unless they left because of illness or disability requiring separation or they had good cause attributable to their employer for quitting. §443.101(1)(a)1., Fla. Stat. (1987). The statute further provides that it shall be liberally construed in order to achieve its intended purpose. §443.031, Fla. Stat. (1987).

Ernest S. Washington was employed as a school teacher by the Gulf County School Board beginning with the 1984-'85 school year. Because he was licensed to teach in another state, he was able to teach in Florida for three years while holding temporary teaching certificates, pending

passage of the Florida Teacher's Examination. During that time he sat for and failed the Florida examination three times. Because he had not passed the examination and could not obtain another temporary certificate, the school board terminated his employment.

Washington's claim for unemployment assistance was reviewed and approved by the Florida Unemployment Appeals Commission which exercises ultimate authority over disputed unemployment compensation claims. §§20.171(4)(c); 443.151(4)(c), Fla. Stat. (1987). The First District Court of Appeal reviewed the Commission's order and affirmed. See §§120.68; 443.151(4)(e), Fla. Stat. (1987). It also certified that its decision directly conflicted with the Second District Court of Appeal's decision in Florida Sheriffs Youth Fund v. Department of Labor and Employment Security, 436 So.2d 332 (Fla. 2d DCA 1983).

In the proceeding below, the school board argued that the First District Court of Appeal should follow its prior decision in School Board of Lee County v. Unemployment Appeals Commission, 500 So.2d 253 (Fla. 1st DCA 1986). Lee County also involved an unemployment compensation claimant who had been employed as a school teacher working under a temporary certificate pending passage of the Florida Teacher's Examination. After one unsuccessful attempt to pass the examination, however, she resigned. She was held disqualified from receiving benefits. The court below held that Lee County was not controlling on

this case because the teacher in Lee County quit without making a good faith effort to meet the conditions of her employment. In contrast, the claimant in this case made a good faith effort to meet the conditions of his employment, but was unsuccessful.

The court distinguished Lee County on the facts, but expressly disagreed with the rule of law espoused in the opinion. Lee County cited with approval Florida Sheriffs Youth Fund v. Department of Labor and Employment Security, 436 So.2d 332 (Fla. 2d DCA 1983). Florida Sheriffs Youth Fund involved a husband and wife who were employed as a team to manage a cottage and act as surrogate parents for a group of dependent girls who resided there. It was understood at the time of hire that the continued employment of each was dependent on the continued employment of the other. Accordingly, although the wife was considered an excellent employee, her employment was immediately terminated when her husband was discharged for misconduct unrelated to her. The Unemployment Appeals Commission held that she was qualified for benefits under Section 443.101(1)(a), Florida Statutes, because she had been discharged from employment for reasons other than misconduct. The Second District Court of Appeal reversed, reasoning as follows:

We therefore hold that where, as here, an employee becomes unable to meet a known, understood, and accepted condition of employment, and where, as here, that inability cannot be

considered to be the fault (in the sense of blameworthiness) of the employer, the employee will be considered to have "voluntarily left his employment without good cause attributable to his employer," regardless of whether the employee resigns or is discharged and regardless of whether the employee's inability was reasonably avoidable or is reasonably remediable by the employee.

436 So.2d at 334. The First District Court of Appeal rejected the proposition that the fault of the employee was immaterial to his entitlement to benefits under Section 443.101(1)(a), Florida Statutes. It held that an employee who makes a good faith effort to meet the employment conditions, but fails to do so, has not voluntarily left employment and is not disqualified from receiving unemployment benefits. Since the purpose of the unemployment compensation program is to assist persons who are unemployed through no fault of their own, whether a claimant's fault caused his or her unemployment is crucial to whether he or she is qualified for unemployment benefits. Moreover, a worker cannot be faulted for making a good faith, albeit unsuccessful, effort to meet the conditions of his employment.

In Florida Sheriffs Youth Fund, the Second District Court of Appeal held that certain claimants should be disqualified despite the absence of fault:

We see no justifiable basis for transferring the economic misfortune of one innocent party onto a second innocent party over that second party's objection.

436 So.2d at 334. The First District Court of Appeal saw the fallacy in the Second District Court of Appeal's reasoning. The declared public purpose of the unemployment compensation law is to relieve the economic misfortune of unemployed persons. Therein lies the justification for providing benefits to a person whose unemployment is neither his own fault or the fault of the employer. In St. Joe Paper Company-v. Gautreaux, 180 So.2d 668 (Fla. 1st DCA 1965), the court acknowledged that its award of benefits to a mandatorily retired worker might penalize the employer who instituted the pension plan under which the worker retired because the employer would be required to contribute to both the pension plan and the unemployment compensation program. Notwithstanding that consideration, the court reasoned:

We also agree with the principles recognized in those decisions that an unemployment compensation statute is remedial and is to be liberally construed to effect its beneficent purpose, and that the disqualifying provisions therein are to be narrowly construed.

180 So.2d at 674. See also Baeza v. Pan American/National Airlines, Inc., 392 So.2d 920 (Fla. 3d DCA 1980).

The construction placed on the statute in Florida Sheriffs Youth Fund is contrary to the statute's declaration of public policy, the rule of liberal construction and the plain meaning of the specific provision being applied. The court holds that an employee

who is fired has voluntarily left her employment. The court creates this fiction to disqualify a claimant because her former employer is without fault.

The employer's fault or lack of fault has no direct bearing on a claimant's entitlement to benefits. Disqualification of an otherwise eligible claimant because his former employer cannot be faulted for the job separation turns the whole program on its head. If a claimant meets the statutory requirements, he is entitled to benefits. As a consequence of the claimant's collection of benefits, the employer's tax account may be affected. Accordingly, the employer may raise and litigate any statutory issues which would disqualify the claimant, but the agency cannot solely on the basis of blamelessness of the employer deprive the claimant of benefits to which he is legally entitled.

When a worker becomes unemployed after unsuccessfully striving to meet the conditions of his employment, he is entitled to unemployment compensation. The claimant in Florida Sheriffs Youth Fund should not have been disqualified. Florida Sheriffs Youth Fund directly conflicts with the statute and must therefore be disapproved.

Two cases which rely on Florida Sheriffs Youth Fund are so similar factually as to deserve scrutiny. Adain v. Florida Unemployment Appeals Commission, 523 So.2d 175 (Fla. 3d DCA 1988), involved an alien who became

unemployed when the Immigration and Nationalization Service revoked his authorization to work in the United States. Although the court observed that the alien could "convincingly argue" that there was nothing voluntary about his leaving his employment, the court concluded by holding that the alien did voluntarily quit. 523 So.2d at 177.

In Prison Rehabilitation Industries and Diversified Enterprises (P.R.I.D.E.) v. Unemployment Appeals Commission, 476 So.2d 1309 (Fla. 2d DCA 1985), rev. denied 486 So.2d 598 (Fla. 1986), the court held an employee who was denied access to his job site by a third party voluntarily left his employment. The job site was located within a state prison facility and the prison authorities suspected the individual in question of smuggling contraband into the prison. The employee denied the charges but was not given an opportunity to be heard. The court relied on its prior decision in Florida Sheriffs Youth Fund to hold that the worker voluntarily left his employment and was therefore disqualified.

Adain and P.R.I.D.E. are both founded on the same fictional premise underlying Florida Sheriffs Youth Fund that the involved claimant voluntarily left his or her employment. In each case, the claimant's employment was terminated because he or she could not meet a condition of that employment. In none of the cases, did the claimant leave voluntarily; therefore it is immaterial

whether the reason the claimant could not meet the employment condition was attributable to the employer. The sole issue which should have been addressed in each case was whether the claimant's failure to meet the condition of employment constituted misconduct connected with work. §443.101(1)(a), Fla. Stat. (1987). In cases where the claimant made a good faith effort, but failed, a finding of misconduct is not appropriate. See §443.036(25), Fla. Stat. (1987); Spaulding v. Florida Industrial Commission, 154 So.2d 334 (Fla. 3d DCA 1963). In contrast, when the individual fails to make a good faith attempt to meet his or her employment conditions, imposition of a disqualification is appropriate. Lee County; Neller v. Unemployment Appeals Commission, 510 So.2d 652 (Fla. 5th DCA 1987); Paschal v. Florida Department of Labor & Employment Security, 405 So.2d 1020 (Fla. 3d DCA 1981).

The claimant in this case made a good faith attempt to obtain a Florida Teacher's Certificate and thereby preserve his employment with the school board. The claimant failed in his efforts to obtain the certificate and his employment was terminated as a result. The claimant did not voluntarily leave his employment and he was not guilty of misconduct connected with work. Consequently, he is entitled to unemployment compensation benefits. The decision of the First District Court of Appeal is consistent with the specific provision of the

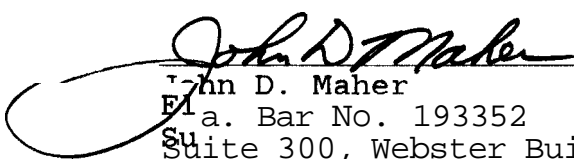
unemployment compensation statute applicable to the facts of this case. It is also consistent with the statute's declared public purpose and rule of liberal construction. Florida Sheriffs Youth Fund which directly conflicts with the decision of the First District Court of Appeal was wrongly decided and must be disapproved.

CONCLUSION

The First District Court of Appeal correctly held that a worker who becomes unemployed after unsuccessfully striving to meet a condition of his employment is entitled to unemployment compensation. The court's opinion is consistent with Section 443.101(1)(a), Florida Statutes (1987), which provides that only those workers who voluntarily quit employment or who are discharged for misconduct are disqualified on the basis of their employment separations. The court's opinion is also consistent with the statute's declaration of public policy and rule of liberal construction. §§443.021; 443.031, Fla. Stat. (1987). The opinion must be affirmed.

Florida Sheriffs Youth Fund v. Department of Labor and Employment Security, 436 So.2d 332 (Fla. 2d DCA 1983), and its progeny directly conflict with the opinion in this case and must be disapproved.

Respectfully submitted,



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