

SUPREME COURT OF FLORIDA

TIMOTHY MASON, SR.,)	
)	
Petitioner,)	Case No. 93,356
)	
vs.)	District Court of Appeal
)	1st District - No. 97-2754
LOAD KING MANUFACTURING COMPANY,)	
and UNEMPLOYMENT APPEALS)	
COMMISSION,)	
)	
Respondents.)	
_____)	

PETITIONER'S REPLY BRIEF ON THE MERITS

Appeal taken from the final decision of the First District Court of Appeal which conflicts with a decision rendered by the Fifth District Court of Appeal in Blumetti v. Unemployment Appeals Commission, 675 So. 2d 689 (Fla. 5th DCA 1996).

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ARGUMENT

**MR. MASON SHOULD BE ENTITLED TO RECEIVE
UNEMPLOYMENT COMPENSATION BENEFITS WHERE THE
APPEALS REFEREE FOUND THAT THE LAST TWO INCIDENTS
PRIOR TO HIS DISCHARGED WERE NOT MISCONDUCT.**

The Respondent asserts in their Answer Brief that "the only factor tending to detract from the imposition of the disqualification was a finding by the referee that the circumstances surrounding the last two incidents may have made them excusable. [Respondent's Brief, p. 5], (emphasis added). This is not an accurate account of the Referee's findings.

Instead her findings establish that the last two incidences were not misconduct. The Appeals Referee stated: (1) "The claimant left before the end of his shift on February 8, 1997, due to personal illness, with the approval of his immediate supervisor." [R.83]. (2) " The claimant was late on February 13, 1997, because he had to walk to work when his ride to work did not pick him up. The claimant's lateness was for a compelling reason." [R.83]. Mason v. Load King Manufacturing Company, 715 So. 2d 279 (Fla. 1st DCA 1998). Therefore, the Court should scrutinize carefully the Respondent's characterization of the Referee's findings.

On the merits the Respondent repeats the First District Court of Appeals analysis of Blumetti v. Unemployment Appeals Commission, 675 So. 2d 689 (Fla. 5th DCA 1996), stating that the decision "is based on a false premise." [Respondent's Brief, p.7]. The contrast between the First and the Fifth Districts could not be clearer, however, all Districts are united in the

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well established legislative rule of construction favoring a liberal construction for unemployment compensation claimants. §443.031, Fla. Stat. (1995); see, Roberts v. Diehl, 707 So. 2d 869 (Fla. 2d DCA 1998); Baptiste v. Waste Management, Inc., 701 So. 2d 386 (Fla. 3d DCA 1997); Gilbert v. Department of

Corrections, 696 So. 2d 416 Fla. 1st DCA 1997); Foote v. Unemployment Appeals Commission, 659 So. 2d 1232 (Fla. 1st DCA 1995). Blumetti's decision is in keeping with this policy of fairness.

Although the claimant may appear to have a poor work attendance history it is well within the legislatures intentions to grant benefits under these circumstances. This court should consider other instances were the legislature has fashioned a waiver of past misconduct. For instance, in the field of residential landlord/tenant law, the legislature codified the common law rule that a landlord may not terminate a tenancy after accepting rent with knowledge of a lease violation. §83.56(5), Fla. Stat. (1995). In the same manner the provisions §443.036, Fla. Stat. (1995), should be liberally construed to prevent an employer from reaching back for past misdeeds to disqualify an employee from receiving unemployment compensation benefits.

Based upon the evidence and testimony presented in the instant case the Appeals Referee wrongfully denied Mr. Mason benefits as a result of his attendance record prior to his suspension. [R.83]. The Appeals Referee determined that Mr. Mason was not guilty of misconduct for the last two occurrences

before his discharge. Consequently, the affirmation of her

decision by the First District Court of Appeals should be reversed and Mr. Mason should be awarded unemployment compensation benefits.

CONCLUSION

The decision of the First District Court of Appeals affirming the decision of the Appeals Referee disqualifying Mr. Mason from receipt of unemployment compensation of benefits should be reversed. Mr. Mason did not have conduct evincing such willful or wanton conduct which is necessary to determine misconduct. The last two incidences prior to his discharge were found to be justified by the Appeals Referee. Consequently, Mr. Mason should be awarded unemployment compensation benefits.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above was furnished to Geri Atkinson-Hazelton, General Counsel, Unemployment Appeals Commission, Suite 300, Webster Building, 2671 Executive Center Drive, West, Tallahassee, Florida 32399-0681; and Load King Manufacturing Company, Attn: Personnel, 1357 West Beaver Street, Jacksonville, Florida 32205 by U.S. Mail this 12th day of January, 1999.

ATTORNEY

