

` IN THE COURT OF APPEALS 08/20/96
OF THE
STATE OF MISSISSIPPI
NO. 94-CC-00903 COA

ROBERT E. MCCRARY

APPELLANT

v.

MISSISSIPPI EMPLOYMENT SECURITY COMMISSION AND THE UNIVERSITY OF SOUTHERN MISSISSIPPI AND UCCS

APPELLEES

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. RICHARD WAYNE MCKENZIE

COURT FROM WHICH APPEALED: FORREST COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

MICHAEL CLAYTON BAREFIELD

ATTORNEY FOR APPELLEES:

JAN D. GARRICK

NATURE OF THE CASE: CIVIL-APPEAL FROM CIRCUIT COURT ORDER AFFIRMING THE DENIAL BY THE MISSISSIPPI EMPLOYMENT SECURITY COMMISSION OF UNEMPLOYMENT BENEFITS

TRIAL COURT DISPOSITION: COMMISSION'S RULING AFFIRMED

BEFORE BRIDGES, P.J., COLEMAN, AND DIAZ, JJ.

COLEMAN, J., FOR THE COURT:

The Circuit Court of Forrest County affirmed two separate decisions of the Mississippi Employment Security Commission (MESC) which denied unemployment benefits to the Appellant, Robert E. McCrary (McCrary). The first decision denied McCrary's claim for unemployment benefits; and the second decision denied McCrary's subsequent claim for one week of benefits because he failed to file timely his claim for that week. We affirm the first decision. Our affirming the first decision renders the second decision moot.

I. Facts

The University of Southern Mississippi (University) had employed McCrary as a patrolman/security officer in its Department of Public Safety. On January 26, 1993, at approximately 5:16 p. m., two people entered the campus security office and reported that an accident had just occurred on the parking lot of the physical education building. The dispatcher, Jennifer Ford, attempted to contact officer McMickle to investigate the accident. When she failed to contact him, she then instructed McCrary to respond to the accident. McCrary had just then entered the police headquarters after he had completed other assigned duties.

McCrary refused Ford's instruction to investigate the accident because he perceived Ford's instruction to be yet another instance of her continuing to assign a disproportionate amount of the work load and "calls" to him. Instead, McCrary left the dispatcher's office. Within a very few minutes of his exchange with the dispatcher, McCrary notified her that he would be unavailable "to work" further calls because he had "checked off" of his shift and had gone to the University commons to eat supper. In the meantime, Ford dispatched still another University policeman to investigate the accident which had precipitated the exchange between McCrary and the dispatcher.

After Keith Oubre, the Director of Public Safety for the University, learned of the incident, he met with McCrary and placed him on temporary suspension because of his refusal to investigate the accident. After he further investigated McCrary's employment history with the University, Oubre terminated McCrary. On February 1, 1993, McCrary filed his initial claim with the MESC for unemployment benefits. In its "Notice of Nonmonetary Decision" dated February 18, 1993, the MESC notified McCrary that he was disqualified to receive unemployment benefits because the University had discharged him for misconduct in refusing to perform his assigned duties. After McCrary appealed the its nonmonetary decision to the MESC Appeals Referee, the Referee conducted a hearing on March 15, 1993. Following this hearing, the referee handed down a decision which denied unemployment benefits to McCrary. McCrary then appealed the referee's decision to the MESC Board of Review. Subsequently, the Board handed down its decision which adopted the referee's findings of fact and affirmed his decision.

In spite of the MESC's rejection of his claim for unemployment benefits, McCrary continued to file for weekly benefits. On March 29, 1993, McCrary filed his claim for benefits for the week ending March 20, 1993. Because this particular claim was filed two days past the March 27, 1993, deadline, for filing his claim for the week ending March 20, the MESC notified McCrary that it had denied his claim for unemployment benefits for the week ending March 20. McCrary appealed this denial of his claim for unemployment benefits for the week ending March 20 as he had appealed the first "Notice of Nonmonetary Decision." He appealed on the argument that he had filed his claim two days late because during the entire week of March 23 through 27 he was extremely ill with the flu and

therefore incapacitated. McCrary filed his claim for the week ending March 20 by personally delivering it to the MESC office in Hattiesburg. As it did with McCrary's initial claim for unemployment benefits, the MESC Review Board affirmed the decision of the Referee, who, in turn, upheld the initial decision of the MESC claims investigator to deny unemployment benefits for the week ending March 20, 1993.

On June 3, 1993, McCrary petitioned the Circuit Court of Forrest County for review of the MESC decisions on both of his claims. The circuit court consolidated both claims as of July 12, 1993, by its order dated August 19, 1993. After the two claims were consolidated, the circuit court entered its Order Affirming Decision of the Mississippi Employment Security Commission Board of Review dated June 28, 1994. In that order, the circuit court recited:

IT IS, THEREFORE, ORDERED AND ADJUDGED that the findings of fact of the Hearing Referee, which were adopted by the Board of Review of the Mississippi Employment Security Commission are supported by the evidence, and, further, that there is no error of law. Accordingly, the decision of the Mississippi Employment Security Commission Board of Review is affirmed, in all particulars.

McCravy has appealed from this order.

II. Issues and the law

In his brief, McCrary proposes the following two issues for this Court's resolution:

1. The Circuit Court erred in affirming the decision of the Mississippi Employment Security Commission Board of Review denying Appellant [McCravy] unemployment benefits.

2. The Circuit Court erred in affirming the decision of the Mississippi Employment Security Commission Board of Review denying Appellant [McCravy] unemployment benefits for the week ending March 20, 1993.

A. First Issue

1. The Circuit Court erred in affirming the decision of the Mississippi Employment Security Commission Board of Review denying Appellant [McCravy] unemployment benefits.

McCrary's initial claim for unemployment benefits was denied pursuant to section 71-5-513 A(1)(b) of the Mississippi Code. Section 71-5-531 of the Mississippi Code of 1972 determines the standard of appellate review which this Court must apply. *See also Barnett v. Mississippi Employment Sec. Comm'n.*, 583 So. 2d 193, 195 (Miss. 1991) ("If substantial evidence supports the Board's fact finding and the relevant law was properly applied to the facts, the appellate court must affirm.")

The Mississippi Supreme Court discussed and defined insubordination in *Barnett v. Mississippi Employment Security Commission*, 583 So. 2d 193, 196 (Miss. 1991):

Recently in *Mississippi Employment Sec. Comm'n v. Martin*, 568 So. 2d 725 (Miss. 1990), this Court defined misconduct under the statute as:

[D]isqualification for unemployment benefits results from misconduct, which is conduct evincing such willful and wanton disregard of the employer's interest as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect from his employees.

Martin, 568 So. 2d at 727 (citing *Wheeler v. Arriola*, 408 So. 2d 1381 (Miss. 1982)). Put another way, "[m]isconduct imports conduct that reasonable and fair-minded external observers would consider a wanton disregard of the employer's legitimate interests." *Mississippi Employment Sec. Comm'n v. Phillips*, 562 So. 2d 115, 118 (Miss. 1990).

The referee found that "the act of claimant's refusing to perform an assigned duty and being insubordinate during the refusal does constitute willful misconduct withing the meaning of the law. The request of the employer was not unreasonable." The Board of Review later affirmed and adopted the referee's finding and affirmed his decision. From our review of the record in this case, we conclude that substantial evidence supported the referee's findings of fact.

McCrary does not dispute that when Ford, the dispatcher, asked him to respond to the accident, he refused to do so and then later called back to inform her that he would be unavailable for further assignments because he was having supper at the University commons. Rather, McCrary asserts that his act of insubordination was somehow justified because for some time prior to the incident, Ford had assigned him a disproportionately larger share of the workload than she had assigned to the other on-duty officers. An officer's refusal to respond to a police dispatcher's instruction to investigate an accident comprises insubordination.

McCrary's deliberate refusal to investigate the accident constituted a "wanton disregard of the employer's legitimate interest" in determining, among other things, whether any person, whether or not a student, had been injured in the accident. McCrary's refusal to investigate the accident remained insubordinate regardless of whether the dispatcher had been unfair in her previous assignments of tasks to him. If McCrary thought that the dispatcher's previous assignments of tasks were unfair, he may have had more constructive options open to him, rather than blatantly disobeying a directive to respond to an accident.

In any event, we refuse to hold that the course of conduct that McCrary chose to pursue comprised anything other than insubordination, and we refuse to conclude that such previous unfair treatment justified this course of conduct. Accordingly, we conclude that the circuit court did not err in affirming the decision of the MESC Review Board to deny McCrary unemployment benefits because his refusal to investigate the accident constituted insubordination, a category of misconduct.

B. Second Issue

2. The Circuit Court erred in affirming the decision of the Mississippi Employment Security Commission Board of Review denying Appellant [McCrary] unemployment benefits for the week ending March 20, 1993.

Had we reversed the circuit court's affirmation of the Mississippi Employment Security Commission's denial of McCrary's unemployment benefits, then we would necessarily consider whether McCrary was entitled to receive his unemployment benefit for the week of March 20 even though he was two days late in filing his claim for unemployment benefits for that week. Our affirmation of the circuit court's affirmation of the Commission's denial of McCrary's entitlement to receive these benefits means, of course, that he receives no unemployment benefits at all. Thus, our resolution of McCrary's first issue adversely to him renders his second issue moot.

An appellate court will not adjudicate moot issues. *Cf. Monahan v. Blue Bell, Inc.*, 393 So. 2d 466, 467 (Miss. 1980) (where the case had been submitted on briefs and oral argument four days after expiration of the one-year period of injunction which had enjoined the appellant from certain employment, the case had become moot; and the court would not adjudicate a moot question). Because McCrary's second issue is moot, we need not consider it; and we do not consider it.

THE DECISION OF THE CIRCUIT COURT OF FORREST COUNTY AFFIRMING THE MISSISSIPPI EMPLOYMENT SECURITY COMMISSION'S DECISION TO DENY APPELLANT UNEMPLOYMENT BENEFITS ON THE GROUND OF MISCONDUCT IS AFFIRMED. COSTS ARE ASSESSED TO THE APPELLANT.

FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, DIAZ, KING, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.