

IN THE COURT OF APPEALS 10/17/95
OF THE
STATE OF MISSISSIPPI
NO. 95-CC-00197 COA

JOSEPH MCLAURIN

APPELLANT

v.

MISSISSIPPI EMPLOYMENT SECURITY COMMISSION AND HILL RESTAURANT

APPELLEES

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

TRIAL JUDGE: HON. L. BRELAND HILBURN JR.

COURT FROM WHICH APPEALED: HINDS COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

PAUL E. ROGERS

ATTORNEY FOR APPELLEES:

JAN D. GARRICK

NATURE OF THE CASE: CIVIL - UNEMPLOYMENT BENEFITS

TRIAL COURT DISPOSITION: AFFIRMED COMMISSION'S DENIAL OF UNEMPLOYMENT
BENEFITS

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

KING, J., FOR THE COURT:

In this appeal, we are asked to determine whether the conduct of an employee, who is the aggressor in an altercation with a co-worker, where such altercation creates chaos such that threats or other intimidating language is used, and where police intervention is required, is "misconduct" within the meaning of section 71-5-513(A)(b) of the Mississippi Code of 1972, disqualifying the discharged employee from receiving unemployment benefits. We find that the Board of Review's decision holding that Joseph McLaurin had committed "misconduct", as affirmed by the Circuit Court of Hinds County, is supported by substantial evidence and affirm.

I.

On December 5, 1993, Joseph McLaurin, a kitchen worker employed by Hill Restaurant for approximately sixteen years, was terminated after he participated in an argument with another kitchen worker. On March 30, 1994, McLaurin applied for unemployment compensation.

At the hearing held on May 19, 1994, during which McLaurin was the only witness to testify, the following colloquy transpired relative to McLaurin's version of the events which led to his dismissal:

Q: Now were you discharged from your job with Hill Restaurant or did you leave on your own?

A: I was fired.

Q: Who fired you?

A: Tommy

Q: Tommy who?

A; Bradley.

Q: And do you know what position [he] held with the restaurant?

A: He's the boss.

Q: Okay. Why did Mr. Bradley fire you?

A: He fired me.

Q: Well just tell me what happened that led up to your firing?

A: (Inaudible) with the cook he had.

Q: What had happened between you and the cook?

A: She opened her mouth.

Q: What did she say?

A: She told me to get out and go back to the house.

Q: Had anything happened between you two before she told you that?

A: No.

Q: Y'all had not been in an argument before she told you to get out of the kitchen and go home?

A: No.

Q: Was the cook your supervisor?

A: No.

Q: How long had you worked with this cook? A long time?

A: Yes.

Q: Okay. Had you all had any problems like this before this last day?

A: I always curse her out.

Q: Had Mr. Bradley talked to you about your relationship with the cook before this, had he talked to you all about the way you cursed her out?

A: Yes.

Q: After she told you to get out of the kitchen and go home, what happened?

A: I was fixing to whip her ass.

Q: Did you strike her that time?

A: No, they wouldn't let me.

A: Who wouldn't let you?

A: The man we were talking about a while ago.

Q: Tom Bradley?

A: Yes.

Q: He was in the kitchen when the argument started?

A: No, not really, the other lady was back there.

Q: And who went and got him?

A: I don't know.

Q: Alright. How long did the disagreement between you and the cook last?

A: A long time.

Q: A long time?

A: Yes. I still don't like her.

Q: Alright. So, did the cook strike you?

A: No. She strike me [sic] she would have been gone.

Q: Did you and the boss get into an argument after he came back to break up the fight?

A: Yes.

Q: Tell me about that argument, what was said?

A: He wanted me to leave right then and I told him I wasn't going nowhere.

Q: And he kept telling you to leave?

A: Yes.

Q: How did they finally get you to leave?

A: Well, I threatened to whip the cook if she come [sic] outside the door and they wouldn't let her come out.

Q: So they had gotten you outside the door, outside the restaurant?

A: Yes.

Q: Okay. And how long did you stay outside after they had gotten you outside the door?

A: They called the police.

Q: Were you still there when the police arrived?

A: Yes.

Q: Did the police take you away?

A: Yes.

The employer did not present witnesses, neither was it represented during the hearing. However, the referee read the following statements, which were given by the employer to the claims examiner, and asked McLaurin if he had any comments about the statements:

[T]he claimant started a fight with the cook, they got so wild and out of hand that he attempted to fight with his father, the owner. They had to put him out of the building and call the police. He was taken to jail. To the best of their knowledge no one did anything to

provoke him, he became violent and uncontrollable.

After the hearing, the appeals referee made the following findings of fact:

Claimant was employed approximately sixteen years as a kitchen worker with Hill Restaurant, Jackson, Mississippi, ending on December 5, 1993. On that date, claimant and a cook got into a verbal argument. Claimant got very mad at the cook and wanted to fight with her. The disturbance was broken up by the restaurant owner. Claimant was also abusive to the restaurant owner and refused to leave the premises when asked to do so. Even after claimant was put out of the restaurant, he refused to leave until the police department picked him up and carried him to jail. Based on claimant's actions in this incident, he was fired.

The findings and opinion of the Board of Review of the Mississippi Employment Security Commission were affirmed by the Circuit Court of Hinds County.

II.

WHETHER APPELLEE MET ITS BURDEN OF PROVING BY SUBSTANTIAL, CLEAR AND CONVINCING EVIDENCE THAT APPELLANT EXHIBITED MISCONDUCT CONNECTED WITH WORK WHICH REQUIRED DISQUALIFYING HIM FROM RECEIVING UNEMPLOYMENT BENEFITS?

This Court is obligated to affirm administrative agency rulings, which are supported by substantial evidence. *Booth v. Mississippi Employ. Sec. Comm'n*, 588 So. 2d 422, 424 (Miss. 1991). Under Mississippi's unemployment compensation law, a person is disqualified for benefits if his termination was for "misconduct" connected to his work. Miss. Code Ann. § 71-5-513 (1972). The Mississippi Supreme Court has defined "misconduct" as:

[C]onduct 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 employee. Also, carelessness and negligence of such degree, or recurrence thereof, as to manifest culpability, wrongful intent or evil design, and showing an intentional or substantial disregard of the employer's interest or of the employee's duties and obligations to his employer, came within the term. Mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, or inadvertences and ordinary negligence in isolated incidents, and good faith errors in judgment or discretion were not considered "misconduct" within the meaning of the statute.

Wheeler v. Arriola, 408 So. 2d 1381, 1383 (Miss. 1982) (citing *Boynton Cab Co. v. Neubeck*, 296 N.W. 636, 636 (Wis. 1941)). The burden of proof is on the employer, "to prove by substantial, clear, and convincing evidence that a former employee's conduct warrants disqualification of benefits." *Shannon Eng'r and Constr. v. Mississippi Employ. Sec. Comm'n*, 549 So. 2d 446, 450 (Miss. 1989).

McLaurin contends that appellee Hill Restaurant failed to prove by substantial, clear and convincing evidence that he exhibited misconduct connected with his work, which disqualified him from unemployment benefits. Relying on *Mississippi Employment Security Commission v. McLane-Southern*, McLaurin argues that the denial of unemployment compensation benefits to him based upon an isolated incident which occurred after sixteen years of continuous service to his employer is contrary to the applicable law and should be reversed. McLaurin's reliance on *McLane-Southern* is misplaced.

In *McLane-Southern*, where the claimant was not the aggressor, but was acting in self-defense, the Mississippi Supreme Court held that "regardless of the sufficiency of the proof offered by the employer, the fact that an employee has been involved in an isolated fight with a fellow employee at the workplace, *standing alone*, is not "misconduct" within the meaning of section 71-5-513(A)(1)(b) so as to disqualify that person from receiving unemployment benefits should that person be discharged as a result of the fight." *Mississippi Employ. Sec. Comm'n v. McLane-Southern*, 583 So. 2d 626, 628 (Miss. 1991) (emphasis added) (citations omitted). In the instant case, the record indicates that McLaurin was unprovoked prior to his argument with his co-worker. In fact, McLaurin testified that the co-worker told him to get out of the kitchen and go home, nothing more. In this appeal, McLaurin claims that this was the only time in sixteen years that he has acted in this manner at the workplace, however, he admitted during the hearing, that he had always cussed the co-worker, and that he was "fixing to whip her ass" when he was stopped by his employer. Standing alone, the argument between McLaurin and his co-worker did not constitute "misconduct." However, in the instant case, McLaurin became so angry and out of control that his employer had to lock him out of the workplace and to call police officers to have him taken to jail. Additionally, on April 13, 1994, McLaurin told the claims examiner that the "cook told him to get out of the kitchen and go home. She should not have said that to him. He intended to kill her and he is still mad and will stay mad until as long as the cook lives or until he can kill her."

McLaurin's actions in threatening his co-worker and his disturbance of the peace at the workplace, as admitted by McLaurin during the hearing, provided overwhelming evidentiary support for the determination of the appeals referee that McLaurin's conduct was sufficient to justify the denial of benefits. Although McLaurin was a participant in an isolated incident at the workplace, his conduct created chaos and discord, disrupted the orderly operations at the workplace, was inimical to his employer's interest, and demonstrated a disregard of the standard of behavior which the employer had a right to expect of its employees. The employer has a substantial interest in having a peaceful workplace and in having its employees perform their assigned job duties.

We find that under the specific facts of this case, the employee's behavior was "misconduct" within the contemplation of the statute, thereby disqualifying him from receiving unemployment benefits. For the foregoing reasons, we affirm the judgment of the circuit court.

THE JUDGMENT OF HINDS COUNTY CIRCUIT COURT IN DENYING UNEMPLOYMENT BENEFITS TO JOSEPH MCLAURIN IS AFFIRMED. APPELLANT IS ASSESSED WITH ALL COSTS OF THIS APPEAL.

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