

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 9529
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare (DSW) terminating his Food Stamp benefits. The issue is whether the petitioner's separation from employment was under circumstances that disqualify him from benefits according to the pertinent regulations.

FINDINGS OF FACT

The petitioner and his wife were recipients of Food Stamps. In late August, 1989, the petitioner was hired to work at a door manufacturing plant. The employer has a 90-day probation policy whereby newly-hired workers can be discharged for any reason deemed sufficient by the employer. The petitioner's wife was hired by the same employer in mid-September, 1989.

On September 28, 1989, the petitioner received a call when he arrived at work telling him his grandfather had died.

The petitioner told his employer that he would be taking the next two days (September 28 and 29) off to attend the funeral.

The employer did not object. The petitioner also did not report to the job on October 2nd, his next scheduled day of work, but he did put in a full day on October 3rd.

On the morning of October 4th, the petitioner took his son to the hospital emergency room because of a bad skin rash. The petitioner's wife went to work and told the supervisor why the petitioner was late. The child's rash was diagnosed as scabies, and the petitioner was told to keep him home from school for several days.

On October 5th and 6th, the petitioner missed work, although his son went to school those days. His wife went to work both those days and told the employer that the petitioner would be absent.

On October 10, 1989, their next scheduled day of work, the petitioner and his wife both reported to the job but found that their time cards had been "pulled". When they inquired as to why, the employer told them they were both terminated from their jobs.

At the hearing, testimony was taken from the petitioner, his wife, and from their supervisor at the job and from the company general manager. Much ado was made over whether the petitioner was "fired" or whether he "voluntarily quit". The employers stated because the petitioner didn't come to work for several days, the employers "assumed" he had "quit"--so they "terminated him".

Semantics aside, however, uncontroverted evidence establishes that the petitioner appeared at work on October 10th after only three consecutive days of absence. His wife, however, had worked each of those three days, and at no time did either she or the petitioner tell the employer

the petitioner was quitting. Clearly, the decision to terminate the petitioner's employment was made by the employer--on October 10, 1989. It is, therefore, found that the petitioner was discharged from his job, and that he did not voluntarily quit the job. Under the regulations (see infra) it is unnecessary to determine whether the petitioner's actions constituted "misconduct".

ORDER

The department's decision is reversed.

REASONS

This case does not turn on whether the employer was justified in terminating the petitioner's employment. It having been found that the petitioner was fired from, rather than quit, the job in question, the sole legal issue is whether the Food Stamp regulations penalize individuals who are fired from their jobs--whatever the reasons or circumstances.¹ The board concludes that the regulations do not allow for a termination of Food Stamp benefits in such situations.

The pertinent regulations governing "work requirements" are contained in Food Stamp Manual § 273.7. Section 273.7(a) requires all non-exempt household members to "register" for work at an appropriate state employment agency. One of the "exemptions" from this requirement is individuals who are "employed working at a minimum of 30 hours weekly." Id. § 273.7(b)(vii). Clearly, the

petitioner fell into this "exemption".²

Food Stamp Manual § 273.7(n) imposes eligibility sanctions against food stamp heads of households who "voluntarily quit" their most recent jobs "without good cause". There is no dispute that the petitioner is the "head" of his food stamp household but, as found above, he did not "quit" the job in question--he was fired. Thus, § 273.7(n) is not applicable.

Food Stamp Manual § 273.7(g) imposes sanctions against food stamp recipients who refuse or fail without good cause to comply with the work requirements "imposed by this section". Id. § 273.7(g)(1). Section 273.7(g)(2) imposes penalties for certain individuals who were "exempt" from the work registration section. However, § 273.7(g)(2) does not apply to individuals, like the petitioner, who were "exempt" from the work registration requirements because they were employed.³

The board is unaware of any provision in the food stamp regulations that penalizes individuals, like the petitioner, who are fired from their jobs--regardless of "cause". In Fair Hearing No. 5317 the board held: "Individuals cannot be denied benefits unless their actions were expressly proscribed by statutes." Id., p 6. In that case, the department argued that the petitioner therein had "undermined" his employment by his own actions--being late for work several times. However, the board ruled that

unless it could be found that the petitioner voluntarily quit, "no (disqualification from food stamp) is possible without considerably stretching the actual wording of the regulations." Id., p 6. In that case, and in at least two others, the board rejected the department's arguments that some discharges from employment should be viewed as "constructive quits." Id. and Fair Hearing Nos. 8927 and 8036.

The same reasoning applies here. Had the department followed its regulations, however, the petitioner would not get off scot-free. Under Food Stamp Manual § 273.7(b)(2)(i) the petitioner, once he lost his "exemption" based on his working, should have been (and probably still is) required to immediately "register for employment" and, thus, be subject to all the work requirements imposed by § 273.7. However, under the regulations there is simply no basis to impose a disqualification from food stamps for "exempt" individuals like the petitioner who are fired from their last jobs--whatever the cause.⁴ The department's decision is reversed.

FOOTNOTES

¹It is, at best, problematic whether the petitioner's absences constituted willful or deliberate "misconduct" as that term is defined by 21 V.S.A. § 1344(a)(1)(A) of the unemployment compensation statutes.

²Apparently, the petitioner was not "registered" in the department's work program. Therefore, the board assumes the department concedes that he was "exempt" under § 273.7(b)(viii).

³This section authorizes a sanction when an individual violates a "comparable . . . unemployment compensation requirement." The department argues that the petitioner, if he was discharged, violated the unemployment compensation law regarding "misconduct". See 21 V.S.A. § 1344(a)(1)(A). However, this section applies only to individuals who are registered in another federal work program (e.g. WIN) or who are receiving unemployment compensation. See Id. §§ 273(b)(1)(iii) and (v). It does not apply to individuals who are working. See Id. § 273(b)(1)(vii). Also, it is unclear whether a discharge for "misconduct" is, per se, a violation "comparable" to a provision in the food stamp regulations.

⁴It certainly cannot be concluded that such a result is so "absurd" or "irrational" that the regulations should not be read according to their plain meaning. See, e.g., State v. Rice, 145 Vt 25 (1984).

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