

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,332

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying his application for ANFC. The issue is whether the petitioner left his last employment for reasons that would have disqualified him for unemployment compensation.

The petitioner applied for ANFC on March 26, 1996. The petitioner does not dispute that under the regulations (W.A.M. § 2226.1) the earliest date he can be found eligible for benefits was April 10, 1996. The Department denied the petitioner's application for two reasons: first, because of the circumstances of his leaving his last employment (the subject of this Recommendation), and second, because the petitioner's only child was eighteen and was not expected to graduate high school before her nineteenth birthday.

The petitioner's daughter turned nineteen on May 2, 1996. The petitioner concedes that regardless of the circumstances surrounding her graduation status while she was eighteen, he was ineligible for ANFC as of the date she turned nineteen (W.A.M. § 2301). Thus, the maximum period of ANFC coverage for which the petitioner could be eligible is the closed period from April 10 through May 2, 1996.

At the hearing in this matter, held on June 5, 1996, the parties agreed that the Board at this time need only consider the issues surrounding the petitioner's termination from his last employment; and that if those issues were resolved in the petitioner's favor, the matter would then be remanded to the Department for a determination, in light of subsequently alleged circumstances, as to whether the failure of the petitioner's daughter to graduate high school before turning nineteen was due to a disability. The petitioner would then have the right to appeal to the Board any subsequent adverse decision by the Department in that regard.

FINDINGS OF FACT

Prior to March, 1996, the petitioner was employed full time as a truck driver for a company based in

New Jersey. His job entailed long distance deliveries that kept him on the road for several weeks at a time. The petitioner was allowed four days off for every four weeks on the road. When the petitioner had days off, his employer routinely allowed him to drive his truck home to Vermont. This saved the petitioner about \$200 in round-trip transportation costs he would have had to incur if he had to leave the truck in New Jersey and rely on public transportation each time he came home on his days off.

The petitioner's truck driving duties for the company also included acting as a trainer for new drivers who would accompany him on virtually all his hauls. Being a trainer and having a second driver with him enabled the petitioner to cover many more miles each day, and, therefore, substantially increased the money the petitioner made each time he went out on the road.

In March, 1996, the petitioner injured his back while driving his truck home to Vermont for his days off. The petitioner immediately called his employer and was told to call back in a few days to let the employer know his status. Before the petitioner could do this, however, a dispatcher of the employer called him to ask him if he could make a run the next day, which the petitioner declined because his back was still sore. Later that same day the dispatcher called the petitioner back and told him he was fired.

The next day, the employer's head dispatcher (not the one who had called him the previous day) called the petitioner and told him he could keep his job but that he would no longer be a trainer and that in the future he would have to return his truck to the company headquarters in New Jersey and leave it there when he took his days off. The petitioner declined these conditions and had no further contact with his employer.

The petitioner worked only the first four days in March before his injury, and has not worked since. The petitioner has since been advised that he needs physical therapy on his back, and he has not been able to do long distance driving since his injury. As noted above, he applied for ANFC on March 26, 1996.

The above findings are based on the petitioner's credible and essentially uncontradicted testimony. In seeking to verify the circumstances of the petitioner's leaving his last work, the Department, on April 17, 1996, received from the petitioner's employer's main office in Illinois a form that indicated that the petitioner's last day of employment had been March 15, 1996, and that the reason for his leaving was "unknown". On the form, the petitioner's only wages in 1996 were listed under March, in the amount of \$2,468. The petitioner testified, and it appears obvious from the circumstances of his employment and from the form itself, that the wages listed by the employer under March were all those cumulatively paid to the petitioner in 1996 up to that time.

The employer has refused to speak further with either the petitioner or the Department about the circumstances surrounding the petitioner's termination of employment; and there is no basis to rebut or discredit the petitioner's testimony in this regard.

It is, therefore, found that the petitioner's termination from his last job came about because the petitioner refused to accept changes in the conditions and benefits of his employment that were unilaterally imposed by his employer. Ending the petitioner's status as a trainer and not allowing him to continue to use the company's truck when he went home to Vermont on his days off would have resulted in a significant loss of net income for the petitioner had he remained on the job.

ORDER

The Department's determination that the petitioner left his last employment voluntarily without good cause attributable to his employer is reversed, and the matter is remanded to the Department for a determination as to whether the petitioner's daughter's failure to graduate high school before her nineteenth birthday was due to a disability.

REASONS

W.A.M. § 2333.1 includes the following under the definitions of "unemployed parent" for purposes of ANFC:

4. Within the 30-day period prior to receipt of assistance, has not become unemployed by reason of conduct or circumstances which result or would result in disqualification for unemployment compensation under Vermont's unemployment compensation law. However, this criterion shall be satisfactorily fulfilled if the principal earner has been disqualified, or would be subject to disqualification, from eligibility for unemployment compensation benefits solely because he/she became unemployed as a result of a health condition. A licensed physician or psychologist must certify that the health condition precluded the applicant from the discharge of duties inherent in his or her employment for a period which exceeded that provided for under the employer's sickness and/or temporary disability policies.

The above regulation imposes only a 30 day disqualification from ANFC after an unemployed parent has terminated his employment for reasons that would disqualify him from receiving unemployment compensation. As noted above, the earliest date the petitioner could be found eligible for ANFC based on his application to the Department for those benefits is April 10, 1996. The employer's limited response to the Department's request for information indicates that the petitioner's last day of employment was March 15, 1996. As of April 15, 1996, the petitioner would qualify as an unemployed parent regardless of the circumstances of his termination from his last employment. Thus, the Board's decision in this case--i.e., whether the circumstances surrounding the petitioner's termination from employment would have disqualified him from receiving unemployment compensation--affects only five days of potential ANFC eligibility, April 10-14, 1996.

The Vermont Unemployment Compensation Statutes include the following provision:

(a) An individual shall be disqualified for benefits (when):

...

(2) ...

(A) He has left the employ of his last employing unit voluntarily without good

cause attributable to such employing unit. . . .

21 V.S.A. § 1344.

It is well settled law in Vermont that when an employer unilaterally changes an employee's working conditions, benefits, or level of compensation, that employee cannot be disqualified from receiving

unemployment compensation if he chooses to terminate his employment rather than accept a detrimental change in the terms of his employment. See, e.g., Harrington v. DES, 142 Vt. 340 (1982); Stryzko v. DET, 144 Vt. 198 (1984); Seymour v. DES, 137 Vt. 79 (1979); and LaRose v. DES, 139 Vt. 513 (1981). In this case, credible and uncontradicted evidence establishes that the petitioner left his employment only after his employer told him that he was no longer a trainer of new drivers and that he could no longer drive his truck to Vermont on his days off. Both of these conditions would have had a significant detrimental impact on the petitioner's wages and benefits incidental to his employment. Under the law, the petitioner was within his rights, in terms of being eligible for unemployment compensation, when he terminated his employment rather than accept those changes in the terms of his employment.⁽¹⁾ Therefore, the Department should not have denied him ANFC on this basis.

The Department's determination that the petitioner voluntarily quit his last job without good cause attributable to the employer is reversed, and the matter is remanded to the Department for a determination regarding the petitioner's allegations that his daughter's failure to graduate high school by age nineteen was due to her disability.

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1. The petitioner testified that he was denied unemployment compensation for reasons not related to his termination of employment--i.e., because his back problems have rendered him temporarily unable to resume truck driving work, and he does not want to seek alternative employment at this time. Although the evidence surrounding the petitioner's injury is problematic, the petitioner did not allege to the Department that he is "incapacitated" within the meaning of the pertinent ANFC regulations (see WAM § 2332). Although the petitioner's physical condition and his willingness to seek and accept alternative jobs may well have become an issue if the petitioner had been otherwise eligible for ANFC beyond May 2, 1996, the Department does not maintain that the petitioner's "disability", or lack thereof, is relevant to a determination of whether the petitioner is eligible for ANFC as an "unemployed parent" for the limited period at issue in this case.