

RENDERED: MAY 9, 2003; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2001-CA-000995-MR

COMMONWEALTH OF KENTUCKY, WORKFORCE
DEVELOPMENT CABINET, KENTUCKY
UNEMPLOYMENT INSURANCE COMMISSION

APPELLANT

v. APPEAL FROM OLDHAM CIRCUIT COURT
HONORABLE DENNIS A. FRITZ, JUDGE
ACTION NO. 00-CI-00276

WILLIAM H. SIMPSON; AND OLDHAM
COUNTY CAB COMPANY, INC.

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: BUCKINGHAM, McANULTY, AND TACKETT, JUDGES.

McANULTY, JUDGE. Appellants, Commonwealth of Kentucky,
Workforce Development Cabinet, and the Kentucky Unemployment
Insurance Commission, appeal from an opinion of the Oldham
Circuit Court which declared Appellee William H. Simpson
eligible for unemployment insurance benefits. We affirm.

In September 1997, Simpson began working for Appellee Oldham County Cab Company, Inc. as a part-time driver. During his tenure at the cab company, Simpson's eyesight began to deteriorate. Realizing that his days of driving might be numbered, Simpson inquired about continuing his employment at the company as a dispatcher. His employer informed him that there was no position available as a dispatcher; however, he might be able to continue his employment by lending a hand around the garage with cleaning duties.

On January 17, 2000, Simpson's failing eyesight caused him to give up driving for good. Three days later, Simpson called the cab company seeking work, so his employer sent a cab to pick him up and bring him in to the garage where he could work washing the company's limousines. According to Appellants, after just two hours of work Simpson left to go home, informing his employer that he did not want to come back to wash limousines anymore. Simpson denied that he said that, and asserted that after that day he was never scheduled to work or otherwise informed of any other duties to perform at the cab company.

Simpson filed a claim for unemployment insurance on January 25, 2000, based on his inability to work because of his visual impairment. A few weeks later, the Division of Unemployment Insurance (Division) determined that Simpson was

disqualified from receiving insurance benefits because he had voluntarily left his work with the cab company without good cause attributable to the employment. Simpson appealed the Division's decision to an unemployment insurance referee, who set the decision aside after a hearing. The cab company appealed to the Kentucky Unemployment Insurance Commission (Commission), which disagreed with the referee and again determined Simpson was disqualified from receiving benefits. Simpson's motion for reconsideration was denied, and thereafter he filed a complaint with the Oldham Circuit Court seeking judicial review of the Commission's order. That court reversed, determining that Simpson was eligible for the benefits. This appeal followed.

The standard of review on appeal in the case sub judice is the same standard that applied on the circuit court level; we are obligated to uphold the Commission's decision if there is substantial evidence of probative value upon which the Commission could base its decision, and if the Commission applied the correct rule of law to the facts as found. H & S Hardware v. Cecil, Ky. App., 655 S.W.2d 38, 40 (1983).

Substantial evidence is that which taken alone or in light of all the evidence has sufficient probative value to induce conviction in the minds of reasonable persons. Blankenship v. Lloyd Blankenship Coal Co., Ky., 463 S.W.2d 62, 64 (1971). If there is substantial evidence in the record to support an

agency's findings, the findings will be upheld, even though there may be conflicting evidence in the record. Secretary of Labor v. Boston Gear, Inc., Ky., 25 S.W.3d 130, 134 (2002). A reviewing court may not substitute its opinion as to the weight of the evidence given by the Commission. McCracken County Health Spa v. Henson, Ky. App., 568 S.W.2d 240, 242 (1977).

In the case sub judice, Appellants argue that the circuit court erroneously substituted its own judgment for that of the Commission, and that any conflicting evidence in the record does not justify the court's making its own findings of fact. We disagree. The Commission's findings included that: The weight of the evidence in this case C the testimony of the two employer witnesses versus that of the claimant C shows that claimant left the employment telling the employer he no longer wanted to wash limousines.@ The trial court found that this conclusion was incorrect because only one of the employer's witnesses offered testimony on this issue, and the statement was not made when appellee left employment but after appellee filed for unemployment. Thus, we do not agree that the Oldham Circuit Court merely substituted its judgment for that of the Commission, but instead we conclude that it properly assessed whether there was substantial evidence to support the Commission's decision as to the weight of the evidence.

The court noted that Simpson was only offered work one time after he retired from his cab driving duties. Additionally, the court found that the only testimony indicating that Simpson refused to wash limousines came from the cab company's owner. Simpson denied making such a statement in his testimony, and another employee who testified did not remember hearing Simpson tell his employer that he refused to come back and wash limousines. Our review of the record of this case, which consists only of a transcript of the aforementioned testimony, bears out the court's interpretation. Thus we agree with the court that there was not substantial evidence of probative value in the case sub judice to show that Simpson refused to return to work. The court did not err in failing to uphold the Commission's decision on that issue.

Next, Appellants argue that the court erred in holding that the Commission misapplied the law to the facts of this case. Appellants argue on appeal that appellee's failing eyesight was not attributable to the employment with the cab company, pursuant to KRS 341.370(1)(c). The Oldham Circuit Court stated that the standard for a good cause for voluntarily quitting work is defined by the Kentucky Supreme Court as existing only when the worker is faced with circumstances so compelling as to leave no reasonable alternative but loss of employment. @ Kentucky Unemployment Insurance Commission v. Murphy, Ky., 539 S.W.2d

293, 294 (1976). Appellants argue that the court did not construe the phrase Attributable to the employment which was added to the statute after the Murphy opinion was rendered. Appellants contend that appellee did not establish that his loss of eyesight was in any way attributable to the employment. Appellees counter that Attributable means only that Simpson's reason for leaving is related in some way to the duties he must perform in his job.

We find no case which construes this phrase. However, we believe that appellant's construction distorts the phrase as it is found in the statute. The standard in KRS 341.370(3)(c) does not require direct causation from the work, as appellant argues. It does not require that the claimant's reason for leaving work be in some way caused by the work itself. We believe the Oldham Circuit Court correctly applied the law when it concluded that claimant could no longer perform the work of a cab driver due to the deterioration in his eyes, and so his reason for leaving was attributable to the work itself. Thus, we affirm.

ALL CONCUR.

BRIEF FOR APPELLANT:

Randall K. Justice
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Glenna Jo Curry
LaGrange, Kentucky