

RENDERED: February 4, 2005; 10:00 a.m.

NOT TO BE PUBLISHED

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2003-CA-002346-MR

WILLIAM V. THOMASON

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE TOM MCDONALD, JUDGE  
ACTION NO. 02-CI-003703

KENTUCKY UNEMPLOYMENT  
INSURANCE COMMISSION  
AND YOUNGBLOOD CONSTRUCTION

APPELLEES

OPINION  
AFFIRMING

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BEFORE: TACKETT, TAYLOR, AND VANMETER, JUDGES.

TACKETT, JUDGE: William A. Thomason appeals from the decision of the Jefferson Circuit Court, which affirmed the findings of the Kentucky Unemployment Insurance Commission that he was dismissed for cause and thus ineligible for unemployment benefits. Thomason argues that the Commission's findings were not supported by substantial evidence, and that if they were supported by substantial evidence, then in the alternative that

the Commission misapplied the standard for determining when an employee is discharged for cause. We hold that the Commission's findings were supported by substantial evidence and that the Commission applied the correct standard, and affirm.

Thomason was a welder working for Youngblood Construction. On October 29, 2001, Thomason and other welders were informed that they would be working ten-hour shifts five or six days that week. Thomason worked every day that week, and on November 3, he was asked to work the next day as well. Thomason had made arrangements for a repairman to come to his house and repair the switch on his water well so that his family could have water service, and needed to be home that day. Thomason informed his supervisor, Cheyenne Youngblood, that he could not work that day for personal reasons. Exactly how Thomason communicated this information to Youngblood is disputed; Thomason states that he told his supervisor twice that day that he could not work because of personal reasons. Youngblood, on the other hand, said that Thomason was very sarcastic and refused to work, at one point saying that "he might do his laundry" as a reason. Witnesses for Youngblood said that Thomason's refusal to work was communicated as early as the October 29 safety meeting at which weekly schedules were distributed. Witnesses for Youngblood testified about a Friday morning encounter between James Gage, superintendent of

Youngblood Construction, and the welders on the job. Gage told the welders that they would be needed both days on the weekend because of the nature of the job. Gage testified that Thomason simply said that he would not work Sunday, and that when he asked him why all he said was that he might do his laundry; another witness, boilermaker Larry Adkins, confirmed this version of events. The Commission held that Thomason's refusal to work and subsequent firing by Youngblood when he reported to work on November 5, constituted misconduct, specifically failure to obey a reasonable request. The Commission's order reversed the finding of a referee, who had determined that Thomason was not terminated for cause. Thomason appealed the decision of the Commission to the Jefferson Circuit Court, which affirmed. This appeal followed.

The issues presented on appeal are whether the findings of the Commission were supported by substantial evidence and if so, whether the Commission applied the proper standard in determining whether he was fired for cause. We hold that the Commission's findings were proper.

First, the Commission's findings were supported by substantial evidence. It is clear to us that in hindsight, Thomason could have stated a very clear reason for his need to be absent from work. Instead, even viewing the evidence in the best light for Thomason, we cannot say that he did so. Even by

his own words, all he told his employer was that he had to be off work for unspecified personal reasons. Taking into account the testimony presented by the employer's witnesses, there was ample testimony on which to base a finding that he did not properly communicate his need to be off work, and that his need to be off work came across as a refusal rather than a reasonable request for time off. As the Commission and the circuit court both noted, Thomason's proof that a repairman did in fact perform work on his well on that Sunday does not prove that he informed his employer of the reason he needed to be off work. Substantial evidence, as we have long held, is all that is required for the findings of fact to be affirmed. Substantial evidence is defined as evidence, taken alone or in light of all the evidence, that has sufficient probative value to induce conviction in the minds of reasonable people." Thompson v. Kentucky Unemployment Ins. Comm., 85 S.W.3d 621, 624 (Ky.App. 2002). A reviewing court is not permitted to weigh the credibility of the witnesses. That is precisely what Thomason asks us to do, in describing Youngblood's testimony as "self-serving" and arguing that "his testimony and filings are not credible." The Commission apparently chose to believe that testimony, and we are not permitted to substitute our judgment for that of the finder of fact. Burch v. Taylor Drug Store, Inc., 965 S.W.2d 830, 834 (Ky.App. 1998). Even where

conflicting evidence is in the record, we must accept a reviewing court's findings as binding where they are supported by substantial evidence. Urella v. Kentucky Bd. Of Medical Licensure, 939 S.W.2d 869 (1997).

Likewise, we must conclude that the Commission applied the proper standard. Kentucky Revised Statute 341.370(6) defines misconduct as including "refusing to obey reasonable instructions." As the Commission notes, "great deference is always given to an administrative agency in the interpretation of a statute which is within its specific province." Commonwealth ex rel Beshear v. Kentucky Utilities Co., 648 S.W.2d 535, 537 (Ky.App. 1982). The fact that a reviewing court may not have come to the same conclusion does not warrant a substitution of a court's discretion for that of an administrative agency. Ky. Unemployment Ins. v. Landmark Comm. News, 91 S.W.3d 575, 582 (Ky.App. 2002). The Commission held that Thomason's refusal to work on November 4, 2001, constituted a refusal to obey a reasonable instruction, given that Thomason was aware of the need for welders on the job site and that he did not adequately inform his employer of his need to be off work that day. Regardless of whether we would have held the same, we are not permitted to substitute our judgment for the Commission's. Our review is confined to the question of whether the Commission misapplied the statute, and we cannot say that it

did. Given the evidence before it, it was reasonable for the Commission to conclude that Thomason refused to obey a reasonable instruction and was therefore terminated for cause.

For the foregoing reasons, the decision of the Jefferson Circuit Court is affirmed.

VANMETER, JUDGE, CONCURS.

TAYLOR, JUDGE, DISSENTS WITHOUT SEPARATE OPINION.

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