

RENDERED: JANUARY 12, 2007; 10:00 A.M.
TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-002255-MR

LES BROWNLEE, ACTING SECRETARY,
U.S. DEPARTMENT OF THE ARMY; AND
THE UNITED STATES OF AMERICA

APPELLANTS

v. APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE KELLY MARK EASTON, JUDGE
ACTION NO. 03-CI-02191 & 04-CI-00454

COMMONWEALTH OF KENTUCKY,
KENTUCKY UNEMPLOYMENT INSURANCE
COMMISSION; REBECCA J. YATES; CHARLOTTE
J. BOOTHE; RITA F. HOCKMAN; CAROLYN J. JONES;
SHEILA F. LUCAS; BEVERLEY Y. HOUSE; PAULA M.
OLIVE; AND MICHAEL JONES

APPELLEES

OPINION AFFIRMING

** ** * * *

BEFORE: JOHNSON¹ AND TAYLOR, JUDGES; BUCKINGHAM,² SENIOR JUDGE.

BUCKINGHAM, SENIOR JUDGE: The United States Army and its Acting
Secretary appeal from a certain judgment of the Hardin Circuit

¹ Judge Rick A. Johnson concurred in this opinion prior to the expiration of his term of office on December 31, 2006. Release of the opinion was delayed by administrative handling.

² Senior Judge David C. Buckingham sitting as Special Judge by Assignment of the Chief Justice pursuant to Section 110 (5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

Court modifying and affirming certain orders of the Kentucky Unemployment Insurance Commission (KUIC). Having considered the briefs, the record, and all applicable law, we affirm.

In August and November 2002, it was announced that, because they would be replaced through private contracting, 160 employees at the military base at Ft. Knox, Kentucky, would lose their positions. In February 2003 a "mock" Reduction in Force (RIF) notice was sent to the affected employees. They were informed how the restructuring would influence them and were given the option to accept voluntary early retirement and a one time, lump sum Voluntary Separation Incentive (VSI) or be included in the actual RIF, scheduled to take place in July of that year.

Each of the individual appellees here chose early retirement and received the VSI payment (\$25,000.00), then applied for unemployment benefits. The Army challenged the unemployment benefits, and the KUIC determined that these individual appellees were entitled to receive the benefits. The Army sought review in the Hardin Circuit Court pursuant to KRS 341.450(1). The parties filed briefs, and a hearing was held on September 20, 2005. The Hardin Circuit Court entered its opinion and order on September 30, 2005. Although the trial court rejected KUIC's finding of "constructive discharge," it held that the individual appellees had sufficiently demonstrated

"good cause" under KRS 341.370(1)(c) for leaving work. The trial court affirmed the granting of unemployment benefits, and the Army appeals.

We initially address the Army's claim that the trial court erred by employing a net result analysis. Without belaboring this issue, we simply state that it was the Army that brought a joint complaint for judicial review and cannot now be heard to complain otherwise.

We now turn to the substantive issue before us, namely, whether the trial court properly affirmed the KUIC's granting of unemployment benefits to these individual appellees.

Upon review of an administrative agency's adjudicatory decision, an appeal court's authority is somewhat limited. The judicial standard of review of an unemployment benefit decision is whether the KUIC's findings of fact were supported by substantial evidence and whether the agency correctly applied the law to the facts. 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. If there is substantial evidence to support the agency's findings, a court must defer to that finding even though there is evidence to the contrary. A court may not substitute its opinion as to the credibility of the witnesses, the weight given the evidence, or the inferences to be drawn from the evidence. A court's function in administrative matters is one of review, not reinterpretation.

Thompson v. Kentucky Unemployment Insurance Commission, 85 S.W.3d 621, 624 (Ky.App. 2002)(footnotes and citations omitted). This Court's standard of review is the same.

"Good cause" is defined in *Kentucky Unemployment Insurance Commission v. Murphy*, 539 S.W.2d 293, 294 (Ky. 1976), as existing "only when the worker is faced with circumstances so compelling as to leave no reasonable alternative but loss of employment." KRS 341.370(1)(c) further requires that the good cause be "attributable to the employment." All parties and the trial court agree that there is no Kentucky law directly on point. The trial court considered the parties' cited cases from sister jurisdictions and found that "they may have helpful analysis, but, in the end, they are of limited assistance because each state has a slightly different statutory framework or has specific regulations addressing this matter." The trial court then analyzed several of those cases to distinguish them from the present situation. Ultimately, the Hardin Circuit Court held in favor of these employees.

In our limited review, we decline to disturb the trial court's opinion and order. There is substantial evidence in the record to support the finding of good cause, and the trial court "correctly applied the law to the facts." *Thompson, supra*.

The judgment of the Hardin Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

David L. Huber
United States Attorney
Louisville, Kentucky

BRIEF FOR APPELLEE REBECCA
YATES:

James T. Kelley
Elizabethtown, Kentucky

BRIEF FOR APPELLEES CHARLOTTE
BOOTHE, RITA F. HOCKMAN,
CAROLYN JONES, SHEILA LUCAS
AND BEVERLY HOUSE:

C. Mike Moulton
Moulton & Long, PLLC
Elizabethtown, Kentucky

BRIEF FOR APPELLEE KENTUCKY
UNEMPLOYMENT INSURANCE
COMMISSION:

Randall K. Justice
Amy Peabody
Frankfort, Kentucky

BRIEF FOR APPELLEE PAULA
OLIVE:

Jerry M. Coleman
Quick & Coleman
Elizabethtown, Kentucky

No brief for Appellee Michael
Jones