

No. 33703 – *Deborah K. May v. Chair and Members, Board of Review; Commissioner, West Virginia Bureau of Employment Programs; and Mate Creek Security, Incorporated*

FILED

June 17, 2008

released at 3:00 p.m.

RORY L. PERRY II, CLERK

SUPREME COURT OF APPEALS

OF WEST VIRGINIA

Albright, Justice, and Starcher, Justice, concurring:

I concur in the majority opinion. I write separately because there are additional grounds for reversing the decision of the Board of Review to disqualify Ms. May from receiving unemployment compensation benefits.

This Court stated in syllabus point 6 of *Slack v. Kanawha County Housing & Redevelopment Authority*, 188 W.Va. 144, 423 S.E.2d 547 (1992):

In order to prove a constructive discharge, a plaintiff must establish that working conditions created by or known to the employer were so intolerable that a reasonable person would be compelled to quit. It is not necessary, however, that a plaintiff prove that the employer's actions were taken with a specific intent to cause the plaintiff to quit.

In addition to matters discussed in the majority opinion, the unrefuted evidence before the Board of Review showed the following, as recited in the brief of Ms. May, whose duties included performing personal tasks for Mr. Don Blankenship, who occupied the home owned by Rawl Sales:

On two different occasions, Mr. Blankenship physically grabbed Ms. May. Once, while trying to stock the coach bus after a last minute notice to do so, Mr. Blankenship grabbed her arm, pulled her towards him, and told her to leave the bus. Ms. May found that treatment to be embarrassing since many of Mr. Blankenship's guests were on the bus when the incident occurred. On another occasion, Mr. Blankenship sent her to McDonald's to purchase breakfast for him and his interior decorator. Ms. May placed the order, accepted the food and returned to the Blankenship home. As she unpacked the food, Mr. Blankenship discovered that McDonald's filled the order incorrectly; Mr. Blankenship started slinging the food and he grabbed Ms. May's wrist, telling her "Any time I want you to do exactly what I tell you to do and nothing more and nothing less."

Mr. Blankenship directed, through his secretary, that Ms. May write him an explanation of why there was no ice cream in the freezer at one of the houses. He believed she was mocking him by failing to purchase the ice cream he wanted. Ms. May did write an explanation on July 11, 2005. She pointed out that he did not seem to realize "the magnitude and heavy volume of work that has been put in my lap since I began working here, with only one \$.30 raise in the last four years. Today you have crushed me." She apologized and asked that he tell her if he did not want her to work any longer. Mr. Blankenship sent back a hand-written note acknowledging that she was under a lot of stress and that his comments added to her stress. He acknowledged her financial difficulty and proceeded to advise that she was well paid in comparison to others in West Virginia and Kentucky and explained that folks working for him sometimes decreased his comfort level. In an explanation apparently intended to be critical of the food purchases she had made for the home, he gave an example related to low carb foods.

On or about July 12, 2005, Ms. May forgot to leave a coat hanger out for Mr. Blankenship to hang his coat. Mr. Blankenship's reaction was to tear the coat hanger and tie rack out of the closet. He left her a note explaining that she would

get a call explaining why he tore it out. He wrote her that he “had 3 dogs stolen in 9 days, mines robbed, people complain incessantly, all of them want more money. None of them do what their (sic) asked.” Mr. Blankenship’s secretary spoke to Ms. May and explained that “he tore the coat hanger and rack and stuff all out . . . that if I had to fix it and repair it and put everything back, it would be a good reminder that I was not to forgot (sic) that hanger in the future.

This shocking conduct directed at Ms. May leaves no doubt that Ms. May’s working conditions were “so intolerable that a reasonable person would be compelled to quit.” *Slack, supra*. Such conduct by an employer is reminiscent of slavery and is an affront to common decency.

Therefore, Ms. May’s termination of employment should be treated as a firing, and her eligibility for unemployment benefits is unquestionable.

I am authorized to state that Justice Starcher joins in this separate opinion.