

Workman, C.J., Dissenting Opinion, Case No.23365 Metropolitan Life Insurance Co. v. Cathy S. Gatson

No. 23365 - Metropolitan Life Insurance Co. v. Cathy S. Gatson, Clerk of the Circuit Court of Kanawha County; the Board of Review of the West Virginia Department of Employment Security; and William Cutright

Workman, C. J., dissenting:

While the majority correctly identifies the issue for the Court's resolution as a legal determination of whether Mr. Cutright's conduct legally rises to the level of misconduct contemplated by West Virginia Code § 21A-6-3 (1996) to permit disqualification from unemployment benefits, I must respectfully dissent because I conclude that the requisite misconduct was established. The majority places great stock in the fact that Mr. Cutright curtailed the wrongful use of the sonic computer by his personal assistant following the issuance of a written rule regarding the nonauthorization of the computer system's use by individuals other than Metropolitan employees. Why the majority concludes that it was permissible for Mr. Cutright to be insubordinate to his superior's directive regarding a company work rule prior to the time a written company directive was issued is incomprehensible to me.

This Court recognized in Perry v. Rutledge, 177 W. Va. 548, 355 S.E.2d 41 (1987) that "[a] refusal to comply with a job assignment directive or a work rule may constitute 'misconduct' for unemployment compensation purposes." Id. at 551, 355 S.E.2d at 44. We explained in Perry that the "job assignment directive or work rule must be reasonable under the particular circumstances, and the unemployment compensation claimant's reason for disregarding the

job assignment directive or work rule must be examined to determine whether the claimant was justified, or at least exercised good faith, in not complying with the directive or rule." Id. The burden is placed on the claimant to prove that "he or she was justified, or at least exercised good faith, in not complying with the directive or rule." 177 W. Va. at 552, 355 S.E.2d at 45.

Because the majority failed to consider whether Mr. Cutright's failure to obey an oral directive regarding a work rule constituted misconduct, I find the majority's reasoning to be flawed. There is simply no basis for the majority's implication that a deliberate violation of company policy cannot result absent a written policy. Whether the directive was oral or written, the failure of Mr. Cutright to comply with his supervisor's instructions regarding use of the sonic computer qualifies as misconduct within the definition adopted by this Court in Kirk v. Cole, 169 W. Va. 520, 288 S.E.2d 547 (1982), as it clearly constituted both a flagrant disregard of a standard of behavior that Metropolitan had a right to expect and a disregard of his obligations to his employer. See id. at 524, 288 S.E.2d at 550.

Moreover, the majority wrongly decided to gloss over the additional allegations of misconduct involving Mr. Cutright's habit of making derogatory and demeaning comments with regard to a female clerk and his boisterous and profane demeanor within the office. The existence of these allegations certainly should have been considered in determining whether Mr. Cutright was entitled to unemployment benefits since that conduct was part of the initial evidence used to support the employer's position that his misconduct barred him from receiving benefits for the period of time provided by statute. See W. Va. § 21A-6-3.

It is amazing how frequently we are seeing instances of abusive people being rewarded by the legal system for their abusive behavior.