Unemployment Compensation Commission of North Carolina

Interpretation No. 69

Opinion of Attorney General

December 3, 1946

Subject: Unemployment Compensation Law; Section 96-14(a) of the General Statutes; Voluntary or Involuntary Separation from Work; Married Women Who Leave Their Work to Follow Their Husbands to New Residences.

In your letter you refer to Section 96-14(a) of the General Statutes which relates to the disqualification for benefits imposed by the Commission when it is determined by the Commission that an individual is unemployed because he or she left work voluntarily without good cause attributable to the employer.

You ask the following question as related to this statute:

"When a married woman follows her husband to a new place of residence, or a new domicile, where he has secured work and such place is too far removed for the woman to continue her work, should it be considered, in connection with the above-quoted section, that she involuntarily separated from her employment, or should it be considered that she voluntarily separated without good cause attributable to the employer, which is contemplated by the above section?"

You say that you would like for our opinion to be confined to the question as to whether such person voluntarily or involuntarily quit work and that you only ask for an opinion on a case where the husband has actually established a domicile or has actually secured permanent work in another locality. You state that you are at present holding that a woman who follows her husband around from place to place where he has temporary jobs, and when he has established no domicile, should be considered as having voluntarily quit her work without good cause attributable to the employer; however, you have held that where the husband has established a domicile or has secured permanent work and the wife quits her work to follow him that she involuntarily separates in order to follow her husband and, therefore, should not be disqualified from the receipts of benefits, assuming that she meets other eligibility requirements.

The language of the disqualification section is as follows:

"For not less than four, nor more than twelve consecutive weeks of unemployment, which occur within a benefit year, beginning with the first day of the first week after the

disqualifying act occurs with respect to which week an individual files a claim for benefits (in addition to the waiting period) if it is determined by the Commission that such individual is, at the time such claim is filed, unemployed because he left work voluntarily without good cause attributable to the employer, and the maximum benefits due said individual during his then current benefit year shall be reduced by an amount determined by multiplying the number of such consecutive weeks of unemployment by the weekly benefit amount."

It would seem that unless a claimant leaves his or her work voluntarily, then there is no need to consider the phraseology "without good cause attributable to the employer." In our interpretation issued January 5, 1944 and designated in your record as Interpretation No. 48, we attempted to lay down some general rules that would be applicable in construing this disqualification clause. The problem of married women separating from their work in order to join their husbands in other communities has been a vexatious problem for the various Unemployment Compensation Boards and Commissions in this country. It has been complicated by the fact that under the common law the husband had a right to choose the domicile; and it was the duty of the wife to reside with her husband at the domicile of his choice unless injurious to her health. Much of the confusion arises from the fact that under the common law the husband was entitled to the company and society of his wife which is designated in legal terms as the right of consortium. When we consider that in the enforcement of the Unemployment Compensation Law we are dealing with a law regulating industrial relationships and we are not dealing with the law of domestic relations, then the problem is not too difficult. In my opinion, there is no justification for attempting to engraft the law of domestic relations into interpretations of Unemployment Compensation Laws. The law of domestic relations regulating the relations between husband and wife belong in one field, and the construction and interpretation of the Unemployment Compensation Law is governed by its own rules of statutory construction. The Unemployment Compensation Law of this State does not attempt by the use of any statutory language whatsoever to incorporate by inference or reference the laws regulating the relationship between husband and wife. Each individual claimant is, and should be, considered on an individual basis, at least in so far as the language of the disqualification statute is concerned which is now under consideration.

In the case of HUIET v. SCHWOB MFG. CO., 27 S.E. (2d) 743, the Supreme Court of Georgia had before it the question we are now considering; and in its opinion, the Chief Justice of the Court said:

"Plainly, a married woman who voluntarily quits her work, for the sole purpose of joining and living with her husband at a point so far away that she cannot continue to work at the

same place, leaves her work voluntarily without good cause connected with her most recent employment, within the meaning of the foregoing provision. The fact that she is a married woman and may owe a superior duty to her husband does not place her in duress or destroy her free agency in such a matter; and while the cause of her leaving may have been a good cause from the standpoint of society, it was clearly not a cause connected with her employment. Where she thus voluntarily chooses between continuing her employment and living with her husband when she cannot possibly do both, she deliberately waives her status as an insured employee, and must accept the consequences. Even though the choice so made by her may not be termed a fault, yet the phrase 'through no fault of her own' as used in section 2, supra, evidently refers to causes beyond 'their' control, and the matter here was subject to the employee's own volition. In such case the employee becomes the author of her own disqualification; and this is true even though she as a married woman may have chosen the better part, not only for herself, but for society as well."

In the above case, the Disqualification Statute of Georgia is similar to our statute except it reads "without good cause connected with their most recent work," instead of "without good cause attributable to the employer." The above case was also affirmed by the Court of Appeals of Georgia in HEWIT, COMMISIONER v. CALLAWAY MILLS, 29 S.E. (2d) 106.

In the case of MOORE v. BUREAU OF UNEMPLOYMENT COMPENSATION, 56 N.E. (2d) 520 (Ohio), the Court said:

"We have been furnished with many authorities on the meaning of the word 'voluntarily.' The dictionary definition is not doubtful. What confronts us is the necessity of determining its meaning as used by the Legislature.

"The context shows that the term is not used as the antonym of physical impossibility. By the terms of subdivision c, if he is discharged for just cause, his benefits are reduced by six weeks, or if his unemployment results from his quitting, his benefits are reduced by the same period, unless there were some reason arising out of his work which justified his quitting. When there is a reason arising out of his work, his benefits are not reduced by six weeks, not because his quitting is involuntary, but because his voluntary act of quitting is justified under the law.

"Now then, this provision is followed by the provision enumerating the absolute bars to benefits notwithstanding unemployment. If the employee quits work voluntarily to marry or because of marital obligations, destroys the employee's volition, every quitting under such circumstances would be involuntary, and the provision would be meaningless. If that had been the intent of the Legislature it would have placed in the appropriate place a provision

that quitting to marry or because of marital obligations should be considered involuntary within the meaning of the act. It did not do so. It could not have meant that by the words employed.

“In a certain sense, a person may be said to act under compulsion whenever he performs a moral or legal obligation. He is required or compelled to obey the laws, but a law-abiding citizen usually acts voluntarily to gain that description.

“We construe the language used to mean that when an employee quits to marry or to perform marital obligations, he does so voluntarily and is not entitled to benefits.”

In the case of EX PARTE ALABAMA TEXTILE PRODUCTS CORPORATION, 7 So. (2d) 303, the Supreme Court of Alabama said:

“We are not aided in determining this question by collateral facts. That is, whether her husband had a good job in New York and was well able to care for her. Nor whether she had children in her family that needed the benefit of a united family. Nor whether her husband had requested her to give up her job and come to live with him. The facts in no respect show that in doing so it was not her own free, voluntary act. The only cause assigned is that she went to live with her husband, a very commendable impulse.* * *Consortium, to which the husband is entitled, includes the performance by the wife of her household and domestic duties, in the sense of whatever is necessary in that respect according to their station in life. 26 Amer. Jur. 637, section 9. We doubt not that this duty persists though the wife should wish to engage in such gainful employment as would prevent her from performing such duties. This Court, was speaking with due regard to such status in observing in the opinion from which we have quoted, that it is with the consent of the husband, that she may give up those household duties to perform labor which conflicts with them. She is not wholly a free person to determine whether she shall thus be employed. So that if she gives up such employment in order to render her husband the duties which she owes him, and in recognition of his wishes, the voluntary act of her husband is attributable to her and becomes her voluntary act, though she might have preferred to continue in such employment.”

In the case of WOODMEN OF THE WORLD LIFE INS. SOC. v. OLSEN, 4 N.W. (2d) 923, the Supreme Court of Nebraska, in dealing with this problem, said:

“It was a legislative purpose to ameliorate ills growing out of labor troubles and unemployment. Protection of the public from pauperism and from other burdens created by unemployment was also in the minds of the lawmakers. The legislature considered these subjects and acted directly on them. Provision was made for the creation, conservation and distribution of funds to make the law effective. These funds were not

intended for disqualified claimants for benefits. Disqualification as well as eligibility of claimants must be considered in giving effect to the words 'without good cause.' The legislative act does not deal directly with domestic relations. Of course it is the duty of a wife to live with her husband while the marital relation exists, if conditions permit, but the unemployment compensation law does not relieve the husband from his duty to support his wife. Her employer did nothing to prompt her decision to leave her work. The cause of her voluntary action had no connection with the abandoned relation of employer and employee. The purposes and import of the unemployment compensation law in its entirety indicate that a compensable claim for benefits must have some connection with, or relation to, the employment which the employee has lost. As stated in a recent opinion:

'Disqualification under the act depends upon the fact of voluntary action and not the motives which brought it about.* *

'The unemployment compensation act does not purport to grant benefits to workmen who leave their work voluntarily.' Deshler Broom Factory v. Kinney, 140 Neb. 889, 2 N.W. 2d 332, 335."

In the case of JOHN MORRELL & CO. v. UNEMPLOYMENT COMPENSATION COM., 13 N.W. (2d) 498, the Supreme Court of South Dakota said:

"From the facts as found by the defendant Commission, it is apparent that claimant left her employment of her own volition and was not discharged. In sustaining the decision of the Appeal Tribunal, the Commission concluded: 'Voluntary separation implies freedom of choice of the individual, either to leave employment or continue working. When the separation is made necessary in the interest of conserving health, there obviously is no freedom of choice, and the separation is not voluntary. A married woman whose separation from her job is necessitated by the danger to her health due to pregnancy, after her confinement, and upon being restored to health and organizing her household for adequate care of the child, is available for work. If, under these circumstances, she definitely seeks reentry into the labor market, she is entitled to benefits under our law if suitable work is not available.' We agree that claimant was justified in leaving her employment, but it does not follow that she was entitled to unemployment benefits. It appears to us from a consideration of the act that the legislature did not intend that employees who leave their work for reasons not attributable to or connected with their employment should receive benefit payments. Without giving the word 'voluntarily' in section 17.0830 (1), supra, an exact definition, we think that it would do violence to the intent and purpose of the statute to hold under the facts in this case that claimant did not 'voluntarily' leave her employment."

In the case DEPARTMENT OF LABOR, ETC. v. UNEMPLOYMENT COMPENSATION BOARD, ETC., 35 A. (2d) 739, the Court of Pennsylvania considered this question and decided the case upon the meaning of the words "good cause," but in the course of the opinion the Court said: "It must be conceded that claimant voluntarily quit." In this case the wife separated from her work to spend some time with her husband who was a member of the Armed Forces in time of war. (There is authority for the fact that termination of employment because of sickness is not voluntary within the provisions of such a disqualification clause.) See FANNON v. FEDERAL CARTRIDGE CORP., 18 N.W. (2d) 249 (Minn.).

Modern statutes have relieved married women from all disabilities which existed at common law. To say that a married woman who leaves her work does not deliberately choose to do so of her own will is to discard all considerations of common sense and normal experience. The fact that she acts upon the basis of commendable motives does not destroy her exercise of her own will and volition in the matter. The fact is that in every question in life which we must decide and with which we are confronted, we balance the motives and advantages on either side of the question, one against the other. It is not necessary to go into any discussion of the psychological processes involved in exercising what is usually called "volition" or "will."

* * * In fact, if it is said that a married woman voluntarily leaves her work when she goes to reside with her husband engaged in temporary work and with no domicile, by what logic can it be said that she leaves involuntarily or her will is destroyed simply because she joins her husband who has a permanent domicile. It appears to us that a separation in one case involves just as much exercise of the will as a separation in the other case. The clear weight of legal authority is that such a separation is voluntary.

I am of the opinion, therefore, that your question should be answered as follows: a married woman who follows her husband to a new place of residence, or a new domicile, where he has secured work and such place is too far removed for the woman to continue her work, it should be considered by the Commission, upon proper findings of fact, that such a married woman voluntarily separated from her employment without good cause attributable to the employer. This opinion is based upon the facts stated in the letter in question; and while we decide in this opinion that such a separation is voluntary, we do not mean that there may not arise cases wherein, although the separation of such a married woman is voluntary, nevertheless, there would be good cause attributable to the employer under specific circumstances as found by the Commission. In other words, we are merely giving our opinion upon the question of whether such a separation is voluntary or involuntary.

Adopted as an official Interpretation by the Commission on December 10, 1946.

(Replaces Page 5 of Interpretation No. 69, dated December 3, 1946.)