

IN THE UTAH COURT OF APPEALS

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Hughes General Contractors,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Petitioner,	)	
	)	Case No. 20080404-CA
v.	)	
	)	
Workforce Appeals Board,	)	F I L E D
Department of Workforce	)	(January 15, 2009)
Services; and Scooter M.	)	
Hammer,	)	2009 UT App 12
	)	
Respondents.	)	

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Original Proceeding in this Court

Attorneys: Kevin R. Watkins, North Salt Lake, for Petitioner  
            Suzan Pixton, Salt Lake City, for Respondent  
            Workforce Appeals Board

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Before Judges Greenwood, Davis, and McHugh.

PER CURIAM:

Petitioner Hughes General Contractors (Employer) seeks judicial review of a decision of the Workforce Appeals Board (the Board) concluding that the claimant Scooter M. Hammer (Hammer) was terminated without just cause and was eligible for benefits. We reverse an administrative agency's findings of fact "only if the findings are not supported by substantial evidence." Drake v. Industrial Comm'n, 939 P.2d 177, 181 (Utah 1997). We will not disturb the Board's conclusion regarding the application of law to facts unless it "exceeds the bounds of reasonableness and rationality." Nelson v. Department of Employment Sec., 801 P.2d 158, 161 (Utah Ct. App. 1990).

On December 20, 2007, Hammer gave Employer two weeks notice of his intent to quit his employment. On December 21, Hammer's supervisor informed Hammer that it considered his resignation to be effective immediately. Employer did not pay Hammer for the two-week notice period. Hammer filed a claim and was awarded unemployment compensation benefits.

An Administrative Law Judge (ALJ) concluded that Hammer was terminated without just cause and therefore entitled to benefits because Employer did not allow Hammer to work through his two-week notice period or pay him through the notice period and that departmental rules did not allow an employer to cure a discharge by paying a claimant through the two-week period after the claimant filed a claim for benefits. The ALJ cited rule 994-405-204, which states, in relevant part that "[i]f a claimant notifies the employer of an intent to leave work on a definite date, and the employer ends the employment relationship prior to that date, the separation is a discharge unless the claimant is paid through the resignation date." Utah Admin. Code R994-405-204.

The Workforce Appeals Board agreed, citing Rule 994-405-106(6)(b), which states, in relevant part:

If the claimant submitted a resignation to be effective at a definite future date, but was relieved of work responsibilities and was not paid regular wages through the balance of the notice period, the separation is considered a discharge as the employer was the moving party in determining the final date of employment.

Utah Admin. Code R994-405-106(6)(b). The Board also concluded that the decision in West Jordan v. Morrison, 656 P.2d 445 (Utah 1982), was controlling. The Board concluded that Employer determined when Hammer's employment was to end and thereby discharged him without just cause.

The focus of Employer's petition for review is the Board's determination that Employer could not cure the discharge by paying Hammer for the two week notice period and thereby avoid responsibility for unemployment benefits. Despite the Board's extensive reliance upon Morrison, Employer does not attempt to distinguish that case. In Morrison, an employee gave West Jordan a two-week notice of his intention to quit, contemplating a last day of December 10. West Jordan immediately accepted the resignation effective as of the date of the November 26 letter and did not allow the employee to work through the two-week notice period. West Jordan asserted that because Morrison would have left work voluntarily in two weeks, his eligibility for benefits should not be impacted by West Jordan's decision to make the resignation effective immediately. The Utah Supreme Court, relied upon statutory language providing that a claimant is eligible for benefits "'[f]or the week in which the claimant left work voluntarily without good cause . . . and for each week thereafter.'" Id. at 446 (quoting Utah Code Ann. § 35-4-5(a)

(Supp. 1981) (current version as amended at Utah Code Ann. § 35A-4-405(1)(a)(Supp. 2008)). The supreme court reasoned that "the statute directs our attention to the week in which the claimant left work--not the week that he might have left work, or offered to leave work, but the week in which the claimant actually left work." Id. at 446. Accordingly, the supreme court held that "the claimant left work the week of November 26 . . . and that his leaving that week was not voluntary." Id. The supreme court also reviewed former rule 135.4 of the Industrial Commission's General Rules of Adjudication stating that "[w]hen a worker submits his/her resignation to be effective at some definite future date, but is discharged prior thereto, the leaving is usually not considered voluntary." Id. at 447. The supreme court concluded that rule 135-4 "appears to comport with the plain meaning of [section] 35-4-5 as we have interpreted it." Id.

Utah Code section 35A-4-405 contains the same statutory language the Utah Supreme Court construed in Morrison as requiring eligibility to be determined based upon the facts as they exist at the time a claimant left work. Compare Utah Code Ann. § 35A-4-405(1)(a) with Utah Code Ann. § 35-4-5(a). Similarly, the current agency rules are consistent with the statutory provisions. The Board's determination that Hammer was eligible for benefits is supported by section 35A-4-405 and Morrison, and the determination is therefore reasonable and rational.

Employer argues that the Board erred in concluding that it could not cure the discharge by paying Hammer for the two-week notice period after the fact. The supreme court rejected an analogous claim in Morrison, where the employer argued that awarding benefits to one who intended to leave work voluntarily was not a result intended by the legislature and "at most, the claimant should receive benefits for just the two-week period he was employed before the effective date of his resignation." Morrison, 656 P.2d at 447. Although acknowledging that the award seemed "disproportionate to the amount of time during which the claimant was involuntarily unemployed," the court supreme concluded that "the language of the statute is unambiguous: the week in which the claimant actually leaves work is the determinative factor regarding subsequent eligibility." Id.

Employer argues that rule 994-405-204 is contrary to the stated purposes of the Utah Employment Security Act because it benefits those who voluntarily choose to leave their employment. "[R]ules promulgated by an agency are entitled to deference where they are made pursuant to legislatively delegated authority and are not contrary to the provisions of the statute." Id. Rule 994-405-204 is substantially similar to the rule reviewed in

Morrison and is consistent with the statutory provisions. Furthermore, although Employer claims it was instructed by the department representative that it could not cure the discharge until after the department "made its initial decision," the Board determined that any communication from the Employer took place after the initial departmental decision to award benefits, but before an ALJ heard Employer's appeal. The agency record supports this determination.

Because eligibility is determined under Utah Code section 35A-4-405 based upon the date an employee actually left work, the Board's decision is reasonable and rational. Accordingly, we affirm.

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Pamela T. Greenwood,  
Presiding Judge

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James Z. Davis, Judge

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Carolyn B. McHugh, Judge