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UNEMPLOYMENT COMPENSATION

Good decision in unemployment case not a free pass for employer in future litigation

by Michael P. Stafford

When an employee files a wrongful discharge or discrimination suit, it's usually not the first time he has argued in an adjudicatory setting that his termination was unjust. In many cases, he has already filed for unemployment compensation. If the unemployment panel finds that he was properly discharged because of misconduct, the employer might expect that information to be helpful in defending a wrongful discharge lawsuit. Unfortunately, that's generally not the case.

The Third U.S. Circuit Court of Appeals (which covers Delaware) recently held that a former employee isn't always precluded from proceeding with a wrongful discharge claim based on a previous administrative determination that he engaged in "misconduct."

Facts

Joel Gonzalez was employed by Executive Airlines, which is part of American Eagle, as a station agent in St. Croix. On May 28, 1998, he collected money from a passenger for a "ticket change fee" but failed to record the transaction or secure the cash. Gonzalez's omissions were discovered by his employer when the passenger later complained about being charged the change fee a second time. Gonzalez was suspended and ultimately terminated for violating American Eagle's policies and procedures.

Like many terminated employees, Gonzalez filed a claim for

unemployment compensation with the Virgin Islands Employment Security Agency (VIESA). Virgin Islands' law provides that employees who are discharged for misconduct aren't eligible to receive unemployment benefits. Courts in the Virgin Islands have defined "misconduct" under the unemployment law as:

[A]n act of wanton or willful disregard of an employer's interests, a deliberate violation of the employer's rules, a disregard for the standards of behavior which an employer has a right to expect from an employee, or negligence indicating an intentional disregard of the employer's interest or of [the] employee's duties and obligations to the employer.

Applying that standard, the VIESA denied Gonzalez's application for unemployment benefits. Gonzalez appealed the initial denial, and an administrative hearing was conducted before a VIESA administrative law judge (ALJ). The ALJ affirmed the denial of benefits, determining that Gonzalez had engaged in misconduct. Gonzalez didn't seek further review of the ALJ's decision.

Several months later, Gonzalez filed a lawsuit in the U.S. District Court for the District of the Virgin Islands. Among his claims, he alleged that he had been wrongfully discharged in violation of the Virgin Islands Wrongful Discharge Act (WDA). In response, American Eagle argued, in part, that Gonzalez was precluded from filing a claim under the Act based on the ALJ's holding in the unemployment proceeding that he had engaged in misconduct.

The district court found in American Eagle's favor, reasoning that the lawsuit raised the same issue that had already been determined by the ALJ — namely, whether Gonzalez had been discharged for misconduct. Gonzalez appealed to the Third Circuit.

Court's decision

On appeal, the Third Circuit reversed the lower court's decision. First, the appellate court noted that under Virgin Islands law, administrative agency determinations are not automatically given preference in WDA claims. In this case, the question was whether the issue raised in the VIESA administrative proceedings was the same issue presented in the wrongful discharge claim.

Looking at the definition of "misconduct" adopted by the territorial courts and comparing it to the WDA, the court concluded that the proceedings didn't raise identical issues. Specifically, the Third Circuit determined "that there are legal and factual differences between the questions decided in Gonzalez's VIESA proceedings and those presented by his wrongful discharge claims."

In the VIESA proceeding, the ALJ had determined that Gonzalez's

actions constituted misconduct because they were "in strict violation of the Employer's interests and a disregard for standards of expected behavior." In contrast, according to the court, the wrongful discharge claim "presents the factual question of whether his conduct falls within" the specific enumerated reasons for dismissal listed in the statute.

The court continued, noting that misconduct "as defined for purposes of [the unemployment statute] is not included among the permissible grounds for termination under [the WDA]." As a result, the court found that "the ALJ's decision does not resolve which, if any, of the [WDA] grounds might apply to Gonzalez's case." Therefore, the decision by the ALJ in Gonzalez's VIESA proceeding doesn't preclude his wrongful discharge claim. *Gonzalez v. AMR, American Airlines, et al.*, No. 06-5161 (3d Cir., Dec. 11, 2008).

Bottom line

As this case illustrates, employees aren't necessarily precluded from asserting claims of wrongful discharge or even discrimination based on administrative agency decisions in other contexts, such as unemployment proceedings. Instead, courts will focus on the specific requirements of each law to determine whether the precise issue has actually already been adjudicated.

When administrative agencies are concerned, the standards usually vary slightly from a wrongful termination or discrimination claim. In general, employees will get a second bite at the apple in court, even if the administrative agency found they were properly terminated because of misconduct.

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