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Unemployment Insurance--Qualification for Benefits of an Employee Retired Under a Mandatory Retirement Plan

William R. Harris
University of Kentucky

Comments

UNEMPLOYMENT INSURANCE—QUALIFICATION FOR BENEFITS OF AN EMPLOYEE RETIRED UNDER A MANDATORY RETIREMENT PLAN—Claimant began his employment in 1942. He was not represented by a collective bargaining agent although the employees of the company had elected representatives to confer with the employer with respect to work rules, conditions, and policy. In 1960 the employer instituted a policy whereby no employee would be allowed to continue employment after his sixty-fifth birthday. The committeemen elected by the employees acquiesced in the plan which made no provision for pension benefits. In 1963 claimant having reached the mandatory retirement age was retired. Claimant's eligibility to receive unemployment insurance benefits was challenged by the Kentucky Unemployment Insurance Commission which ruled that claimant was disqualified from receiving unemployment benefits for the duration of his unemployment. The Commission's ruling was based on *Ky. Rev. Stat. 341.370* [hereinafter cited as KRS], which provided in pertinent part that (2) A worker shall be disqualified from receiving benefits . . . for the duration of any period of unemployment with respect to which: . . . (c) He has left his most recent suitable work voluntarily without good cause. On appeal by claimant the Commission's order was reversed by the Jefferson Circuit Court, which was appealed to the Kentucky Court of Appeals. *Held*: Affirmed. On these facts the claimant was not disqualified by KRS 341.370 from receiving unemployment benefits. *Kentucky Unemployment Insurance Commission v. Young*, 389 S.W.2d 451 (Ky. 1965).

It is a settled principle of law that an employee who becomes unemployed, or a claimant who remains unemployed, through a voluntary act is not entitled to receive unemployment compensation.[1] Application of this principle, however, has proved difficult in cases concerning claimants unemployed through the operation of mandatory retirement plans. The Kentucky Court of Appeals has faced this issue on two previous occasions, but on different factual situations. In *Kentucky Unemployment Insurance Commission v. Kroehler Mfg. Co.*[2] the claimants had become unemployed by oper-

[1] 81 C.J.S. *Social Security and Public Welfare* § 164 (1953); 48 Am. Jur. *Social Security, Unemployment Insurance, Etc.* § 35 (1943).

[2] 352 S.W.2d 212 (Ky. 1961).

ation of mandatory retirement plans which had been embraced in their collective bargaining agreements, but in that case the employees had participated in the plan by their individual requests with no compulsion upon them to join. Furthermore, the employees were permitted to withdraw from the program prior to retirement age with an accompanying withdrawal of his contributions to the pension funds. The Court held that these claimants had voluntarily become unemployed, stating by way of dictum that:

> The purpose of the General Assembly in the enactment of such legislation was to provide benefits for only those employees who have been forced to leave their employment because of forces beyond their control and not because of any voluntary act of their own.[3]

In *Kentucky Unemployment Insurance Commission v. Reynolds Metals Company*[4] the court followed the same line of reasoning in holding that a claimant who was unemployed by operation of the retirement plan embodied in his union's collective bargaining agreement had voluntarily abandoned his employment and was disqualified to receive unemployment benefits by KRS 341.370(2)(c). In applying the rule of *Kroehler*,[5] the court pointed out that in both cases the claimants had voluntarily accepted plans which provided for the termination of their employment.

Thus on the eve of the decision in *Young*[6] it was established that an employee who became unemployed by a retirement plan which he had accepted either personally or through his collective bargaining agent had voluntarily become unemployed within the meaning of KRS 341.370(2)(c). This is the position taken by half of the courts which have decided the issue,[7] and would seem logically to be the most sound.

In its opinion in *Young*[8] the court again applied the statutory standard of voluntariness. In the court's own words "[T]he important

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[3] *Id.* at 214.
[4] 360 S.W.2d 746 (Ky. 1962).
[5] 352 S.W.2d 212 (Ky. 1961).
[6] 389 S.W.2d 451 (Ky. 1965).
[7] The following courts have reached essentially the same conclusions as the Kentucky court: Lamont v. Director of Division of Employment Security, 337 Mass. 328, 149 N.E.2d 372 (1958); Bergseth v. Zinsmaster Baking Co., 252 Minn. 63, 89 N.W.2d 172 (1958); Ferrill v. Leach, 89 Ohio L. Abs. 545, 186 N.E.2d 868 (1962). Courts holding *contra*, usually on the ground that stated statutory policy prohibits waiver of rights to compensation are: Reynolds Metals Co. v. Thorne, 272 Ala. 709, 133 So. 2d 713 (1961); Employment Security Commissioner v. Magma Copper Co., 90 Ariz. 104, 366 P.2d 84 (1961); Campbell Soup Co. v. Board of Review, Division of Employment Security, 13 N.J. 431, 100 A.2d 287 (1953); Warner Co. v. Unemployment Compensation Board, 396 Pa. 545, 153 A.2d 906 (1959). See generally Annot., 90 A.L.R.2d 835 (1963).
[8] 389 S.W.2d 451 (Ky. 1965).

and controlling question . . . is, was his employment discontinued voluntarily by [claimant] . . . or his authorized agent?" Despite this emphasis on the test of voluntariness, the court refused to hold claimant disqualified. This interjects new elements into the test of qualification. First, the court by distinguishing the *Reynolds*[9] case has made it known that before an employee's voluntary acceptance of a plan through collective acquiescence will be construed as his own acceptance, the employee must be represented by at least a truly representative employees' association. Further adjudication must be had before the bench and bar will know the full extent of this requirement. Second, the court alluded to the fact that there was no pension provided for by the retirement plan. While it is probable that the court mentioned the absence of a pension as a factor militating against a conclusion of voluntary acceptance of the plan by claimant, it might well prove that the absence of benefits under a retirement plan will become prima facie evidence of involuntary unemployment by the retired employee. It is interesting to note that a majority of the courts which have considered the issue have ruled that a retired employee receiving pension benefits is not at the same time eligible for unemployment benefits.[10]

The present law in Kentucky on the issue of a mandatorily retired employee's qualification under KRS 341.370(2)(c) is a combination of *Reynolds, Kroehler,* and *Young.* It is submitted that while the court correctly decided the issue before it in the *Young* case, the loose language concerning the claimant's representation by the committeemen and the absence of a pension plan has cast doubt upon the heretofore established test of voluntariness. Any future litigation to resolve the doubt could have been avoided by a closer compliance with the previously established test.

William R. Harris

CONSTITUTIONAL LAW—CONNECTICUT STATUTE FORBIDDING THE USE OF ANY DRUG, MEDICINAL ARTICLE OR INSTRUMENT FOR THE PURPOSE OF PREVENTING CONCEPTION STRUCK DOWN.—Appellants Griswold and Buxton, the Executive Director of the Planned Parenthood League of Connecticut and the League's Medical Director respectively, were arrested as accessories for giving information and advice to married persons and for prescribing the best contraceptive device or ma-

[9] 360 S.W.2d 746 (Ky. 1962).
[10] Annot., 32 A.L.R.2d 901 (1953).