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Unemployment Compensation--Leaving Employment Voluntarily Without Cause--"Involving Fault on the Part of the Employer"

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merger of giant industries continues, while this decision only points the way to further monopolization of the oil industry. The implication is that the Anti-Trust Division might do greater service to the cause of free competition by using its facilities in an adequate prosecution of the mergers than by picking out technical violations of the anti-trust laws where the effect of the injunction can be legally nullified. More fundamentally the doubt persists from the course of recent prosecution policy whether the Anti-Trust Division as presently constituted has demonstrated its fitness as the agency for developing the program of combating monopoly and preserving competition.

T. W. C.

UNEMPLOYMENT COMPENSATION—LEAVING EMPLOYMENT VOLUNTARILY WITHOUT CAUSE—"INVOLVING FAULT ON THE PART OF THE EMPLOYER."—The claimant terminated her last employment because her physician advised that she might develop tuberculosis by reason of the dust condition in her working place. She made no allegation that her employer was at fault in connection with the circumstances which caused her to cease work. Her claim for unemployment benefits was denied by the Board of Review, whose decision was appealed and affirmed by the circuit court. *Held,* on appeal, that a person voluntarily leaving employment because of fear of illness, or any cause not involving fault on the part of the employer, is not entitled to unemployment benefits. *State v. Hix,* 54 S. E.2d 198 (W. Va. 1949).

Unemployment compensation provisions were first enacted in West Virginia in 1936. W. Va. Acts 2d Ex. Sess. 1936, c. 1; *cf. id.* S. Con. Res. 4. The purpose, as stated by the legislature is "to provide reasonable and effective means for the promotion of social and economic security by reducing as far as practicable the hazards of employment. In the furtherance of this objective, the legislature establishes a compulsory system of unemployment reserves in order to... (2) Guard against the menace to health, morals, and welfare arising from unemployment." W. VA. CODE c. 21A, art. 1, §1 (Michie, 1943). Under accepted practice in the construction of statutes, *cf. Sale v. Board of Education,* 119 W. Va. 193, 192 S. E. 173 (1937); 3 SUTHERLAND, STATUTORY CONSTRUCTION §5902 (3d ed. 1943); *but cf. Slack v. Jacob,* 8 W. Va. 612 (1875), it is in the light

of the declared legislative purpose that the disqualification section, under which the claimant was denied benefits and which reads, "Upon the determination of the facts by the director an individual shall be disqualified for benefits: (1) for the week in which he *left his most recent work voluntarily without good cause involving fault on the part of the employer . . .*" W. Va. CODE c. 21A, art. 6, §4 (1) (Michie, 1943) (italics supplied) is to be applied.

Such a disqualification provision can be divided into two parts: (1) that he left work voluntarily; and (2) that he left work without good cause involving fault on the part of the employer. *Cf. Moulton v. Iowa Employment Security Comm'n,* 239 Iowa 1161, 34 N. W.2d 211 (1948); Kempfer, *Disqualification for Voluntary Leaving and Misconduct,* 55 YALE L. J. 147, 154 (1945). The court in the principal case defined "voluntary" as "a free exercise of the will." See 54 S. E.2d at 201. An alternative and better view is that the mere fact that a worker wills to leave his job does not necessarily mean voluntary leaving. Extraneous factors must be taken into account. *Craig v. Bureau of Unemployment Compensation,* 83 Ohio App. 247, 83 N. E.2d 628 (1948). To quit because of illness is compulsory and not voluntary. *Fannon v. Federal Cartridge Corp.,* 219 Minn. 306, 18 N. W.2d 248 (1945); *Hoffstot v. Unemployment Compensation Board of Review,* 164 Pa. Super. 43, 63 A.2d 355 (1945).

When section 4 (1) was amended by adding "involving fault on the part of the employer", compare W. Va. Acts 2d Ex. Sess. 1936, c. 1, art. 6, §4 (1) with W. Va. Acts 1943, c. 76, art. 6, §4 (1), the legislative purpose was to protect the unemployment trust fund more adequately. See Loeb, *Recent Amendments to the West Virginia Unemployment Compensation Law,* 49 W. VA. L. Q. 122, 127 (1943). The court has carried this purpose so far that leaving employment because of unsuitable working conditions gives no justification unless, in maintaining such conditions, the employer has used deceit or other wrongful conduct. *Amherst Coal Co. v. Hix,* 128 W. Va. 119, 35 S. E.2d 733 (1945). The view in the *Amherst Coal* case and in the principal case requiring actual wrongs on the part of the employer for the employee quitting work to draw benefit is rested on the mandate of the legislature. This legislation is a piece-meal change from the theory and purpose of unemployment compensation legislation to alleviate the suffering of those involuntarily unemployed. It

would seem that now the court must look only to the fault of the employer. The employer may actually be no more at fault than where consumers quit buying his products, forcing him to cut back labor costs where nevertheless the employee is allowed to recover benefits. See, Simrell, *Employer Fault vs. General Welfare as a Basis of Unemployment Compensation,* 55 YALE L. J. 181 (1945). This type of legislation compels the worker to serve under the penalty of forfeiting certain benefits granted to all workers by law. The employer can virtually say "This job is inconvenient. Your own domestic situation, or your health or other good causes counsel that you should abandon this job, but if you do, you will be deprived of the benefits which now under the law go to all workers who are without fault unemployed." *Montgomery Ward & Co. v. Board of Review,* (Ill. C. C. Cook County, 1941 [quoted 55 YALE L. J. 158 (1945)]).

Another seeming inconsistency is that if a worker quits to preserve his health he is denied benefits. However, if unemployed, he may refuse to accept unsuitable work and still retain benefits. "In determining whether work is suitable for an individual, the director shall consider: (1) the degree of risk involved to the individual's health, safety, and morals." W. VA. CODE c. 21A, art. 6, §5 (Michie, 1943). There is no reason why a worker should be allowed benefits if he refuses to accept work which will endanger his health when he is forced to suffer disqualification penalties when he quits work to preserve his health. *Fannon v. Federal Cartridge Co., supra.*

J. R. H.

WILLS—TIME FOR CONTEST—ADMISSION TO PROBATE OF NON-TESTAMENTARY INSTRUMENT.—Decedent died in Monongalia County, leaving an *unwitnessed,* typewritten testamentary paper signed by him, naming his wife as sole beneficiary. In an *ex parte* proceeding, the county clerk of that county admitted this paper to probate on December 27, 1944, and an order confirming probate was entered on December 28, 1944. W. VA. CODE c. 41, art. 5, §11 (Michie, 1943) provides that, "After a judgment or order entered as aforesaid in a proceeding for probate ex parte, any person interested who was not a party to the proceeding...may proceed by a bill in equity to impeach or establish the will...and if the judgment or order