

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 10,128
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare imposing a 90-day period of disqualification from food stamps because he voluntarily quit a job. The issue is whether the petitioner had "good cause" to quit within the meaning of the pertinent regulations.

FINDINGS OF FACT

In late August the petitioner applied for work at an inn located near a ski resort. The petitioner spoke with the inn's owner, who agreed to hire the petitioner full-time. The petitioner understood that his starting pay was to be \$5.50 an hour, with a raise to \$6.00 once the petitioner completed an unspecified probationary period. At first, the job entailed working half-time in the kitchen, and the rest of the time doing odd jobs. When the inn got busier later that fall, the petitioner was expected to work full-time in the kitchen. The owner was impressed with the petitioner, and expected that he could be trained as a prep cook.

The owner testified that he "thinks" he offered the petitioner only \$5.00 an hour to start, since this was the wage the inn was paying to other employees with

responsibilities similar to those of the petitioner. He agreed, however, that he hoped to pay the petitioner \$6.00 an hour once the petitioner undertook the duties of a prep-cook trainee full-time. Following his hiring of the petitioner, the owner wrote down a starting wage of \$5.00 an hour. Nothing in writing was given to the petitioner.

The petitioner received his first paycheck about a week and a half later--on a Monday night. At that time he discovered that he was only being paid \$5.00 an hour. He spoke to the head chef, who told him he would have to take it up with the owner. On Thursday evening, the petitioner confronted the owner about the discrepancy in his starting wage.¹ Although the petitioner was adamant, the owner told the petitioner he wanted to discuss the matter with the head chef before making a decision, and that he would talk to the petitioner the next night. There were other employees present within earshot, and the owner also wanted to discuss the matter privately (although he did not voice this concern to the petitioner).²

The petitioner, who had been told by the head chef that it was the owner's decision, assumed that he was getting the "runaround". Shortly after he spoke with the owner, he left the job, never to return.

At the hearing, the owner testified that he was surprised by the petitioner's quitting because he was sure he could have "worked something out" with the petitioner.

From conversations and correspondence with the Department, and from his testimony at the hearing, it is clear that the petitioner had, and still has, a rigid pre-conception that he will be mistreated by any and all employers. The owner's testimony as to the conversation he had with the petitioner the night the petitioner left was credible and essentially uncontroverted by the petitioner. Although the petitioner "assumed" that the owner would not give him the salary he thought he had coming, there is no credible evidence that this was, in fact, the case. The owner seemed sincere in his impressions that the petitioner was a good employee and in that, if given a reasonable chance, he could have and would have reached an agreement with the petitioner concerning his wages.

The owner, either on the night the petitioner quit or at the hearing, did not directly dispute the petitioner's assertion that the starting wage was to be \$5.50 an hour. Based on the owner's testimony and demeanor, however, it cannot be found that the owner intentionally misled the petitioner. Thus, it cannot be concluded that it was unreasonable for the owner, when confronted with what was, at worst, a mistake on his part in not paying the petitioner \$5.50 an hour, to ask to speak with the petitioner's immediate supervisor and to confer with the petitioner in private before acceding to the petitioner's claim. Moreover, it cannot be found that the petitioner had any reasonable basis to assume or conclude that the

owner would not make good on what the petitioner understood to be the original agreement.

At the hearing, the petitioner introduced evidence that his transportation costs to and from the job, which was located 23 miles from his home, were inordinately high (mostly because of necessary repairs to his car). He maintains that \$5.00 an hour was not a "suitable" wage given his circumstances. He concedes, however, that \$5.50 was suitable. Inasmuch as it cannot be found that the petitioner, if he did not quit, would not have been earning at least \$5.50, the evidence regarding the petitioner's expenses should be considered irrelevant.

RECOMMENDATION

The Department's decision is affirmed.

REASONS

Food Stamp Manual § 273.7(n) provides, in pertinent part:

No household whose head of household voluntarily quits his or her most recent job without good cause shall be eligible for participation in the program as specified below . . .

. . .

v. Upon a determination that the head of household voluntarily quit employment, the State agency shall determine if the voluntary quit was with good cause as defined in § 273.7(n) (3).

. . . In the case of participating households (if the voluntary quit was without good cause), benefits shall be terminated for a period of 90 days . . .

F.S.M. § 273.7(n) (3) includes the following:

Good cause for leaving employment includes the good

cause provisions found in § 273.7(m), and resigning a job that does not meet the suitability criteria specified in § 273.7(i). Good cause for leaving employment shall also include:

- (ii) Work demands or conditions that render continued employment unreasonable, such as working without being paid on schedule . . .

As noted above, the petitioner does not allege that the job at the inn was "unsuitable" (under 273.7(i)) if the wage was \$5.50 an hour, or that any of the provisions of "good cause" (under § 273.7(m)) would apply under those circumstances.³ The case turns on whether the owner of the inn, at any time, intentionally "breached" an agreement to pay the petitioner \$5.50 an hour. (If he did, good cause for quitting would exist under § 273.7(n)(3)(ii), supra, regardless of the petitioner's expenses and transportation problems.)

Unfortunately for the petitioner, however, it cannot be found that any breach, if one occurred, was anything other than a mistake. Upon learning that there was a misunderstanding between him and the petitioner regarding the petitioner's starting wage, the owner asked the petitioner to wait until he spoke with the petitioner's supervisor. To prevail in this matter the petitioner would have had to establish that it was reasonable for him "assume" that such a wait would be unavailing or that the owner, as a matter of law, was obligated to immediately accede to the petitioner's claims as soon as the petitioner confronted him. Neither the facts nor the law support

either conclusion.

The hearing officer has no basis to even speculate whether the petitioner's preconceptions regarding employers are understandable in terms of his past experiences. However, the actions of this or any employer cannot be bound by or considered in view of the petitioner's preconceptions. The evidence in this matter clearly indicates that this employer was impressed with the petitioner's work and wished to keep him as an employee; and, more importantly, would have made a sincere attempt to settle the misunderstanding regarding the petitioner's wages. The petitioner, acting rashly, did not give the employer a reasonable opportunity to do this. Thus, it cannot be concluded that the petitioner had "good cause" within the meaning of the above regulations to voluntarily quit the job in question.⁴ The Department's decision should, therefore, be affirmed.

FOOTNOTES

¹It is not clear why the petitioner waited 3 days after receiving his check to confront the owner about his rate of pay.

²The owner testified (credibly) that since other employees were being paid less than \$5.00, it would have been impolitic to immediately accede to the petitioner's claim in their presence.

³Section 273.7(i)(2)(iv) provides that a job is "unsuitable" if, "the distance from the (petitioner's) home to the place of employment is unreasonable considering the expected wage and the time and cost of commuting." Section 273.7(m) includes the "unavailability of transportation" as

"good cause" not to accept a job. The facts of this matter do not establish that the petitioner "refused to accept" a job paying \$5.00 an hour.

⁴Rushlow v. D.E.T., 144 Vt. 328 (1984); Cook v. D.E.T., 143 Vt. 497 (1983). Compare, Burke v. D.E.T., 141 Vt. 582 (1982); Shorey v. D.E.S., 135 Vt. 414 (1977).

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