

Summary of SC93361, *Melissa Coday v. Division of Employment Security*

Appeal from the labor and industrial relations commission

Argued and submitted October 8, 2013; opinion issued February 25, 2014

Attorneys: Coday was represented by Martin L. Perron and Maria V. Perron of The Perron Law Firm PC in St. Louis, (314) 993-4261; and the division was represented by Bart A. Matanic of the division in Jefferson City, (573) 522-9972.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A woman appeals the determinations that she was overpaid unemployment benefits and that she owes penalties for the overpayments. In a unanimous decision written by Judge Paul C. Wilson, the Supreme Court of Missouri – finding no error except in the calculation of the penalty for the second period of overpayments – vacates the commission’s decision and remands (sends back) the case with instructions for calculating the second penalty properly. Competent and substantial evidence supports the commission’s: determinations that the woman intentionally misreported to the division of employment security and willfully failed to disclose earnings and other facts material to her claims; determinations that she was overpaid benefits and that she owed penalties; and that her earnings were attributable throughout the period of her employment. The woman’s willful misrepresentations warranted fraud penalties under the statute, although the penalty for the second period should have been 25 percent rather than 100 percent because, before the fraud in the second period occurred, there was no prior fraud established for purposes of enhancing the penalty.

Facts: Melissa Coday worked at Sullivan Private Label Company for 20 years before the financial crisis in 2008 threatened her compensation and job security. In anticipation of a reduced salary, Coday began working part-time for Design Design in July 2008. She continued working there after she was laid off from Sullivan in May 2009 and until she again obtained full-time employment in March 2010. On average, she worked for Design Design 10 to 15 hours per week, receiving orders from retail customers and earning wages based on a percentage of the orders from customers in her area, regardless of whether she assisted the customer. She was not paid until the order had been shipped and the customer had paid for it in full, which sometimes could take several months. Despite this work, Coday filed weekly claims for unemployment benefits from May 2009 to March 2010, answering “no” to the question about whether she did any work that week. As such, she was not prompted for – and did not provide – her earnings information. Following a routine audit, the division of employment security determined that Coday willfully failed to disclose earnings and other facts material to her claims in each of two time periods that resulted in her being overpaid benefits and assessed a penalty for each period. Finally, the division determined that Coday had been overpaid benefits for her “waiting week,” the final week for which she was paid benefits. She ultimately sought review from the labor and industrial relations commission, which upheld the division’s determinations. Coday appeals.

VACATED AND REMANDED.

Court en banc holds: (1) The commission’s decision that Coday intentionally misreported to the division and willfully failed to disclose earnings and other facts material to her claims was

supported by competent and substantial evidence. Under section 288.380, RSMo Supp. 2013, “willfulness” requires only that a person intend the consequences of her act or acts with a wrongful purpose and suggests only that an action be voluntary or intentional, rather than inadvertent or accidental. Coday intended to and did obtain unemployment benefits by voluntarily, consciously or intentionally failing to disclose her work for and earnings from Design Design. For 49 straight weeks, she told the division she was not working and, therefore, never reported her earnings. But she knew that she was working, that her statement to the contrary was wrong and misleading, and that her untrue answers regarding work and earnings would protect her eligibility for benefits. Coday’s actions were willful under any definition.

(2) The determinations that Coday had been overpaid benefits for her waiting week and for October 2009 to March 2010, as well as the determination that she owed a penalty for this latter overpayment, were within the division’s authority and were supported by competent and substantial evidence. These written determinations, though made in 2011, clearly and repeatedly indicate they were made pursuant to section 288.380, for which there is no one-year time limit; as such, they were not subject to the one-year limitation of section 288.070.5, RSMo Supp. 2013.

(3) The calculation of Coday’s overpayments by pro rating Coday’s earnings was supported by competent and substantial evidence. Under the unemployment compensation law, the burden of proof to establish a claimant’s right to benefits rests on the claimant and never shifts. Because Coday did not keep records of her work for Design Design, there is no evidence of how much she may have worked each week for which she was paid benefits or for which weeks her monthly compensation was paid. There is undisputed evidence, however, that she worked for Design Design throughout the period for which she claimed benefits and, when asked, she admitted she worked an average of 10 to 15 hours per week. Accordingly, the evidence supports the commission’s decision to allocate each month’s paycheck to each of the weeks in the preceding month. The only distinction between Coday and what a division witness described as “maybe hundreds of people” in “the exact same situation” is that Coday did not keep records of her hours, sales or earnings and failed to report any work or earnings. As such, competent and substantial evidence supports the commission’s decision affirming the division’s method of prorating Coday’s wages for each of the weeks she worked. Any imprecision or inaccuracy in that method was the fault of Coday, not the division.

(4) Coday’s willful misrepresentations, as discussed in Paragraph 1, warranted fraud penalties. Section 288.380.9(1), RSMo Supp. 2013, provides that, on discovery of facts indicating fraud by an applicant for benefits, the deputy shall assess a penalty equal to 25 percent of the amount fraudulently obtained. As such, the 25-percent penalty for the first period of overpayment was authorized by statute. The statute further provides that, if the individual has a prior established overpayment due to fraud, the deputy shall assess a penalty equal to 100 percent of the current amount fraudulently obtained. Neither the division nor the commission offered any explanation for treating Coday’s series of fraudulent claims as two distinct violations so that the overpayment for the first period could be used to increase the penalty for the second period to 100 percent. All of Coday’s fraudulent activity took place before any overpayment or penalty was assessed. As such, the division exceeded its authority by splitting the claims arbitrarily into two periods and using the first to justify a 100-percent penalty for the second. Accordingly, the case is remanded with instructions that the second penalty be assessed at a rate of 25 percent, not 100 percent.