

SAMPLE RESPONSE

FOR THE

SAMPLE 90-MINUTE

PERFORMANCE TEST

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May 2018.**

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CAPTION

TO: Susan Mont
FROM: Applicant
SUBJECT: Conrad Haynes Case

INTRODUCTION

This firm represents Conrad Haynes (Mr. Haynes). This appeal is made to the administrative law judge ("ALJ") in the Office of Administrative Appeals. Mr. Haynes appeals of the denial of claim for unemployment compensation. His former employer, the National Bank of Columbia ("NBC"), argues that he should not receive this benefits because his termination was voluntary. **We argue that his termination was involuntarily made. Alternatively, if it is found that it was voluntary, it was for good cause and thus, he should receive the unemployment benefits.** The reasoning is based on the following arguments.

ARGUMENTS

1. EMPLOYEE'S DECISION TO LEAVE WAS INVOLUNTARILY MADE.

Coercion Was Present.

Although Mr. Hayne's resigned voluntarily, it was due to coercion on the part of the employer. Such coercion is treated as an involuntary termination as argued below.

The statute states: a person who leaves work **involuntarily** or **with good cause** shall be **eligible** for unemployment compensation. Columbia Unemployment Compensation Code ("Code") Sec 110. **Whether an individual leaves with or without good cause** is determined in accordance with the **test**: "What would a **reasonable and prudent person** in the labor market do **in the same circumstances**?" Columbia Association of Accountants, Columbia Supreme Court. Moreover, the entire **benefits section** must be **liberally and broadly construed**. Delgado Col. Supreme Court.

Here,

- Mr. Haynes gave a two week notice resignation letter (although the termination took effect immediately).
- However, we argue that he was coerced by the employer, NCB.
- In the next section, we explore the rule based on coercion.

If Voluntary But Coerced, It is Involuntary.

If the resignation is **voluntarily made but it is coerced**, then it is an **involuntary** resignation. Accountants. Whether the employee's **action was compelled** by the **employer**, rather than based on this own volition, then it must be **determined by all of the circumstances**. Id.

Here,

- Mr. Haynes stated that his departure voluntary.
- As such, it must be determined whether his voluntary departure was coerced.
- This discussion now follows to determine the type of voluntary termination that is present in this matter.

Two Types of Voluntary Terminations.

Situations reflecting termination cases **involving voluntariness fall into two categories**: 1) **Voluntary if it is “shape up or ship out”** ("Shape Up Type") and 2) **Involuntary if it comes closer to “quit or be fired** ("Quit-Fired Type")” Accountants. There are no unemployment benefits if the termination is of the Shape Up type. To the contrary, benefits are available under the Quit-Fired type. Now, it must be determined which type of voluntary termination Mr. Haynes falls under.

Did Mr. Haynes Leave Under the Shape Up Category?

Here,

- Ms. Bennet of the National Bank of Columbia ("NBC"), stated that Mr. Haynes' termination was voluntarily made and gave the following reasoning.
- It was stated that Mr. Haynes was generally dissatisfied with the job because he was not getting the promotion that was initially offered.
- No one forced him to leave NBC.

However, this does not fit into the “shape up or ship” out category. Accountants.

- He was told he performed at levels above his pay grade.
- Mr. Haynes had received a written performance appraisal that was positive.
- He fulfilled the job description of the three levels of tellers (Teller, Senior Teller, and Teller Manager).
- Thus, there was no need for him to shape or ship out.

Thus, the voluntary standards under the Shape Up type are not met.

Did Mr. Haynes Leave Under the Quit-Fired Category?

To the contrary, using these standards, his **termination was involuntarily** made. For this to apply, the **‘quit or be fired’** standards must be made. This standard applies **where there is no evidence that the employer offered the employee any palatable option** other than resignation. Accountants.

Here,

- the facts are similar to Accountants.
- Mr. Haynes was not given any palatable options.
- He was promised a positing that would serve as a “stepping stone” to management.
- He was explicitly given the option that he should quit if he was not happy.
- He was told by management that “It just isn’t going to happen.”

Thus, Mr. Hayne's termination was coerced. Since it was coerced, the ALJ should treat his termination as involuntarily made and the unemployment benefits should be granted. We now turn to the alternative conclusion on the issue of whether good cause was present.

2. MR. HAYNES VOLUNTARILY LEFT BUT FOR GOOD CAUSE.

Alternatively, Mr. Haynes argues that if a finding of voluntary termination is present, that it was made for good cause and that Mr. Haynes is entitled to unemployment benefits. It must next determined whether Mr. Hayne's voluntary decision to leave was based on good cause. First, we discuss the issue of good cause not being present.

Was Good Cause Not Present?

It must now be determined whether Mr. Haynes termination was voluntarily made and if good cause was not present. **Good cause is not present when the circumstances include minor reduction in wages, refusal to obey reasonable employer rules, and general dissatisfaction with work.** Code 311.6. Again, the test is based on what a **reasonable and prudent person** in the labor market do **in the same circumstances?** Accountants,

Here,

- the pay cut after he took the new position was the lowest he had ever been paid. As such, it was not a minor reduction in wages.
- He was classified under the lowest-paid scale while taking on senior and manager teller responsibilities.
- Mr. Haynes expresses job dissatisfaction.
 - However, this was after he was promised a promotion at the newly opened branch.

Thus, a showing of that good cause is not present cannot be established. Next, we discuss whether good cause was present.

Was Good Cause Present Under the Kaplan Elements?

Circumstances that constitute good cause include **failure to provide remuneration for employee services, material change in terms of employments resulting in lower pay.** Code Sec 311.7. *See also* Rodger Kaplan v. Columbia Department of Employment Services, Columbia Supreme Court.

Here,

- Again, Mr. Haynes was paid at a lower salary.
- Transferred to a different branch based on a promise that was never met. He applied and was promised a position as a Customer Service Representative that came with a promotion of \$5,000 more annually.

Thus, good cause was present under the Kaplan elements. It is now also argued that good cause is also present under the Delgado elements.

Was Good Cause Present Under the Delgado Elements?

Good cause is also present under Delgado. Delgado v. Columbia Department of Unemployment Services, Columbia Supreme Court. In order to constitute **good cause, the circumstances that compel the decision must be real, substantial, and reasonable**; there must be some compulsion produced by **extraneous** and necessitous or compelling **circumstances**. Id.

Delgado held that if the employer's existence was in peril, a factor would be met since it was held to reasonable and prudent under the test.

Delgado Factors:

- A finding that severe financial difficulties were present.
- Also, employees had been furloughed,
- His own continued employment was in jeopardy.
- Delgado had also encountered "a lot of resistance" from the Executive Director's support staff.
- This implicitly could mean that Mr. Haynes could be fired since the standard of review is construed liberally and broad.

Here,

- Mr. Haynes was told by the manager that there was attrition.
- Employer had been bought and that new senior management personnel would be in place.

Thus, a showing of good cause is also met under Delgado. As such, the ALJ should grant Mr. Haynes unemployment benefits.

CONCLUSION

For the reasons stated here, Mr. Haynes should be entitled to the unemployment benefits. The decision by the claims examiner at the Department of Unemployed Services should be reversed.