SUMMARY
April 8, 2021

2021COA48

No. 20CA1010, *Catholic Health v. ICAO* — Labor and Industry — Colorado Employment Security Act — Benefit Awards — Non-Volitional Drug or Alcohol Addiction

A division of the court of appeals considers whether an employee terminated because of her nonvolitional drug or alcohol use must comply with section 8-73-108(4)(b)(IV), C.R.S. 2020, of the Colorado Employment Security Act to obtain unemployment compensation benefits. The division concludes that, because subsection (4)(b)(IV) plainly says an employee who loses employment for on-the-job drug use must take certain steps to qualify for unemployment compensation benefits, the requirements in the subsection are mandatory.

Because it's undisputed that the claimant didn't comply with subsection (4)(b)(IV), the division sets aside the Panel's order upholding her award of unemployment benefits.

COLORADO COURT OF APPEALS **2021COA48**

Court of Appeals No. 20CA1010
Industrial Claim Appeals Office of the State of Colorado
DD No. 57868-2019

Catholic Health Initiatives Colorado,

Petitioner,

v.

Industrial Claim Appeals Office of the State of Colorado and Katie Muhs,

Respondents.

ORDER SET ASIDE AND CASE
REMANDED WITH DIRECTIONS

Division IV
Opinion by JUDGE DUNN
Terry and Gomez, JJ., concur

Announced April 8, 2021

Hall, Render, Killian, Health & Lyman, P.C., Mark L. Sabey, Denver, Colorado, for Petitioner

Philip J. Weiser, Attorney General, Emmy A. Langley, Assistant Solicitor General, Denver, Colorado, for Respondent Industrial Claim Appeals Office

No Appearance for Respondent Katie Muhs

¶ 1 Suffering from a fentanyl addiction, claimant, Katie Muhs, stole and self-injected fentanyl while working as a registered nurse for Catholic Health Initiatives Colorado.[1] Once discovered, Catholic Health terminated Ms. Muhs's employment. Ms. Muhs later sought and was awarded unemployment compensation benefits based on a finding that her addiction rendered her fentanyl theft and use nonvolitional, and thus she was not at fault for her unemployment.

¶ 2 Catholic Health challenged the benefit award, arguing Ms. Muhs was not entitled to benefits because — even if her addiction rendered her not at fault for her unemployment — she undisputedly did not comply with section 8-73-108(4)(b)(IV), C.R.S. 2020, of the Colorado Employment Security Act (Act), which explains how an employee terminated because of a no-fault addiction may qualify for a full benefit award.

¶ 3 Unpersuaded, the Industrial Claim Appeals Office (Panel) affirmed Ms. Muhs's benefit award. It agreed that she had not complied with subsection (4)(b)(IV) and was not entitled to

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[1] The fentanyl use and theft occurred at St. Anthony Hospital. Catholic Health is the parent company of Centura Health, which operates the hospital.

unemployment benefits under that subsection. But it concluded that because Ms. Muhs's "use of fentanyl, and the urge to steal it, was outside of her control," she was entitled to benefits under the Act's broad no-fault policy. *See* § 8-73-108(1)(a).

¶ 4 Catholic Health now challenges the Panel's order and again argues that, even if Ms. Muhs's use and theft of fentanyl were outside her control, she still needed to comply with subsection (4)(b)(IV) to obtain unemployment compensation benefits. Since she did not, Catholic Health insists that the Panel got it wrong and that Ms. Muhs does not qualify for unemployment benefits.

¶ 5 We agree with Catholic Health and conclude that subsection (4)(b)(IV) plainly says how an employee who loses employment because of a nonvolitional drug or alcohol addiction may qualify for unemployment compensation benefits. Because it's undisputed that Ms. Muhs didn't comply with that subsection, we have no choice but to set aside the Panel's order upholding her award of unemployment benefits.

I. Background

¶ 6 For several months in 2019, while working as a registered nurse for a Catholic Health hospital, Ms. Muhs stole and self-

injected fentanyl. After a supervisor reported a missing bag of fentanyl from a patient room where Ms. Muhs had been present, Catholic Health questioned Ms. Muhs about the missing fentanyl and asked her to undergo urinalysis testing. The test came back positive for fentanyl. Ms. Muhs then admitted she had been diverting and using fentanyl while working. Catholic Health terminated her employment for multiple violations of company policy, including theft of company property, diverting fentanyl, and reporting to work under the influence.

¶ 7 About a month later, Ms. Muhs submitted a claim for unemployment compensation benefits, stating that she was fired for substance abuse, that she was addicted to fentanyl, and that she had started treatment for acute stress disorder and substance use disorder. A deputy for the Department of Labor and Employment, Division of Unemployment Insurance (Division) awarded Ms. Muhs unemployment compensation benefits under subsection (4)(b)(IV).

¶ 8 Catholic Health appealed the deputy's determination. At the evidentiary hearing, Ms. Muhs testified that she began using fentanyl during work hours to self-medicate her migraine pain. She explained that she had become addicted to fentanyl and had tried to

stop using it but could not. She also explained how she took fentanyl-filled syringes and then, after self-injecting the fentanyl, replaced the missing fentanyl with saline solution.

¶ 9 Although Ms. Muhs testified she had undergone treatment, she did not provide the hearing officer with written substantiation "within four weeks" after admitting her addiction to the Division, as required by subsection (4)(b)(IV). Ms. Muhs did submit, however, an out-of-time treatment program report form that was signed by an authorized representative and showed that she had enrolled in a treatment program.[2]

¶ 10 After the hearing, the hearing officer sua sponte entered an order stating that Ms. Muhs had submitted "insufficient documentation to determine [her] entitlement to benefits" and ordered her to submit the documentation required by subsection (4)(b)(IV). In response, Ms. Muhs submitted a physician's letter

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[2] The Panel doesn't dispute the treatment program report form was untimely, and it doesn't say whether it believes the untimely report otherwise satisfied subsection (4)(b)(IV). Ms. Muhs doesn't appear in this appeal, so her position is unknown. Because no one has raised the issue, we express no opinion on whether the untimely treatment report otherwise satisfied subsection (4)(b)(IV)'s documentation requirements.

stating that she had "a substance use disorder" and that she was "currently participating in a recovery program." She also submitted additional treatment program reports. The hearing officer set a second hearing "to allow the admission" of the supplement. But Ms. Muhs failed to appear at the second hearing, so the hearing officer did not admit the supplement and it's not part of the record.

¶ 11 The hearing officer later issued a written decision. He determined that Ms. Muhs "failed to meet the documentation requirements" of subsection (4)(b)(IV) and thus an award under that subsection was "not available." Still, the hearing officer found that Ms. Muhs had no control over her addiction and that her fentanyl use and theft were nonvolitional. Based on this finding, the hearing officer concluded that Ms. Muhs was not at fault for her termination and awarded her benefits.[3]

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[3] We recognize that the hearing officer's decision stated that benefits were awarded under subsection (4)(b)(IV). But given the hearing officer's express finding that Ms. Muhs didn't comply with that subsection and his recognition that the Act generally provides that an employee who is not at fault for her job separation is entitled to unemployment benefits, we conclude that the hearing officer functionally awarded benefits under section 8-73-108(1)(a), C.R.S. 2020, which contains the Act's no-fault principle.

¶ 12 On review, the Panel agreed with the hearing officer. It rejected Catholic Health's contention that Ms. Muhs's entitlement to benefits depended on her compliance with subsection (4)(b)(IV). It instead noted that an employee "is generally entitled to unemployment benefits if she is unemployed through 'no fault' of her own." Because Ms. Muhs's addiction and the resulting fentanyl use and theft were out of her control, the Panel concluded that she was not at fault for her unemployment and was entitled to unemployment compensation benefits.

II. General Legal Principles

¶ 13 The Act is designed to ease "the burden of unemployment on those who are involuntarily unemployed through no fault of their own." *Mesa Cnty. Pub. Libr. Dist. v. Indus. Claim Appeals Off.*, 2017 CO 78, ¶ 18 (quoting *Colo. Div. of Emp. & Training v. Hewlett*, 777 P.2d 704, 706 (Colo. 1989)); *see* § 8-73-108(1)(a) (setting forth the guiding legislative principle that "unemployment insurance is for the benefit of persons unemployed through no fault of their own"). Under the Act, fault doesn't require culpability; rather, it requires "some volitional act" or that the employee "exercised some control over the circumstances resulting in the discharge from

employment." *Gonzales v. Indus. Comm'n*, 740 P.2d 999, 1003 (Colo. 1987); *Pepsi-Cola Bottling Co. of Denver v. Colo. Div. of Emp. & Training*, 754 P.2d 1382, 1383 (Colo. App. 1988). Beyond this broad no-fault principle, the Act identifies several specific situations under which an employee may qualify for unemployment compensation benefits. *See* § 8-73-108(4)(a)-(y). In determining whether an employee qualifies for a full award, the Division "must" consider the qualifying reasons, "along with any other factors that may be pertinent" to the Division's determination. § 8-73-108(4). None of the qualifying provisions, however, are couched in terms of fault. *See id.*

¶ 14 We review de novo the Panel's legal conclusions, including its statutory interpretations. *See M & A Acquisition Corp. v. Indus. Claims Appeals Off.*, 2019 COA 173, ¶ 11; *see also Mesa Cnty. Pub. Libr.*, ¶ 17. While we sometimes defer to the Panel's interpretation of the Act, we won't defer to an interpretation that is inconsistent with the Act's plain language. *See Safeway Stores 44 Inc. v. Indus. Claim Appeals Off.*, 973 P.2d 677, 680 (Colo. App. 1998); *see also Whitewater Hill, LLC v. Indus. Claim Appeals Off.*, 2015 COA 5, ¶ 19 (rejecting the Panel's interpretation of the Act because it failed to

give effect to all the language in the statute). And we will set aside the Panel's decision if it is legally erroneous. *See* § 8-74-107(6)(d), C.R.S. 2020; *accord Whitewater Hill*, ¶¶ 26-27.

¶ 15 When interpreting a statute, we must determine and give effect to the legislature's intent. *See Destination Maternity v. Burren*, 2020 CO 41, ¶ 22; *Laub v. Indus. Claim Appeals Off.*, 983 P.2d 815, 817 (Colo. App. 1999). To do that, we always start with the statute's language, giving words their plain and ordinary meanings. *See Laub*, 983 P.2d at 817. We also endeavor to give effect to all a statute's provisions and avoid constructions that render any provision meaningless or that lead to an illogical result. *See Mounkes v. Indus. Claim Appeals Off.*, 251 P.3d 485, 487 (Colo. App. 2010). If the language is clear and unambiguous, we look no further. *See Specialty Rests. Corp. v. Nelson*, 231 P.3d 393, 397 (Colo. 2010).

III. Analysis

¶ 16 Catholic Health contends the Panel erred by ignoring subsection (4)(b)(IV)'s requirements and awarding Ms. Muhs unemployment compensation benefits because she was not at fault for her addiction or the resulting fentanyl use and theft. The Panel

counters that even though Ms. Muhs undisputedly did not comply with subsection (4)(b)(IV), that subsection is not exclusive. And because Ms. Muhs was not at fault for her addiction or resulting fentanyl use and theft, she "is entitled to benefits" under the Act's general no-fault provisions.

¶ 17 Subsection (4)(b)(IV) provides as follows:

> The off-the-job or on-the-job use of not medically prescribed intoxicating beverages or controlled substances, . . . *may be reason* for a determination for a full award pursuant to this subsection (4)(b), *but only if*:
>
> (A) The worker has declared to the division that he or she has an alcohol or substance use disorder;
>
> (B) The worker has substantiated the alcohol or substance use disorder by a competent written medical statement issued by a physician licensed to practice medicine . . . or has substantiated the successful completion of, or ongoing participation in, a treatment program as described in subsection (4)(b)(IV)(C) of this section within four weeks after the claimant's admission. The substantiation must be in writing to the division and signed by an authorized representative of the approved treatment program.
>
> (C) A worker who is not affiliated with an approved treatment program must present to the division within four weeks after the date of

> the medical statement referred to in sub-subparagraph (B) of this subparagraph (IV), substantiation of registration in a program of corrective action that will commence within four weeks after the date of the medical statement and that is provided by an approved private treatment facility or an approved public treatment facility . . . or by an alcoholics anonymous program. The substantiation shall be in writing to the division and signed by an authorized representative of the approved treatment program.

§ 8-73-108(4)(b)(IV) (emphases added).

¶ 18 By this plain and unambiguous language, the General Assembly established how a worker who loses employment because of a no-fault addiction "may" qualify for full unemployment benefits. Such a worker may do so, "but only if" the worker declares to the Division that the worker has an alcohol or substance abuse disorder and then, within four weeks of that admission, does one of the following:

(1) submits a written statement signed by an authorized representative of an approved treatment program, substantiating that the worker successfully completed or is participating in an approved program; or

(2) submits a competent written medical statement issued by a physician or physician assistant substantiating the substance use disorder; and within four weeks after the date of this medical statement, the worker must present a signed statement by a representative of a treatment program that the worker is registered in an approved program that will start within four weeks after the date of the medical statement.

See § 8-73-108(4)(b)(IV)(B); *see also Fowler v. Carder*, 849 P.2d 917, 919-20 (Colo. App. 1993) (affirming the Panel's denial of an award of unemployment benefits under subsection (4)(b)(IV) where the worker did not admit his addiction and did not "furnish one of the two required substantiations").

¶ 19 We conclude the unambiguous limiting phrase "but only if" imposes mandatory and specific requirements and deadlines that a no-fault addict must satisfy to qualify for unemployment benefits. *See Fowler*, 849 P.2d at 918-19 (discussing subsection (4)(b)(IV)'s "specific" substantiation requirements). Indeed, it's hard to imagine how the legislature could have more plainly explained what a worker who loses employment because of a no-fault addiction must

do to obtain unemployment benefits. *See* Webster's Third New International Dictionary 1577 (2002) (defining "only" to mean "exclusively" or "solely"); *id.* at 1124 (defining "if" to mean "in the event that" and "so long as").

¶ 20 Perhaps recognizing the strength of the language, the Panel doesn't argue that subsection (4)(b)(IV) is ambiguous or even that it's discretionary. It agrees that to obtain benefits under that subsection, a worker must comply with the documentation requirements and deadlines. Even so, it argues that the subsection is not the exclusive path for an addicted worker to obtain benefits.

¶ 21 To get there, the Panel points to the Act's overarching no-fault policy along with our traditionally liberal interpretation of the Act to further its remedial purposes. *See, e.g.*, § 8-73-108(1)(a) (recognizing broad no-fault principle); *see Mesa Cnty. Pub. Libr.*, ¶ 19 ("We construe the Act liberally" to further its purposes.). We don't disagree with either of these unremarkable principles. But neither do we find them helpful.

¶ 22 After all, it's the General Assembly that determines eligibility for unemployment compensation benefits and standards for qualification or disqualification. *See Gonzales*, 740 P.2d at 1003;

see also Miller v. Indus. Comm'n, 173 Colo. 476, 482, 480 P.2d 565, 568 (1971) (noting that "the grounds upon which compensation may be awarded, the standards of eligibility and disqualification" are within the "sound discretion of the legislature"). That the General Assembly broadly favors awarding no-fault benefits doesn't mean that it can't impose, or hasn't imposed, requirements on how some workers may qualify for unemployment benefits — even if they are without fault for their unemployment. Subsection (4)(b)(IV) is not alone in requiring workers to comply with specific requirements before unemployment benefits may be awarded. *See* § 8-73-108(4)(b)(I) (outlining requirements a worker "must have complied with" to "be entitled to a full award" where a worker or family member's health "has caused the separation"); *see also* § 8-73-108(4)(v) (requiring a worker who separates from employment to care for an ill immediate family member to provide "a competent statement verifying the condition" of the ill family member when requested).

¶ 23 And had the General Assembly intended for workers to receive unemployment benefits after demonstrating a job loss due to a nonvolitional addiction, it would have just said that. Plenty of the

Act's qualifying provisions don't impose any particular documentation requirements or deadlines. *See, e.g.*, § 8-73-108(4)(a) (laid off for lack of work); § 8-73-108(4)(m) (involuntary retirement); § 8-73-108(4)(o) (quitting because of personal harassment). But by imposing specific documentation requirements and deadlines, the General Assembly demonstrated its intent that a worker who is terminated because of a no-fault addiction do something more to qualify for unemployment benefits. Because it did, we don't agree with the Panel that the Act's overall no-fault policy overrides subsection (4)(b)(IV)'s mandatory requirements. *See Jordan v. Safeco Ins. Co. of Am., Inc.*, 2013 COA 47, ¶ 34 (general policy concerns cannot override clear statutory language).

¶ 24 Not only that, but the Panel's interpretation renders subsection (4)(b)(IV) superfluous. If workers can qualify for unemployment benefits by simply establishing they are not at fault for their terminations because of their no-fault addictions, what worker would bother to comply with the documentation requirements and deadlines in subsection (4)(b)(IV)? The Panel doesn't explain how the subsection retains any meaning or effect if

a worker can get benefits by doing nothing more than proving a no-fault addiction. Nor do we see how the Panel's interpretation does anything other than render subsection (4)(b)(IV) superfluous, which neither we nor the Panel may do. *See Keysight Techs., Inc. v. Indus. Claim Appeals Off.*, 2020 COA 29, ¶ 12.

¶ 25 Finally, beyond the general policy underlying the Act, the Panel insists that *M & A Acquisition* not only supports its decision but requires it. We don't read that case the same way. In *M & A Acquisition*, the employer discharged an employee for testing positive for marijuana. At the time he was tested, the employee was on medical leave. A hearing officer awarded the employee unemployment compensation benefits, concluding he was not at fault for his separation. *M & A Acquisition Corp.*, ¶¶ 4-5.

¶ 26 The employer appealed, arguing that the employee was disqualified under three of the Act's disqualifying provisions. The Panel didn't consider the disqualifying provisions advanced by the employer. Instead, the Panel concluded a different disqualifying provision, section 8-73-108(5)(e)(IX.5), was the exclusive disqualifying provision that applied to an employee discharged for "a positive drug test administered pursuant to the employer's drug

policy." *Id.* at ¶ 8. Because the employee did not fall within that disqualifying provision, the Panel concluded he was not at fault for his job separation and was entitled to unemployment benefits. *Id.* at ¶¶ 7-9.

¶ 27 The employer appealed, and a division of this court concluded the Panel erred by not considering the three disqualifying provisions advanced by the employer. *Id.* at ¶¶ 24-26. In doing so, the division observed that "[n]othing in the language" of section 8-73-108(5)(e)(IX.5) "supports the Panel's conclusion" that the provision "should be applied exclusively in certain circumstances." *Id.* at ¶ 13. It also rightly observed that the Panel's interpretation "directly conflicts" with the language in section 8-73-108(5)(e), which states that an employee is disqualified if separated from employment "for any of the following reasons." *Id.* at ¶ 21 (quoting § 8-73-108(5)(e)). But unlike the disqualifying provision at issue in *M & A Acquisition*, subsection (4)(b)(IV) plainly contains mandatory and exclusive language. This critical difference makes the Panel's reliance on *M & A Acquisition* misplaced.

¶ 28 Even so, the Panel points to a couple of other statements in *M & A Acquisition* to support its argument that subsection (4)(b)(IV)

is not the exclusive qualifying provision for workers who lose their jobs because of a no-fault addiction. First, *M & A Acquisition* stated that the Act contemplates that the Division must consider "all potentially applicable qualifying and disqualifying provisions." *Id.* at ¶ 14. As a general proposition, we don't disagree. Where multiple disqualifying or qualifying provisions conceivably apply, then all should be considered. But if a mandatory qualifying provision specifically applies, then the worker must qualify under that provision. In fact, the *M & A Acquisition* division recognized as much, quoting *Mattison v. Industrial Commission*, 33 Colo. App. 203, 206-07, 516 P.2d 1143, 1145 (1973), for the proposition that while some "cases 'fall within two or more provisions of the Act' . . . , if 'the facts of a case are covered specifically by one section of the statute, that provision must be applied.'" *M & A Acquisition*, ¶ 14.

¶ 29 The Panel next points to *M & A Acquisition*'s observation that because the Panel concluded the employee "was not at fault" for his job separation "such a conclusion could, by itself, support an award of benefits." *Id.* at ¶ 25. Again, as a general proposition untethered to any specific qualifying or disqualifying provision, that's correct.

Under the Act, if a worker is not at fault for her job separation and no disqualifying section applies, the worker may be entitled to unemployment benefits. But for the reasons we have already explained, the Act's general no-fault policy doesn't trump a specific provision that imposes mandatory requirements to obtain unemployment benefits. And to the extent *M & A Acquisition* could be read to say otherwise, we don't agree with it.

¶ 30 All this said, we don't doubt Ms. Muhs's addiction or that her fentanyl use and theft were beyond her control. Nor do we doubt that an employee in the throes of addiction may struggle to comply with the documentation requirements and deadlines required by subsection (4)(b)(IV). But it is for the General Assembly to decide how and when a worker who loses employment because of an addiction may qualify for unemployment benefits. *See Gonzales*, 740 P.2d at 1003. It plainly did that when it enacted subsection (4)(b)(IV). *See Mesa Cnty. Pub. Libr.*, ¶ 24. To reach what perhaps is a more palatable result, the Panel disregarded that subsection. Only the General Assembly, however, can change how a worker who loses employment because of a no-fault addiction qualifies for unemployment compensation benefits. *See Dep't of Transp. v. City*

of Idaho Springs, 192 P.3d 490, 494 (Colo. App. 2008) ("If a statute gives rise to undesirable results, the legislature must determine the remedy.").

¶ 31 In sum, it's undisputed that Ms. Muhs was not at fault for her separation because she could not control the addiction that led to her fentanyl use and theft. Thus, Ms. Muhs was entitled to obtain unemployment compensation benefits, "but only if" she complied with subsection (4)(b)(IV). Because she undisputedly did not do so, we conclude the Panel erred by affirming her unemployment benefit award.

IV. Conclusion

¶ 32 We set aside the order and remand to the Panel with directions to return the case to the hearing officer for entry of an order disqualifying Ms. Muhs from unemployment compensation benefits.

JUDGE TERRY and JUDGE GOMEZ concur.