IN THE SUPERIOR COURT FOR THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

MRPC FINANCIAL MANAGEMENT LLC, a Delaware Limited Liability Company,	:	C.A. No. 02A-10-004
Petitioner,	:	
v.	:	
RICHARD CARTER, JR., individually and the UNEMPLOYMENT INSURANCE APPEAL BOARD,	:	
Respondents.	:	

Submitted: April 1, 2003,
Decided: June 20, 2003.

O R D E R

For the reasons set forth in the Opinion attached hereto, the holding of the Unemployment Insurance Appeal Board is **AFFIRMED**.

IT IS SO ORDERED.

_____
Judge Susan C. Del Pesco

Original to Prothonotary
xc: Chad J. Toms, Esquire
Carol Evan Taylor, Esquire
Unemployment Insurance Appeal Board

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Upon petitioners appeal from the decision of the Unemployment Insurance Appeal Board—**AFFIRMED**.

O P I N I O N

Chad J. Toms, Esquire, of Saul Ewing, LLP, Wilmington Delaware, for petitioner MRPC Financial Management LLC; and

Carol Evan Taylor, Esquire, of Wilmington Delaware, for respondent Richard C. Carter, Jr..

Del Pesco J.

This is employer's appeal from a decision of the Unemployment Insurance Appeal Board ("Board"). The Board held that the claimant did not voluntarily terminate his employment; he was constructively discharged. Based upon that factual conclusion, the Board looked to the employer to prove just cause for the discharge. The Board concluded that the employer did not meet that burden. For the reasons stated below, the Board's decision is AFFIRMED.

Factual Background

An extensive record regarding the relationship between the claimant and the employer was developed before the Appeals Referee. That testimony was not repeated at the hearing before the Board, which had the benefit of that record.

MRPC Financial Management, LLC ("MRPC") owns and operates three hotels in Delaware and New Jersey. Mr. Perry Patel and Mrs. Ranjan Patel ("Mr. Patel" and "Mrs. Patel" or "the Patels") husband and wife, own and manage the hotels through MRPC. Respondent, Richard C. Carter, Jr. ("claimant or Carter") was employed as the Vice President of Operations of MRPC.[1] Carter reported directly to the Patels, supervised all hotel managers, and was responsible for sales and marketing of the three hotels operated by MRPC.

[1] Carter had specifically been hired by the Patels due to his previous experience with hotel management and bringing unprofitable hotels into the black.

Carter was employed pursuant to a two year, written contract starting on December 15, 2000, earning $60,000 annually. Prior to his separation from MRPC, he was a full time salaried employee. By all accounts, Carter and the Patels began with a close working relationship. By March, 2002, financial pressures and low occupancy incident to September the 11th, had strained that relationship.

The Country Inn & Suites in Delaware was newly completed and did not yet have a manager. Adding a further strain, that hotel required much of Carter's time on top of his responsibilities as vice president of operations for MRPC. It was generally known that Carter was increasingly unhappy.

Tensions came to a head when on March 5, 2002, Carter dispatched a memorandum to Mr. Patel voicing his displeasure. Carter claimed that daily operations had suffered because management and staff constantly received conflicting orders from him and the Patels. On March 6, 2002, the men met to discuss the problem and temporary solutions. Carter claimed that the many managerial constraints,[2] coupled with the current situation at the Country Inn & Suites contributed to his unhappiness. At that meeting Mr. Patel suggested that Carter consider substantially less responsibility and work as a general manager for

[2] Though not addressed by the Referee or the Board, Mrs. Patel testified that these 'managerial constraints' Carter referenced involved spending, and that Carter was spending too much money.

the new hotel. Neither salary nor a modification of his employment contract were discussed. Carter told Mr. Patel he would think about it.

On March 7, 2002, Carter issued a memorandum to all MRPC hotel managers. In relevant part, it read:

> At my request in a meeting with Mr. & Mrs. Patel, I have asked that all management report to Mr. Patel directly and to myself indirectly for at least the next 90 to 120 days. This will allow real time information and problems to be quickly handled and will allow Mr. Patel full control of the operations until we feel comfortable as a whole and are able to hire a General manager for the Country Inn & Suites. Then at that time, I will be freed up to handle the operations as a whole.
> With that being said, please find below who [sic] is going to handle what:
>
> Mr. Patel, CEO:
> Oversight and direction of MRPC Hotels.
>
> Richard Carter, VP Operations/Sales & Marketing:
> Oversight and direction of all Sales & Marketing for the company.
> General Manager of the Country Inn & Suites…[3]

Mrs. Patel testified that it became necessary for her to oversee all expenditures to keep costs in control.

[3] *See* Ex. 2 to Board Decision, R. 0061-62. Carter testified before the Board that the sole purpose of issuing this memorandum was for employee cohesion. Specifically, he testified:

> [A]s vice president of the company I went to Mr. Patel on the 7th cause [sic] we were having a meeting with the managers that day and I said listen we need to stop this. It's going to hurt our business, the employees are going to get confused, here is my recommendation. I'm still vice president of operations of the company, why don't we just have all decisions as far as, the big thing was the money because we were financially tight after 9/11 within the industry. I said why don't we do this, any decisions that need to be made by general managers rather then [sic] them saying Richard can I do this and I got to go to… [Mr. Patel and ask] can I do this? Why don't we just have real on decision spot [sic] making and directly go to [Mr. Patel] to make the [financial] decision[s]. I'm still overseeing the properties, I'm still in charge of sales and marketing… I had no

Early, Friday morning, March 15, 2002, Mr. Patel summoned Carter to New Jersey for a joint meeting with a Ms. Sawyer, a former manager of a MRPC hotel and subordinate of Carter's. At Mr. Patel's suggestion and to Carter's surprise, Ms. Sawyer asked Carter to undertake management responsibilities of her new food and beverage venture; a venture unaffiliated with, but operating inside MRPC hotel's. Carter demurred, citing a reluctance to expose his family to the serious financial risks associated with any start-up business. He again, reluctantly, told Mr. Patel that he would think about it.

Back at the Country Inn hotel later in the afternoon on March 15, 2002, Carter met with the Patel's. The testimony of the three persons present at that meeting, is as follows:

The claimant:

Richard Carter: [ ]I was then called into his office at 4:30 and sat down in his office with him and Mrs. Patel and he basically said to me, Richard I am demoting you

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choice, I mean I'm responsible for sales and marketing, operations, employees are quitting because they're frustrated because I would make a decision, Mr. Patel would come in and change my decision. So people are confused. So I said, and Mrs. Patel was present at the meeting…

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I said let's just put an end to this and just let Mr. Patel make the financial decision on all purchasing and things of that nature and I said this is what I'm recommending that we type a memo so the employee's don't feel that there is internal conflict within management of the company. And then when the 120 days we would be in our summer months which the occupancies rise and we'll be able, I'll be able to make financial decisions. That's all my intention was.

Transcript R. at 96-7.

[to] a general manager effective, I was vice president of operations at the time. I am demoting you to a general manager effective April 16th and I'm reducing your salary by 20 thousand dollars.

Carol Taylor[4]: Did he give you anything in writing with respect to that offer?

Richard Carter: He went to hand me a piece of paper but I did not accept it. I did not receive it because I said to him I need to think about this over the weekend. I said you're reducing me my position, you're reducing my salary, and I said I, I don't know I have to think about this.[5]

In response, Mr. Patel testified:

Board Member: [ ]I want to ask you a question again. Did you tell him he was no longer vice president and that his salary was going to be reduced by 20 thousand a year?

Mr. Patel: No sir.[6]

Mrs. Patel testified about the same meeting:

Ranjan Patel: No, we discuss it we was offering him because he was very depressed, he was not focusing on his job, he was always spending money, at the time we was very tight with the budget because of the September 11th.

The Chairman: Okay, Mrs. Patel, then that was the offer?

Ranjan Patel: No, we discussed that if you can not handle your duties right now as the vice president of operations if you want to take the position as a GM let's stay friend, you are welcome to work here but then

[4] Claimant's attorney.

[5] Transcript R. at 80-1.

[6] Transcript R. at 88.

we'll reduce the salary if you chose to do that. It was option.[7]

* * * * *

Ranjan Patel: Vice president of operation make 60 thousand dollar, general manager makes 40 thousand dollar.

Board Member: Okay

Ranjan Patel: At the time he was under lot of I don't know anxiety. He was always upset, the money was down and after September 11, yes financially we was tight. . . .. If you don't perform your job right, and if you want o take the job as GM still we like to have you here because it seems like he was looking for a job like month before and two weeks before.[8]

Admitted in evidence was a letter dated March 11, 2002 which states:

This is to certify and verify that Richard C. Carter, Jr. is employed as a General Manager at the Country Inn & Suites-Newark at a yearly salary of $40,000.00 per year."

The letter has lines to indicate acceptances of the terms of the employment, but the lines are blank.

The next two days, March 16 and 17, staff and general managers of the three hotels could not reach Carter when problems arose.

On March 18, 2002, Carter attended his final regional hotel marketing committee meeting in New Jersey, where he resigned his positions. He did not go to work that day. The next morning, March 19, 2002, Mr. Patel called a meeting

[7] Transcript R. at 99.

[8] Transcript R. at 102.

with Carter as soon as Carter arrived for work. The agenda involved discussions with all management personnel regarding problems over the weekend. Carter testified that Mr. Patel told him he was being let go. Mr. Patel stated that he was not letting Carter go, just offering options. Carter resigned that morning.

Procedural History and Findings of the Unemployment Insurance Agency

Carter filed for unemployment benefits beginning the week of March 17, 2002. Upon investigation, a Claims Deputy granted Carter benefits. MRPC appealed. The Appeals Referee, on the basis of an extensive record, reversed the decision of the Claims Deputy stating:

> There is a certain degree of give and take in any employment relationship. An employee must develop a certain degree of tolerance to bear minor deviations in working conditions provided that basic employment rights are not significantly diminished or the deviations do not amount to cruel and harsh working conditions.[9]

Carter appealed. The Board relying on its own fact finding, and the Referee hearing record, reversed. The Board determined that the resolution of this dispute turned on witness credibility,[10] and concluded:

> It appears from the evidence presented that employer was unhappy with [Carter's] work as Vice-President and was trying to find other positions for him. The Board Accepts [Carter's] testimony that the General Manager position offered by his employer involved a very substantial decrease in pay. The Board finds that this "offer" of the General Manager position was really more of an ultimatum to

[9] Referee Decision, R. 0010-15.

[10] Transcript R. at 87-90.

> [Carter], which constituted constructive discharge. The Board finds that [Carter] did not leave his employment voluntarily, but only because of the ultimatum presented him by employer for [his]discharge/demotion... The Board does not find that employer has met its burden of proving claimant engaged in any wilful or wanton behavior….[11]

The Board, citing *Anchor Motor Freight v. UIAB*,[12] held as a matter of law that "[a]n employee who is faced with resignation (or a demotion) induced under pressure may be considered to have been constructively discharged and will be eligible for unemployment compensation provided there was no just cause for discharge."[13]

Standard of Review

The function of this Court on review of an Unemployment Insurance Appeal Board decision is to determine whether the decision is supported by substantial evidence[14] and is free from legal error.[15] Substantial evidence is that which is relevant to a reasonable person, or that which adequately supports a reasonable

[11] Board Decision, R. at 0056.

[12] 325 A.2d 374 (Del. Super. 1974).

[13] Board Decision, R. at 0056.

[14] *See Unemployment Ins. Appeal Bd. v. Duncan*, 337 A.2d 308 (Del. 1975); *see e.g. General Motors Corp. v. Freeman*, 164 A.2d 686, 688 (Del. 1960).

[15] *See Longobardi v. Unemployment Ins. Appeal Bd.*, 293 A.2d 295 (Del. 1972); *see also Boughton v. Div. of Unemployment Ins*., 300 A.2d 25, 26-27 (Del. Super. 1972); *Ridings v. Unemployment Ins. Appeal Bd*., 407 A.2d 238, 239 (Del. Super. 1979).

conclusion.[16] This Court does not weigh the evidence, determine questions of credibility, or make factual findings.[17]

Title 19, section 3315 states that an individual may be disqualified for unemployment benefits:

> (1) For the week in which the individual left work voluntarily without good cause attributable to such work…[, or]
> (2) For the week in which the individual was discharged from the individual's work for just cause…[18]

In a termination situation, the employer has the burden of proving just cause. Employee performance and conduct is highly relevant in assessing just cause.[19] Absent evidence to the contrary, an employer necessarily sets the standard for acceptable workplace conduct and performance. Just cause refers to a "wilful or wanton act in violation of either the employer's interest, or of the employee's duties, or of the employee's expected standard of conduct."[20] Wilful and wanton conduct is that which is evidenced by either conscious action, or reckless indifference leading to a deviation from established and acceptable workplace

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[16] *See Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994).

[17] *See Johnson v. Chrysler Corp*., 231 A.2d 64, 66-67 (Del. Super. 1985).
[18] Del. Code Ann. tit. 19 §3315(1)-(2)(1995).

[19] *See Abex Corp. v. Todd*, 235 A.2d 271, 272 (Del. Super. 1967)(*citations omitted*); *see also Weaver v. Employment Sec. Comm'n*, 274 A.2d 446, 447 (Del. Super. 1971).

[20] *See Abex Corp.*, 235 A.2d at 272; *see e.g. Boughton*, 300 A.2d at 26-27 (Del. Super. 1972).

performance; it is unnecessary that it be founded in bad motive or malice.[21] Just cause includes notice to the employee in the form of a final warning that further poor behavior or performance may lead to termination.[22]

In a voluntary[23] quit situation, the employee bears the burden of proving good cause existed to justify quitting. "Good Cause for quitting a job must be such cause as would justify one in voluntarily leaving the ranks of the employed and joining the ranks of the unemployed."[24] "Good cause should be determined by the standard of a reasonably prudent person under similar circumstances."[25] "In Delaware, substantial reduction in an employee's pay constitutes good cause for [an] employee's voluntary quitting."[26] Even a small difference in the employee's

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[21] *See Coleman v. Department of Labor*, 288 A.2d 285, 288 (Del. Super. 1972)(*citations omitted*).

[22] *See Ortiz v. Unemployment Ins. Appeal Bd.*, 317 A.2d 100 (Del. 1974); *see generally Moeller v. WSFS*, 723 A.2d 1177 (Del. 1999).

[23] "[V]oluntary has been defined as proceeding form one's own choice or full consent." *Anchor Motor Freight, Inc. v. Unemployment Ins. Appeal Bd.*, 325 A.2d 374, 376 (Del. Super. 1974)(*citations and internal quotations omitted*).

[24] *O'Neal's Bus Service, Inc. v. Employment Security Commission*, 269 A.2d 247, 249 (Del. Super. 1970)(holding that continuous exposure to abusive language without exhausting administrative remedies was not good cause).

[25] *White v. Security Link*, 658 A.2d 619, 621 (Del. Super. 1994); *see also Department of Correction v. Unemployment Ins. Appeal Bd.*, 1999 WL 743440, *3 (Del. Super.).

[26] *Harris v. Academy Heating & Air*, 1994 WL 319231, *1-2 (Del. Super.)(*citing Performance Shop v. Unemployment Insurance Appeal Board*, Del. Super. C.A. No. 84A-MR-31, Stifel, J. (February 25, 1985). "The Commonwealth Court in Pennsylvania has held that an employee is still eligible for unemployment benefits where he left employment due to employer's unilateral change of agreement of hire, i.e., wages and working conditions." *Harris v. Academy Heating &*

pay is sufficient if the difference substantially affects the employee's ability to earn a living.[27] However, an employee must make a good faith effort to resolve problems with the employer before quitting; the employee must exhaust administrative remedies.[28]

An employee may not quit under the pretext of good cause merely because he finds the employment situation personally untenable.[29] And finally, "[w]here reasons for quitting include personal reasons, justice requires that the evidence be carefully scrutinized in order to ascertain whether or not the primary motivating cause for the quit was connected with the employment."[30]

Air, 1994 WL 319231, *2 (Del. Super.)(*citing National Freight, Inc. v. Commonwealth Unemployment Compensation Board of Review*, 385 A.2d 1288 (Pa. Cmwlth. 1978)); *see also Dove v. MHL Refrigeration, Inc.*, 1995 WL 162097, *2-3 (Del. Super.)(holding that good cause exists when employer failed to maintain sufficient funds in bank for employee paychecks, and failed to make alternative arrangements to pay employees).

[27] *See Harris v. Academy Heating & Air*, 1994 WL 319231, *2 (Del. Super.).

[28] *Sandefur v. Unemployment Ins. Appeal Bd.*, 1993 WL 389217 (Del. Super.)(*relying on O'Neal's Bus Service, Inc.*, 269 A.2d at 249).

[29] *See Hall v. Doyle Detective Agency*, 1994 WL 45361, *5 (Del. Super.)(*citing O'Neal's Bus Service, Inc.*, 269 A.2d at 249). *Cf. King v. K & T Enterprises*, 1989 WL 25906 (Del. Super.)(stating that an untenable situation is that related to a condition of employment, not personal animosity); *see also Brainard v. Unemployment Compensation Commission of Delaware*, 76 A.2d 126, 127 (Del. Super. 1950) *superceded by statute* at DEL. CODE ANN. tit. 19 §3301 *et seq.* (holding "that a voluntary quit for good cause must be for reasons connected with the employment[ ]" and not personal).

[30] *Redding v. Medical Center of Delaware*, 1994 WL 45351 (Del. Super.).

In the case at bar, the Board reasoned that the well established rule in *Anchor Motor Freight, Inc. v. Unemployment Ins. Appeal Bd*.,[31] equating a forced resignation to termination, was applicable to Carter's case.

In *Anchor Motor Freight*, a pregnant claimant had been employed for almost two years before an illness required a two week leave. When she returned, she had been reassigned to the night shift. Though it was only March, her supervisor—claimants brother—pestered her about upcoming maternity leave in June. This, and a new night schedule, prompted her to ask for an earlier leave of absence. She was immediately presented with a letter of resignation. Claimant was told that her failure to sign the letter would result in a forfeiture of vacation pay and her final pay check, as well as blemish her employment record. She signed the letter. The Court held the resignation was not of her own free will and consent.[32] Because claimant did not leave work voluntarily, it was tantamount to discharge. "Therefore, the Court holds that claimant who was induced to resign under pressure, by her employer, was discharged without just cause, within the meaning…" of the Act.[33]

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[31] *Anchor Motor Freight, Inc. v. Unemployment Ins. Appeal Bd.*, 325 A.2d 374 (Del. Super. 1974).

[32] *Anchor Motor Freight*, at 376.

[33] *Id*.

Also of interest is *Redding v. Medical Center of Delaware.*[34] In *Redding* the court ruled a claimant, when offered a probationary period to improve her work performance or be demoted, did not voluntarily leave for good cause when the demotion was offered after the employee failed to improve. There, management reviewed claimant's performance and employee record and after careful consideration gave her 90 days to improve, or risk demotion. Claimant asserted her performance was related to the poor relationship she had with her supervisor. After 90 days had passed, she still failed to meet expectations and was demoted, though still reported to her previous supervisor. Two days after accepting her new position, she quit, citing that she could not work with her supervisor.[35] There is no mention in the decision of any reduction of salary, or a written employment contract.

Discussion

Factual Conclusions

Petitioner argues that the Board's decision was is not supported by substantial evidence.

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[34] *Redding v. Medical Center of Delaware*, 1994 WL 45351 (Del. Super.).

[35] The Court also noted that she had failed to exhaust her administrative remedies with respect to her dislike of her supervisor.

The Board concluded that the Patel's were planning to change Carter's position with MRPC. Such a conclusion finds support in the evidence. First, prior to March 15, the Patels offered claimant the general managers position. Second, at the meeting with Ms. Sawyer on March 15, Carter was unexpectedly offered the opportunity to manage a new beverage business. Finally, although the testimony was conflicting regarding the Friday, March 15, 2002, meeting, the Board found that Carter was presented with an ultimatum involving a $20,000.00 pay cut, an full third of his contractual salary. Evidence supports the Board's conclusion that when Carter reported for work on March 19, 2002, he resigned as opposed to accepting the demotion in duties and a reduction in pay. The Board found under those circumstances that the resignation was forced.

Legal Conclusions

The Board ruled that "an employee who is faced with resignation (or a demotion) induced under pressure may be considered to have been constructively discharged and will be eligible for unemployment compensation provided there was no just cause for discharge." It is this perceived expansion of the rule in *Anchor Motor Freight*, to which petitioner points as legal error. The Court does not agree.

A demotion offered as an ultimatum, involving a substantial deviation from a written employment contract, is tantamount to a constructive discharge. The

burden of proving just cause for such a demotion falls squarely upon the employer. This is consistent with *Anchor Motor Freight*. *Redding* is distinguishable because there is no indication of any, much less a substantial, change in pay, no employment contract.

The Remaining Arguments

(a) Evidence Outside the Record

Petitioner claims that the Board erred by considering evidence outside the record. This position is premised upon the fact that the Board's opinion is titled "Decision of the Appeal Board on Appeal from the Decision of Stephanie K. Parker", when in fact, the Appeals Referee below was Theresa Matthews. Petitioner complains that because the Board references the incorrect Referee, it must have considered facts outside the ruling of Theresa Matthews. Clearly, the typographical error or substitution of one name for another is of no consequence. It is the record and decision below which matter; and the decision accurately reflects the record below. The error is *de minimus*.

(b) Denial of a Full and Fair Hearing.

Next, petitioner asserts that the Board failed to allow for a full and fair hearing when it abruptly cut short the hearing. Petitioner is correct in that time

limits imposed by the board "should not work to the detriment of [the] parties…"[36] Specifically, petitioner protests that "MRPC was not given an opportunity to cross examine the Claimant's witnesses, elicit testimony from its own witnesses or submit the additional documentary evidence."[37]

An extensive record had been developed before the Appeals Referee, which was available to the Board. The Board was focusing on the conversation which occurred on March 15. The Board members carefully and completely examined the three people who had been present at the meeting. It also heard the very brief testimony of Sabrina Dean, the typist of the March 11 letter, which had value in corroborating the testimony of the claimant. Having concluded that March 15 meeting was pivotal, particularly in the context of a written employment agreement, the Board was not required to take testimony which has no probative value or which is cumulative.[38]

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[36] *See* Petitioner's Opening Br. at 10 (*citing Bailey v. MBNA America Bank*, 1991 WL 1304159, *1, n.2 (Del. Super.)).

[37] Petitioner's Opening Br. at 10.

[38] The Rules of the Board expressly state that "[t]he purpose of a hearing before the Board is to examine the factual and legal bases for the decision rendered by the Hearing Officer**.** *The Parties shall not relitigate the case presented to the Referee*…" *See* Rules and Regulations of the Unemployment Insurance Appeal Board, Rule 4.1. Purpose, (*as last republished* January 11, 2003)(*emphasis added*). Further, "[h]earings are scheduled to last 20 minutes from the time the

(c) Administrative Remedies

MRPC has the burden of establishing just cause for this demotion. Carter was not required to exhaust any administrative remedies. That being said, Carter dealt directly with the only people capable of remedying any grievance; the owners. Carter had no where else to address his complaints.

Conclusion

The conclusion of the UIAB is supported by substantial evidence, and there are no errors of law. The decision of the Unemployment Insurance Appeal Board is AFFIRMED.

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presiding member calls the case, except that the Board may extend the length of the hearing at its discretion." *Id*. at Rule 4.5, Length of Hearing.