IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

PARTHENIA UPSHUR,	)	
	)	
Appellant,	)	
	)	
v.	)	
	)	
THE CHILDREN'S PLACE, INC.,	)	C.A. No: 03A-06-005 RSG
	)	
and	)	
	)	
UNEMPLOYMENT INSURANCE APPEAL BOARD	)	
	)	
Appellees.	)	

Submitted: November 3, 2003
Decided: January 29, 2004

Upon Appeal from a Decision of the Unemployment Insurance Appeals Board.
***AFFIRMED*.**

Parthenia Upshur, Wilmington, Delaware, Appellant, *pro se.*
Daniel R. Losco, Esquire, Losco & Marconi, P.A., Wilmington, Delaware, for Appellee.
Margaret F. England, Esquire, Losco & Marconi, P.A., Wilmington, Delaware, for Appellee.

CORRECTED OPINION

Gebelein, J.

Parthenia Upshur ("Claimant") is appealing a decision of the Unemployment Insurance Appeal Board ("UIAB" or "Board") in which the Board affirmed the decision of the Appeals Referee denying Claimant benefits. Upon review of the parties submissions and the record below, the Court concludes that the Board's decision must be affirmed.

STATEMENT OF FACTS

Claimant was employed by the Children's Place ("Employer") from May 2002 through October 25, 2002. It is undisputed that Claimant failed to report to work after October 25, 2002. The parties disagree as to factual nature of the circumstances leading to Claimant's unemployment. According to Claimant, she was terminated from her position because Employer informed her that she was being replaced because they wanted someone with 60 hours of training since they were getting ready to be re-licensed by the State. Employer contends that Claimant's position did not require 60 hours of training because she was an assistant to a fully licensed teacher. Employer claims that Claimant's hours were going to be changed from 8:00 a.m. until 1:00 p.m. to 1:00 p.m. until 6:00 p.m. and that she was also offered a morning shift working with older children. Employer testified that Claimant indicated that she would rather "quit first." Subsequently, Employer indicates that Claimant failed to report for work after October 25, 2002.

After hearing additional testimony, the Board adopted the pertinent findings of fact and conclusions of law made by the Appeals Referee ("Referee"). The Referee relied upon title 19, section 3315(1) ("section 3315") of the Delaware Code.[1] He concluded that based upon the undisputed testimony of Employer, Claimant was terminated for job abandonment after she

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[1]Ref. Dec. at 3. *See also* DEL. CODE ANN. tit. 19, § 3315(1) (1995).

failed to report to work after October 25, 2002. Therefore, Claimant left her work without good cause attributable to her work within the meaning of section 3315.[2] The Board found Employer's witnesses to be more credible than Claimant and found that she was not fired, but walked off the job because she did not like the new shift alternatives that she was presented.[3] Furthermore, the Board stated that: "[e]ven if claimant was unhappy with the proposed changes, she made no attempt to resolve her issues administratively before quitting."[4] Ultimately the Board held that Claimant voluntarily terminated her work for personal reasons, without good cause in connection with the work, thereby disqualifying her from unemployment benefits.[5]

PROCEDURAL POSTURE

The record reflects that Claimant filed for unemployment benefits on January 26, 2003. Several attempts that were made to obtain additional information from Employer were unsuccessful. As a result, on March 13, 2003, the Claims Deputy found that Claimant was terminated without just cause and was eligible for receipt of benefits. Employer filed a timely appeal on March 19, 2003, and a hearing with was scheduled for April 9, 2003. Claimant failed to personally appear for the hearing. The Referee reversed and modified the decision of the Claims Deputy and found that appellant left her job voluntarily without good cause.[6] In so

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[2] *Id;* DEL. CODE ANN. tit. 19, § 3315(1) (1995) provides, in pertinent part, as follows: "An individual shall be disqualified for benefits: (1) For the week in which the individual left work voluntarily without good cause attributable to such work and for each week thereafter until the individual has been employed in each of 4 subsequent weeks (whether or not consecutive) and has earned wages in covered employment equal to not less than 4 times the weekly benefit amount."

[3] Bd. Dec. at 2.

[4] *Id.*

[5] *Id.*

[6] Ref. Dec. at 3.

finding, Claimant was disqualified from receipt of unemployment benefits and an overpayment was ordered to be established for the unemployment benefits Claimant received during the period of her disqualification.[7]

Claimant filed a timely appeal of the Referee's decision with the UIAB on April 14, 2003, and a hearing was scheduled. On May 29, 2003, the Board held a hearing and issued a decision affirming the decision of the Referee. The Board found that Claimant voluntarily terminated her work for personal reasons, without good cause in connection with the work and affirmed the decision of the Referee.[8] The Board's decision became final on June 22, 2003. Claimant filed a timely notice of appeal on June 30, 2003 from the decision of the UIAB.

ISSUES ON APPEAL

Claimant filed an appeal of the Board's decision raising the following four issues for review: (1) Claimant did not quit, she was fired; (2) she was informed by Employer that she had been replaced; (3) Claimant disputes Employer's claim that they were short staffed in light of Claimant's failure to report to work; and, (4) that her hours were anytime her boss asked her to work.[9] In support of her claims, Claimant argues that the Board's decision should be reversed because it is "the only right thing to do."

In response, Employer argues that there is substantial evidence to support the Board's

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[7] *Id.* at 3-4.

[8] Bd. Dec. at 2.

[9] The Court notes that Claimant has not asserted any cognizable legal arguments in connection with her appeal. In it's entirety, Claimant's motion consists largely of a recitation of her version of the facts. However, because Claimant is acting *pro se* the Court will attempt to flesh out the merits of her claims. *See Vick v. Haller,* 1987 WL 36716 (Del. Supr.) (holding that a *pro se* complaint, however inartfully pleaded, may be held to a less stringent technical standard than formal pleadings drafted by lawyers). *See also Jackson v. Unemployment Ins. Appeal Board,* 1986 WL 11546 (holding that Superior Court may give a *pro se* litigant leniency to allow the case to be fully and fairly heard).

decision that Claimant voluntarily terminated her employment for personal reasons without good cause. Employer also argues that Claimant's issues on appeal are arguments of fact, not questions of law, that have already been decided by the by the UIAB.

Standard of Review

The function of the reviewing Court is to determine whether the agency's decision is supported by substantial evidence.[10] Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[11] Substantial evidence requires "more than a scintilla but less than a preponderance" to support the finding.[12] The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.[13] It merely determines if the evidence is legally adequate to support the agency's factual findings.[14] If the record below contains substantial evidence to support the findings of the Board, then that decision will not be disturbed.[15]

Discussion

Under Delaware law, the employer must show that the claimant was discharged for "just cause" in connection with her work. "Just cause" is defined as "a wilful or wanton act in

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[10] *General Motors Corp. v. Freeman*, 164 A.2d 686, 688 (Del. 1960); *Johnson v. Chrysler Corp.,* 213 A.2d 64, 66-67 (Del. 1985).

[11] *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battisa v. Chrysler Corp.,* 517 A.2d 295, 297 (Del. Super. Ct. 1986), *app. dism.,* 515 A.2d 397 (Del. 1986).

[12] *Onley v. Cooch,* 425 A.2d 610, 614 (Del. 1981) (quoting *Cross v. Califano*, 475 F.Supp. 896, 898 (D. Fla. 1979)).

[13] *Johnson v. Chrysler Corp.,* 231 A.2d at 66.

[14] DEL. CODE ANN. tit. 29 § 10142(d) (1997).

[15] *Adams v. Nabisco,* 1995 WL 653435 (Del. Super. Ct.).

violation of either the employer's interest or of the employee's duties or of the employee's expected standard of conduct."[16] The Board concluded that Claimant's failure to return to work after October 25, 2002 amounted to voluntary termination of her employment. In adopting the Referee's decision, the Board properly recognized that an employee who voluntarily terminates her employment will be disqualified from the receipt of unemployment benefits unless she can show that good cause existed to justify her separation, and that the reason for doing so was directly related to her work or to her employer.[17] The Board ruled that good cause can be found where there had been a substantial reduction in hours, wages or a substantial deviation in the working conditions from the original agreement of hire to the detriment of the employee.[18] However, an employee has an obligation to make a good faith effort to resolve problems with the employer through administrative remedies before quitting.[19]

The Board's finding that Claimant voluntarily terminated her employment without good cause attributable to her work is supported by substantial evidence. The Board found Employer's witnesses more credible than Claimant. Claimant has not meet her burden of showing good cause to "justify one in voluntarily leaving the ranks of the employed and joining the ranks of the unemployed."[20] Claimant was not informed that she would have to accept a substantial reduction in hours or wages and Employer did not propose a substantial deviation in

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[16] *Avon Products, Inc. v. Wilson*, 513 A.2d 1315, 1317 (Del. 1986); *Abex Corp. v. Todd,* 235 A.2d 271 (Del. Super. Ct. 1967).

[17] Ref. Dec. at 3.

[18] *Id.*

[19] *Sandefur v. Unemployment Ins. Appeal Bd.*, 1993 WL 389217 (Del. Super.)(citing *O'Neal's Bus Service, Inc. v. Employment Security Comm'n*, 269 A.2d 247, 249 (Del. Super. 1970)).

[20] *O'Neal's Bus Serv., Inc. v. Employment Sec. Comm'n,* 269 A.2d 247, 249 (Del. 1970).

the working conditions from the original agreement of hire. Claimant was asked if she could change her hours from morning to afternoon, without changing the total amount of hours. She was also asked to watch older children which was the age group that she had originally been hired to supervise. Claimant's fourth argument, that her hours were determined by the needs of her employer, clearly demonstrates that Employer was not proposing a substantial deviation in the conditions agreed upon when Claimant was hired. In the alternative, if Claimant believed that Employer was proposing a substantial change in the terms of her employment, she failed to fulfill her obligation to address her concerns through administrative remedies. After the proposed change, Claimant simply stopped reporting for work.

Claimant's argument that Employer replaced her with another employee because of the upcoming State re-licensing proceedings is without merit. Claimant contends that she was replaced with an employee who has 60 hours of training. As an assistant to a fully licensed teacher, Claimant's position did not require 60 hours of training to be compliant with the State licensing regulations. The record reflects that Claimant's "replacement" also did not have 60 hours of training. As a result, the number of training hours completed is not a viable argument to support Claimant's position.

Lastly, Claimant disputes Employer's claim that they were short staffed as a result of Claimant's failure to report to work after October 25, 2002. Employer offered into evidence payroll forms that were completed for the two weeks following October 25, 2002. Claimant's name appears on the form through November 8, 2002 which supports Employer's position that: Claimant was expected to report for work on October 28, 2002. Claimant has not set forth any legal argument for the Court to consider. Accordingly, the court finds that there is substantial

evidence to support the factual findings of the Board and the ruling that Claimant voluntarily terminated her employment, as opposed to being fired.

Based on the foregoing reasons, the Board's decision denying Claimant benefits is **AFFIRMED.**

IT IS SO ORDERED.

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The Honorable Richard S. Gebelein

Orig: Prothonotary
cc: Parthenia Upshur, Wilmington, Delaware.
Daniel R. Losco, Esquire, Losco & Marconi, P.A., Wilmington, Delaware.
Margaret F. England, Esquire, Losco & Marconi, P.A., Wilmington, Delaware.