IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

MIROSLAVA BIHAC,	)	
	)	
Claimant/Appellant,	)	
	)	C.A. No. N10A-03-012 MMJ
v.	)	
	)	
FAMILY MEDICAL ASSOCIATES,	)	
	)	
Employer/Appellee.	)	

Submitted: August 16, 2011
Decided: November 4, 2011

On Appeal from a Decision of the Unemployment Insurance Appeal Board
AFFIRMED

MEMORANDUM OPINION

Miraslava Bihac, *Pro Se*, Appellant

David A. Denham, Esquire, Bifferato Gentilotti LLC, Newark, Delaware, Attorney for Employer/Appellee

JOHNSTON, J.

FACTUAL AND PROCEDURAL CONTEXT

Miraslava Bihac ("Claimant") was employed by Family Medical Associates ("Employer") from August 2006 to December 2008 as a nurse. Claimant worked part-time and was compensated at a rate of $18.00 an hour.

Employer was comprised of three doctors – Drs. Jose Manalo, Anna Layosa-Magat, and Carlo Magat. Generally, Claimant was only scheduled to work when Dr. Manalo was in the office. Therefore, when Dr. Manalo took extended absences from work, as he often did, Claimant was not needed at work.

Claimant testified that on December 8, 2008, she was advised by Dr. Layosa-Magat that Dr. Manalo would be on vacation and that Claimant need not report to work until Dr. Manalo returned. According to Claimant, she was not provided with a firm recall date, as was usually the case when Dr. Manalo took vacation. Claimant further claimed that during her conversation with Dr. Layosa-Magat, she was told that she was expensive and could seek alternative employment if she desired. Despite Dr. Layosa-Magat's alleged statement, Claimant did not believe that she had been terminated.

Employer refuted Claimant's allegations, maintaining that Claimant was expressly told by Dr. Layosa-Magat to report back to work on January

5, 2009. According to Dr. Layosa-Magat, because she and Dr. Magat would be on vacation for the next three weeks, Claimant was not needed at work. Dr. Layosa-Magat further denied Claimant's contention that she was advised to seek other employment because she was expensive.

On January 5, 2009, Claimant failed to show up to work. Wendy Palmer, Employer's office manager, called Claimant numerous times on January 5, 2009, as well as on January 6, 2009, to inquire as to Claimant's whereabouts. Palmer was unable to make contact with Claimant on either day.

On January 7, 2009, Claimant called Employer to discuss her mother's medications. Claimant spoke with Palmer, who asked Claimant why she hadn't reported to work the previous two days. Claimant stated that she did not know she was scheduled to work. Palmer then asked Claimant whether she would be returning to work, to which Claimant responded that she did not know. Claimant made no further attempts to contact Employer and discuss the status of her employment.[1]

Claimant filed for unemployment benefits on February 1, 2009. On March 4, 2009, a Claims Deputy denied Claimant benefits after finding that

[1] At the December 15, 2009 hearing before the Unemployment Insurance Appeal Board, Claimant changed her testimony and stated that she called Employer on March 7, 2009 to inquire about the status of her job. According to Claimant, Employer never returned her call.

Claimant voluntarily quit her job without good cause. Claimant appealed the Deputy's decision to an Appeals Referee.

On March 30, 2009, the Referee dismissed Claimant's appeal after Claimant failed to appear at a scheduled hearing. On June 15, 2009, Claimant appealed the Referee's decision to the Unemployment Insurance Appeal Board ("Board"), claiming that she did not receive notice of the March 2009 hearing because she was out of the country.

On July 22, 2009, the Board affirmed the Referee's decision and denied further review, finding that Claimant's appeal was untimely. Claimant appealed the Board's decision and provided documentation showing that she was, in fact, in Europe from March 10, 2009 to June 8, 2009. The Board remanded the matter to the Referee, finding that Claimant had presented sufficient evidence to demonstrate that her failure to appear at the March 2009 hearing – as well as her failure to timely appeal the Referee's decision – was not the result of negligence or bad faith.

On December 16, 2009, following an administrative hearing, the Referee affirmed the March 2009 decision of the Claims Deputy. The Referee found that Claimant failed to follow-up with Employer regarding the status of her employment, and thus, abandoned her job. Accordingly,

Claimant was ineligible for unemployment benefits. Claimant appealed the Referee's decision to the Board.

On March 19, 2009, the Board affirmed the Referee's decision, finding that Claimant voluntarily quit her job without good cause. According to the Board, Claimant abandoned her job after failing to communicate with Employer regarding her intention to return to work.

On March 22, 2010, Claimant filed a *pro se* appeal of the Board's decision to this Court.

STANDARD OF REVIEW

On appeal from the Unemployment Insurance Appeal Board, the Superior Court must determine if the Board's factual findings are supported by substantial evidence in the record and free from legal error.[2] Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[3] The Court must review the record to determine if the evidence is legally adequate to support the Board's factual findings.[4] The Court does not "weigh evidence, determine questions of credibility or make its own factual findings."[5] If the record lacks satisfactory proof in support of the Board's finding or decision, the Court

[2] *Unemployment Ins. Appeal Bd. v. Duncan*, 621 A.2d 340, 342 (Del. 1993).
[3] *Histed v. E.I. duPont de Nemours & Co.*, 621 A.2d 340, 342 (citing *Olney v. Cooch*, 425 A.2d 610, 614 (1981)).
[4] *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).
[5] *Id*. at 67.

may overturn the Board's decision.[6] On appeal, the Superior Court reviews legal issues *de novo*.[7]

DISCUSSION

In determining whether a claimant is eligible for unemployment benefits, the Court must invoke a two-part inquiry. The Court first must decide whether the claimant voluntarily quit her job or was terminated.[8] If a determination is made that the claimant voluntarily quit, the Court next must decide whether the claimant had good cause to leave her job.[9] A claimant who voluntarily quits without good cause is ineligible for unemployment benefits.[10]

Claimant voluntarily quit her job with Employer.

"To voluntarily quit a job, an employee must have had a conscious intention to leave or terminate the employment."[11] That is, the employee must leave on her own motion, as opposed to being discharged by the employer.[12]

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[6] *Id*. at 66-67.
[7] *Person-Gaines v. Pepco Holdings, Inc.*, 981 A.2d 1159, 1161 (Del 2009).
[8] *Harris v. Logisticare Solutions*, 2010 WL 3707421, at *2 (Del. Super.); *Laime v. Casapulla's Sub Shop*, 1997 WL 524063, at *2 (Del. Super.).
[9] *Id.*
[10] 19 *Del. C*. § 3314(1).
[11] *Laime*, 1997 WL 524063, at *3 (citing *Andress v. Schumacher & Co.*, 1993 WL 542062, at *3 (Del. Super.)).
[12] *Tubbs v. TRG Field Solutions*, 2011 WL 4447978, at *2 (Del. Super.) (citing *Gsell v. Unclaimed Freight*, 1995 WL 339026, at *3 (Del. Super.)).

The undisputed record establishes that on December 8, 2008, Claimant was advised by Dr. Layosa-Magat that she need not report to work while Employer was short-staffed. The record is clear that Employer did not intend to terminate Claimant's employment, nor did Claimant believe she had been terminated. Indeed, Claimant testified that she intended to report to work upon Dr. Manalo's return to the office.

It is equally undisputed, however, that Claimant never returned to work. Claimant testified that she did not report to work because she was neither given a firm recall date nor contacted by Employer in the interim. Employer offered contradictory testimony, claiming that Claimant was expressly told to report to work on January 5, 2009. According to Employer, when Claimant failed to show up to work, numerous attempts were made to contact her, all of which were unsuccessful. In resolving this factual dispute, the Board accepted Employer's testimony, finding that Claimant failed to report to work after being given a precise recall date. Because issues of credibility are uniquely within the province of the Board, the Court will not second-guess such determinations.[13]

Moreover, even assuming, *arguendo*, that Claimant was not provided with a firm recall date, she nonetheless had a responsibility to contact

[13] *Patterson v. Brandywine Counseling Inc.*, 2010 WL 4513539, at *2 n.39 (Del. Super.); *Laime*, 1997 WL 524063, at *3.

Employer and to clarify the status of her job.[14] As the Court has observed, "[A]n employee does have an obligation to inform an employer of resolvable problems and to make a good faith effort to resolve them before simply leaving."[15] Here, Claimant made no attempt to contact Employer despite the fact that she claimed she had not been given a firm recall date.[16] By failing to communicate with Employer to resolve the issue, Claimant abandoned her job.[17] Therefore, the Court finds that the Board's holding – that Claimant voluntarily quit her job – is supported by substantial evidence and free from legal error.

Claimant has failed to establish good cause for leaving her job.

Because the Court has found that Claimant voluntarily quit, the Court next must determine whether Claimant had good cause to leave her employment. Good cause requires that a claimant's basis for voluntarily

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[14] *Laime*, 1997 WL 524063, at *3. *See also Connor v. Techclean Indus., Ltd.*, 2004 WL 249571, at *2 (Del. Super.) (finding that suspended employee had obligation to "call his employer to attempt to return to work or at least find out the status of his job").

[15] *Sandefur v. Unemployment Ins. Appeals Bd.*, 1993 WL 389217, at *4 (Del. Super.).

[16] The Board did not find Claimant's belated claim that she contacted Employer in March 2009 to be credible. The Court will not second-guess the Board's credibility determination.

[17] *See, e.g.*, *Laime*, 1997 WL 524063, at *3 (holding that claimant voluntarily quit job after making no effort to resolve problems with employer and never returning to work); *Behr v. Unemployment Ins. Appeal Bd.*, 1995 WL 109026, at *1 (Del. Super.) (finding that claimant voluntarily abandoned job after he "failed to report when he said he would, failed to contact the employer for several weeks and could not be reached at the phone number listed on his employment application").

quitting be connected with the employment and not for personal reasons.[18] For example, good cause may consist of "not being paid when wages are due, a substantial reduction in wages or hours, or a substantial, detrimental deviation from the original employment agreement."[19] The burden is on the claimant to establish good cause for leaving employment.[20]

Claimant did not meet her burden. Because Claimant steadfastly maintained that she did not voluntarily quit her job, the Board determined that Claimant did not establish good cause for leaving her employment. This finding was within the sound discretion of the Board and will not be disturbed by the Court.

CONCLUSION

The Board's finding that Claimant voluntarily quit her job without good cause is supported by substantial record evidence. Claimant, therefore, is ineligible for unemployment benefits. The Court finds that the Board's decision is free from legal error.

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[18] *Baaden v. Amer Industrial*, 2010 WL 1854133, at *2 (Del. Super.) (citing *Weathersby v. Unemployment Ins. Appear Bd.*, 1995 WL 465326, at *5 (Del. Super.)).
[19] *Laime*, 1997 WL 524063, at *3 (internal citations omitted).
[20] *Longobardi v. Unemployment Ins. Appeal Bd.*, 287 A.2d 690, 692 (Del. Super. 1971), *aff'd*, 293 A.2d 295 (Del. 1972).

THEREFORE, the Court hereby **AFFIRMS** the Board's decision in its entirety.

IT IS SO ORDERED.

/s/ Mary M. Johnston
The Honorable Mary M. Johnston