IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

AVERY STEWART, Appellant, v. CHRISTIANA CARE HOSPITAL and UNEMPLOYMENT INSURANCE APPEAL BOARD, Appellees.	)))))))))	C.A. No.: 11A-10-003 FSS **(E-FILED)**

Submitted: April 5, 2012
Decided: May 11, 2012

ORDER

Upon Appeal From the Unemployment Insurance Appeal Board –
AFFIRMED.

1. Appellant, Avery Stewart, worked for Christiana Care from July 14, 2009-May 3, 2011. Appellant quit because he felt his co-workers and supervisors created a hostile, discriminatory environment. Appellant alleges one co-worker changed Appellant's schedule twice without authorization, another pulled her pants down in his presence, and a third asked him for drugs.

2. On May 20, 2011, a claims deputy disqualified Appellant from receiving benefits because he quit without good cause.[1] Appellant timely appealed

[1] *See* 19 *Del. C.* § 3314(1) ("An individual shall be disqualified for benefits [when] the individual left work voluntarily without good cause attributable to such work.").

to an appeals referee.

3. On July 13, 2011, after a full hearing, the appeals referee upheld the claims deputy. The appeals referee held Appellant voluntarily quit without good cause, and "made no effort to bring his complaints prior to making the decision to quit his job. At the very least, [Appellant] should have complained to human resources. In failing to do so, the [Appellant] did not exhaust his administrative remedies." On July 14, 2011, Appellant timely appealed to the Board.

4. Appellant testified that he met with his supervisor, but refused to give specific information because he was not a "snitch." On September 28, 2011, the Board upheld the referee, holding Appellant did not demonstrate, by a preponderance of the evidence, that he quit his job for good cause. The Board also held Appellant failed to exhaust his administrative remedies. On October 7, 2011, Appellant timely appealed to this court.

5. The court's role on appeal from the Board is quite limited. The court does not re-weigh the evidence.[2] It may only decide if the Board's factual findings are supported by substantial evidence,[3] and whether the Board correctly applied the law to the facts.[4] If the Board's factual findings hold up and are legally

[2] *Johnson v. Chrysler Corp.,* 213 A.2d 64, 66 (Del. 1965).

[3] *Unemployment Ins. Appeal Bd. v. Duncan*, 337 A.2d 308, 309 (Del. 1975).

[4] *Ridings v. Unemployment Ins. Appeal Bd.*, 407 A.2d 238, 239 (Del. Super. 1979).

error-free, the court must affirm unless the Board somehow abused its discretion.[5]

6. When an employee quits, in effect he gives up his unemployment insurance benefits claim, unless his resigning was for "good cause" related to his employment's conditions.[6] "Good cause" is established where: (i) an employee voluntarily leaves employment for reasons attributable to issues within the employer's control and under circumstances in which no reasonably prudent employee would have remained employed; and (ii) the employee first exhausts all reasonable alternatives to resolve the issues before voluntarily terminating employment.[7]

7. To exhaust all reasonable alternatives, the employee must at least notify the employer of the problem and request a solution.[8] The employee "must also bring the problem to the attention of someone with the authority to make the necessary adjustments, describe the problem in sufficient detail to allow for resolution, and give the employer enough time to correct the problem."[9]

8. As mentioned, according to Appellant's unsubstantiated testimony, in late March 2011, a co-worker pulled her pants down in his presence.

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[5] *Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991).

[6] *See* 19 *Del. C.* § 3314(1).

[7] *Thompson v. Christiana Care Health System,* 25 A.3d 778, 783 (Del. 2011).

[8] *Id.* at 784-85 (citing *Calvert v. State, Dept. of Labor & Workforce Develop., Empl. Sec. Div.,* 251 P.3d 990, 1001–1002 (Alaska 2011)).

[9] *Id.* at 785 (quoting *Calvert,* 251 P.3d at 1001–1002).

On April 9, 2011, another co-worker allegedly asked him for drugs. And, Appellant's schedule was changed on April 11 and April 18, 2011. Appellant did not seek his supervisor's help until April 18, 2011, and he submitted his resignation the next day. Even when Appellant finally discussed his grievances, almost two weeks after he submitted his resignation, he refused to divulge specific information because he did not want to be a "snitch."

9. The record shows, assuming his claims are true, Appellant failed to exhaust reasonable alternatives before quitting. The law does not condone Appellant's decision, using his term, to "snitch" only when it suited his purposes. Appellant had to give his employer a fair chance to address the situation and make it right. Once the Board found Appellant did not exhaust his administrative remedies, it could conclude under the law that Appellant was not entitled to receive benefits.

10. Moreover, assuming Appellant's allegations about the three or four instances of bad and questionable conduct by co-workers were true, they do not justify quitting.[10] Thus, the Board's decision was based on substantial evidence, and consistent with unemployment insurance law.

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[10] *See, e.g., id*. at 783-784 ("The employee must develop a tolerance level to bear minor deviations in the working condition as long as there is not a lessening of basic employment rights or cruel and harsh punishment by the employer.") (quoting *Swann v. Cabinetry Unlimited*, 1993 WL 487892, at *1 (Del. Super. Oct. 15, 1993) (Lee, J.)). *See also O'Neal's Bus Serv., Inc. v. Employment Sec. Comm'n,* 269 A.2d 247, 249 (Del. Super. 1970) ("[A]n employee does not have good cause to quit merely because there is an undesirable or unsafe situation connected with his employment.").

For the foregoing reasons, the Board's September 28, 2011 decision is **AFFIRMED.**

IT IS SO ORDERED.

/s/ Fred S. Silverman
Judge

cc: Prothonotary
Mr. Avery Stewart, *Pro Se*
Caroline L. Cross, Esquire - Unemployment Insurance Appeal Board
James H. McMackin, III, Esquire