

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

KATHY LEET,)
) C.A. No. K10A-05-004 JTV
 Appellant,)
)
 v.)
)
 VSR VALERIE'S BAR,)
)
 Appellee.)

Submitted: March 1, 2011
Decided: June 23, 2011

Kathy Leet, *Pro Se.*

VSR Valerie's Bar, *Pro Se.*

Upon Consideration of Appellant's
Appeal From Decision of
Unemployment Insurance Appeals Board
AFFIRMED

VAUGHN, President Judge

ORDER

Upon consideration of the appellant's brief and the record of the case, it appears that:¹

1. The appellant, Kathy Leet, appeals from an Unemployment Insurance Appeals Board decision which held that she voluntarily quit her employment at VSR Valerie's Bar without good cause. As a result, she was disqualified from receiving unemployment benefits.

2. The appellant was employed as a bartender at VSR Valerie's Bar from April 25, 2009 through September 3, 2009. On September 3, 2009, the appellant informed her supervisor that she would not return to work until the supervisor was ready to start treating her in a more professional manner. Thereafter, the appellant failed to appear for her scheduled work shift on September 4, 2009. It is undisputed that the appellant never returned to work at VSR Valerie's Bar after the discussion with her supervisor on September 3, 2009.

3. The appellant contends that she did not voluntarily quit. During the Board's hearing, the appellant testified, in substance, that she was wrongfully accused of theft; that she was nearing six months there and had been told that people only lasted six months at a time; that the employer gets rid of people or finds a way to get rid of them because they start to know the system; that she was suddenly informed that everything she did was wrong; that she was verbally attacked by the owner and her manager; that the employer hired a girl who was known for causing physical

¹ The appellee declined to file a brief.

Leet v. Valeries Bar

C.A. No. K10A-05-004 JTV

June 23, 2011

issues and fights and scheduled the new girl to work with her; that she feared for her physical safety since she was scheduled to work with the new employee; that she was asked to do illegal things, such as refill partially empty liquor bottles; and that she was generally subjected to a hostile work environment.

4. When reviewing decisions from the Board, the Court is limited to consideration of the record which was before the administrative agency.² The court must determine whether the findings and conclusions of the Board are free from legal error and are supported by substantial evidence in the record.³ Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.⁴ The court does not weigh the evidence, determine questions of credibility, or make its own factual findings.⁵ The reviewing court merely determines if the evidence is legally adequate to support the agency's factual findings.⁶

² *Hubbard v. Unemployment Ins. Appeal Bd.*, 352 A.2d 761, 763 (Del. 1976).

³ *Unemployment Ins. Appeal Bd. v. Martin*, 431 A.2d 1265, 1266 (Del. 1981); *Pochvatilla v. United States Postal Serv.*, 1997 WL 524062, at *2 (Del. Super. 1997); 19 *Del. C.* § 3323(a) (“In any judicial proceeding under this section, the findings of the [UIAB] as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the Court shall be confined to questions of law.”).

⁴ *Oceanport Ind. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del. 1994); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super. 1986).

⁵ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

⁶ *Majaya v. Sojourners' Place*, 2003 WL 21350542, at *4 (Del. Super. 2003); see 19 *Del. C.* § 3323(a) (providing that, absent fraud, the factual findings of the Board shall be conclusive and the jurisdiction of a reviewing court shall be confined to questions of law).

Leet v. Valeries Bar

C.A. No. K10A-05-004 JTV

June 23, 2011

5. Under 19 *Del. C.* § 3314(1), a person is not entitled to unemployment benefits if that person resigns from a job voluntarily without good cause. Good cause is “such cause as would justify one in voluntarily leaving the ranks of the employed and joining the ranks of the unemployed.”⁷ It may include circumstances where there is a substantial reduction in wages or hours, as well as a substantial deviation in working conditions.⁸ Additionally, the phrase voluntarily quit means leaving on one’s own accord, as opposed to being discharged.⁹

6. At its hearing, the Board concluded that the appellant had not presented any material evidence which was not available to the Referee, and adopted the Referee’s findings of fact and conclusions of law. At the Referee hearing, the employer’s representative testified that the appellant had a poor attitude at work and informed customers on September 3, 2009 that it would be her last night working with the employer. The representative further testified, as mentioned above, that the appellant informed the owner on September 3rd to contact her when she was ready to start treating her professionally, and then failed to appear for work on September 4. The Appeals Referee concluded that:

[the appellant’s] unemployment is a result of her own choice and her own doing ... No substantial evidence was

⁷ *O’Neal’s Bus Serv. v. Employment Security Comm’n*, 269 A.2d 247, 249 (Del. Super. 1970)(citing *Zielenski v. Bd. of Review*, 85 N.J. Super. 46, (1964)); see also *Deamond v. GPM Investments, LLC*, 2011 WL 532173, *2 (Del. Super. Feb. 11, 2011).

⁸ *Hopkins Constr. v. UIAB*, 1998 WL 960713 (Del. Super. 1998).

⁹ *Gsell v. Unclaimed Freight*, 1995 WL 339026 (Del. Super. 1995).

Leet v. Valeries Bar

C.A. No. K10A-05-004 JTV

June 23, 2011

offered ... that there was a substantial deviation in the working conditions....to the detriment of the Claimant, nor any undesirable or unsafe situation connected with her employment such that the Claimant attempted to rectify by exhausting available administrative remedies before her decision not to return to work.

7. In this appeal, the appellant refines and restates the factual allegations which she made below. She states that her primary concern is to have the accusation of theft taken off her record. That issue is not before the court on an appeal from a Board decision. It appears, from the decision of the Referee, which was adopted by the Board, that issues of credibility between the appellant and the employer were resolved in favor of the employer. As stated above, this Court does not make factual findings or determine questions of credibility.

8. After considering the record, I conclude that there is no persuasive basis for disturbing the Board's decision. I find that the findings and conclusions made by the Board below are free from legal error and supported by substantial evidence in the record. Therefore, the decision below is ***affirmed***.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

President Judge

oc: Prothonotary
cc: Order Distribution
File