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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz.R.Sup.Ct. 111(c); ARCAP 28(c);
Ariz.R.Crim.P. 31.24



DIVISION ONE
FILED: 11/29/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

**IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE**

COURTNEY D. PAPPE,) 1 CA-UB 11-0160
)
Appellant,) DEPARTMENT B
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) Rule 28, Arizona Rules
SECURITY, an Agency,) of Civil Appellate
) Procedure)
and)
)
APACHE COUNTY BOARD OF SUPERVISORS,)
)
Appellees.)
)

Appeal from the A.D.E.S. Appeals Board

Cause No. U-1162297-BR

AFFIRMED

Southern Arizona Legal Aid, Inc. Lakeside
by Brooks Joseph Chapin
Attorneys for Appellant

Apache County Attorney's Office St. Johns
by Joseph Young, Deputy County Attorney
Attorneys for Appellee Apache County Board of Supervisors

and

Thomas C. Horne, Arizona Attorney General Phoenix
by Carol A. Salvati, Assistant Attorney General
Attorneys for Appellee Arizona Department of Economic Security

H O W E, Judge

¶1 Courtney Pappe appeals the denial of her claim for unemployment benefits after the Arizona Department of Economic Security ("ADES") Unemployment Insurance Appeal Board determined that she left work voluntarily without good cause. We affirm for the following reasons.

FACTS AND PROCEDURAL HISTORY

¶2 Pappe worked as a victim's advocate at the Apache County Attorney's Office ("County Attorney"). Two years later, the County Attorney offered her a position as a Legal Secretary I, a promotion and a pay raise. Pappe accepted the offer. Shortly thereafter, however, she began having a "nervous breakdown."

¶3 On Thursday, August 20, 2009, Pappe was allowed to leave work early to see a doctor for her emotional problems. When Pappe did not show up to work the next day, her manager called and asked if someone had taken her to the doctor. Pappe believed this was the final straw in a pattern of discrimination against her. Instead of returning to work that day, Pappe came to the office to pick up a few personal items from her desk. Without talking to anyone, she went to the Chief of Staff and handed him the following letter ("August 21 letter"):

Dear Sirs/Madams:

This notice is to inform you that working conditions exist that are so objectively difficult and unpleasant that I feel compelled to resign.

There has been a continuous pattern of discriminatory harassment directed towards me and others.

I have been subjected to conditions that I reasonably believe to be intolerable and constitute a condition of constructive discharge.

Because Pappe had never filed any complaints or raised any grievances, the County Attorney accepted Pappe's letter as a notice of immediate resignation.

¶4 When Pappe returned to the office after the weekend to pick up her remaining belongings, her access key had been canceled. She handed the County Attorney a second letter stating: "This morning my access key was non-functional. Please clarify your intentions regarding my employment status."

¶5 That same day, the County Attorney issued a memorandum regarding Pappe's resignation. The memo explained that Pappe's access privileges had been revoked because her employment ended when she submitted the August 21 letter of resignation, which the County Attorney had no authority to reject. The memo reiterated that the County Attorney was unaware of any "discriminatory harassment" or "difficult and unpleasant working conditions" that Pappe had mentioned in her August 21 letter.

Three days later, the County Attorney issued a second memorandum evaluating Pappe's claim for constructive discharge under Arizona Revised Statutes ("A.R.S.") section 23-1502 (Westlaw 2012).¹ The memo concluded that Pappe had no claim for constructive discharge because she had not provided prior notice before resigning, nor could she show any "outrageous conduct" that would waive the notice requirement. The County Attorney sent Pappe a copy of both memos.

¶16 An Appeals Board deputy determined that Pappe was ineligible for unemployment benefits because she voluntarily left employment. Pappe challenged that determination, arguing that she had been constructively discharged pursuant to § 23-1502(F). At a hearing before the Appeals Tribunal, Pappe identified the discriminatory conduct that compelled her to resign: (1) changing her job duties; (2) removing her from her cubicle; (3) banning her boyfriend from the office; and (4) asking her if she went to see a doctor when she missed work. The Appeals Tribunal found that Pappe had voluntarily quit without good cause. The Appeals Board affirmed in a majority decision, finding that Pappe "quit her job impulsively for her own personal, non-compelling reasons, and . . . did not establish that she had no reasonable alternative but to quit her

¹ We cite the current version of applicable statutes when no revision material to this decision has occurred.

job." One Board member dissented, finding that Pappe had not voluntarily resigned because: (a) Pappe testified that she did not intend to resign; (b) she returned to the workplace the following Monday; (c) the employer had disabled her access key; and (d) she asked the County Attorney to clarify its intentions about her employment.

¶17 We accepted Pappe's timely application for appeal. A.R.S. § 41-1993(B).

DISCUSSION

¶18 Pappe argues that (1) § 23-1502 precluded a finding that Pappe voluntarily resigned; (2) her letter met the requirements of constructive discharge under § 23-1502; (3) the Appeals Board erred in relying on *Bowman v. Ariz. Dep't of Econ. Sec.*, 182 Ariz. 543, 544, 898 P.2d 492, 494 (App. 1995) to determine whether she had good cause to resign; and (4) the County Attorney deprived her of due process by accepting her resignation instead of addressing her grievances. The fundamental argument underlying all of these arguments—and the argument raised on appeal—is that the Appeals Board erred in finding that Pappe voluntarily quit without good cause because she had raised a claim of constructive discharge under § 23-1502.

¶19 When reviewing a decision of the Appeals Board, this court determines whether it properly applied the law to the

facts before it. *Bowman*, 182 Ariz. at 545, 898 P.2d at 494. Our review is limited to the basis of the Board's decision, and its findings of fact are binding unless they are arbitrary, capricious or an abuse of discretion. *Id.* (internal citation omitted). We will affirm if any reasonable interpretation of the record supports the Appeals Board's decision. *Id.* On this record, we find no error.

¶10 Under the Arizona Employment Protection Act, an employee may sue the employer for constructive discharge if "objectively difficult or unpleasant working conditions" or the employer's "outrageous conduct" compelled the employee to resign. A.R.S. § 23-1502.² The constructive discharge statute,

² The relevant portion of § 23-1502 reads:

A. In any action under the statutes of this state or under common law, constructive discharge may only be established by either of the following:

1. Evidence of objectively difficult or unpleasant working conditions to the extent that a reasonable employee would feel compelled to resign, if the employer has been given at least fifteen days' notice by the employee that the employee intends to resign because of these conditions and the employer fails to respond to the employee's concerns.

2. Evidence of outrageous conduct by the employer . . . including . . . a continuous pattern of discriminatory harassment by the employer . . . or other similar kinds of conduct, if the conduct would cause a

however, creates only a cause of action against the employer for damages. The term "constructive discharge" is not mentioned in Title 6 of the Arizona Administrative Code ("A.A.C."), which governs claims for unemployment benefits. *Bowman*, 182 Ariz. at 545, 898 P.2d at 494. Accordingly, a constructive discharge claim—that "objectively difficult or unpleasant working conditions" or an employer's "outrageous conduct" has compelled a worker to resign—must be recast in terms of Title 6. *Id.* Under Title 6, a constructive discharge claim is the equivalent of claiming that the worker had "good cause" to quit due to dissatisfactory or intolerable work conditions.

¶11 In *Bowman*, the claimant challenged the Appeals Board's finding that she was disqualified for unemployment benefits because she had voluntarily resigned. The claimant argued that she had not resigned, but had been constructively discharged under A.R.S. § 25-1502 because of sexual harassment. Treating her constructive discharge argument as a claim that she had

reasonable employee to feel compelled to resign.

As preconditions to bringing a constructive-discharge claim, the employee must (1) give written notice "that a working condition exists that the employee believes is objectively so difficult or unpleasant that the employee feels compelled to resign or intends to resign"; (2) allow the employer fifteen calendar days to respond in writing; and (3) "read and consider the employer's response." A.R.S. § 23-1502(B)(1)-(3). These requirements are waived if, however, the employer's conduct was so "outrageous" that a reasonable employee would feel compelled to resign. A.R.S. § 23-1502(F).

"good cause" to quit due to dissatisfactory or intolerable work conditions, we stated that a worker must first show under A.A.C. §§ R6-3-50210 and R6-3-50515 that she took "reasonable steps to preserve the employee-employer relationship and not 'quit impulsively' unless this is impossible or impractical." *Id.* at 546, 898 P.2d at 495. Comparing the claimant's actions "with the degree of tolerance [a] normal worker would be expected to exercise before leaving," we held that the claimant acted impulsively by resigning the day after she first informed her employer about the harassment. *Id.* at 547, 898 P.2d at 496 (citing A.A.C. § R6-3-50515(A)(2)). We affirmed, finding that the claimant voluntarily resigned without good cause. *Id.*

¶12 Despite Pappe's attempt to distinguish *Bowman*, we agree with the Appeals Board that *Bowman* governs our analysis. Recast in Title 6 terms, Pappe argues that she did not quit "voluntarily" but that dissatisfactory or intolerable working conditions "compelled" her resignation. Reasonable evidence, however, supports the Board's finding that she resigned without good cause when she submitted the August 21 letter.

¶13 Pappe testified that the phone call from her manager was the "final straw" that compelled her to resign. The August 21 letter also unconditionally states that she was "compelled to resign." Her testimony that she intended to invoke paragraph F of the constructive discharge statute also demonstrates that she

resigned because it waives prior notice and permits immediate resignation based on the "outrageousness" of an employer's conduct. Because sufficient evidence supports the Board's findings, we reject Pappe's contention that the majority ignored contrary evidence simply because it weighed the evidence differently than the dissent. See *Prebula v. Ariz. Dep't of Econ. Sec.*, 138 Ariz. 26, 30, 672 P.2d 978, 982 (App. 1983) ("This court does not sit as a trier of fact" and will affirm the Appeals Board's decision "if it is supported by any reasonable interpretation of the record.").

¶14 The record further shows that Pappe made no effort to preserve her relationship with the County Attorney before resigning. Pappe's supervisors all testified that she voiced no prior complaints or grievances about her working conditions. Pappe herself testified that she made no effort to adjust her grievances before submitting the August 21 letter. Pappe also refused to engage in a dialogue about her grievances when her supervisors attempted to ask her what was wrong at the time she handed them the letter.

¶15 Nor did Pappe demonstrate intolerable working conditions. Pappe's job duties changed not because she was being harassed, but because she accepted a promotion with a pay raise. Pappe was moved from her cubicle to another one ten feet away not because she was being discriminated against, but

because her cubicle was needed in another building to match other cubicles. While Pappe complains that her then boyfriend and now husband had been banned from the office, she had requested protection from him because he was stalking her. Regarding the phone call that Pappe identified as the final act of harassment that compelled her to resign, the manager explained that she had called to ask whether Pappe went to see a doctor because she was concerned that Pappe had been crying the day before and had left work early to see a doctor. The manager also wanted to know when Pappe was returning to the office because she wanted to decorate Pappe's cubicle for her birthday. We thus find no error.

¶16 We briefly address Pappe's remaining assignment of error, that the County Attorney violated her due process rights under A.R.S. § 23-1502 by accepting her resignation instead of attempting to investigate and adjust her grievances. As noted above, however, § 23-1502 creates a cause of action against an employer for damages arising from wrongful termination. The notice provisions of § 23-1502 are preconditions to bringing a lawsuit and appear to benefit the employer. To the extent, if any, the notice provisions may be construed as conferring due process rights in favor of the employee, Pappe improperly raises such claims against her employer in this appeal. Because Pappe received a fair opportunity to be heard regarding her

disqualification from unemployment benefits, we find no due process violation under Title 6.

CONCLUSION

¶17 For these reasons, we find no error and affirm.

_____\s\
RANDALL M. HOWE, Judge

CONCURRING:

_____\s\
MAURICE PORTLEY, Presiding Judge

_____\s\
PATRICIA A. OROZCO, Judge