

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

JEAN GREEN, *Appellant*,

v.

ARIZONA DEPARTMENT OF ECONOMIC SECURITY, an Agency,

and

CAVE CREEK SCHOOL DISTRICT #93, *Appellees*.

No. 1 CA-UB 17-0535
FILED 9-13-2018

Appeal from the A.D.E.S. Appeals Board
No. U-1555175-001B

REVERSED AND REMANDED

COUNSEL

Wilenchik & Bartness, P.C., Phoenix
By David Timchak
Counsel for Appellant

Arizona Attorney General's Office, Phoenix
By Carol A. Salvati
Counsel for Appellee Arizona Department of Economic Security

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MEMORANDUM DECISION

Judge James B. Morse Jr. delivered the decision of the Court, in which Presiding Judge James P. Beene and Judge Michael J. Brown joined.

M O R S E, Judge:

¶1 Jean Green timely challenges an August 2, 2017, decision by the Arizona Department of Economic Security ("ADES") Appeals Board finding that Green was not entitled to unemployment insurance benefits. ADES elected not to file a response brief in this matter. We reverse the decision of the Appeals Board and remand to ADES.

FACTS AND PROCEDURAL HISTORY

¶2 In early July 2016, Cave Creek School District #93 ("Cave Creek") hired Green as a teacher of the visually impaired. After accepting the job, Green learned that her caseload would include a significant number of students who were not "visually impaired," and concluded that her certification did not cover the services necessary for those students. Green decided to resign the position and Cave Creek accepted her resignation on August 8, 2016.

¶3 On October 19, 2016, a Determination of Deputy concluded that Green was eligible for unemployment benefits because she voluntarily left employment with good cause. Cave Creek contested the Determination of Deputy and the Appeal Tribunal held an evidentiary hearing on April 19, 2017. After the hearing, the Appeal Tribunal issued findings of fact and affirmed the Determination of Deputy. Cave Creek appealed to the Appeals Board. The Appeals Board adopted the Appeal Tribunal's findings of fact but concluded that Green voluntarily left work without good cause and, therefore, was not entitled to unemployment benefits.

¶4 Green timely filed an application for appeal. On October 26, 2017, this Court granted the application and placed this matter in the Arizona Court of Appeals Pro Bono Representation Program. On February 2, 2018, the Court appointed pro bono counsel to file an amicus brief on behalf of Green. Pro bono counsel filed the opening brief on March 14, 2018.

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On March 28, 2018, ADES filed a notice in which it advised that ADES "will not submit a response brief in this matter."¹

DISCUSSION

¶5 ADES did not file an answering brief. Where "debatable issues are raised," we have discretion to treat the lack of response as "a confession of reversible error." *Bugh v. Bugh*, 125 Ariz. 190, 191 (App. 1980). As ably set forth by pro bono counsel in the opening brief, and evidenced by the Determination of Deputy and the decision of the Appeal Tribunal, this matter presents debatable issues. Accordingly, in our discretion, we treat ADES's decision to decline to file a response brief as a confession of reversible error.

CONCLUSION

¶6 We reverse the August 2, 2017, decision of the Appeals Board, find that Green was entitled to unemployment insurance benefits, and remand this matter to ADES.



AMY M. WOOD • Clerk of the Court
FILED: AA

¹ Cases selected for participation in the Pro Bono Program usually will be set for oral argument. See Administrative Order 2014-04 at 2. Given ADES's decision to decline to file a response, however, we vacated the scheduled oral argument in this matter.