IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

STATE OF DELAWARE, DEPARTMENT OF CORRECTION,	:	C.A. No. K10A-06-009 WLW
Employer-Below/Appellant,	:	
v.	:	
REGINA L. POTTER and the UNEMPLOYMENT INSURANCE APPEAL BOARD,	:	
Appellee.	:	

Submitted: August 4, 2011
Decided: November 29, 2011

ORDER

Upon an Appeal of the Decision of the
Unemployment Insurance Appeal Board.
Remanded.

Catherine Damavandi, Esquire, Department of Justice, Wilmington, Delaware; attorney for the Appellant.

Regina L. Potter, *pro se.*

WITHAM, R.J.

The issue before the Court is whether the decision of the Unemployment Insurance Appeal Board, finding that the Appellee was constructively discharged, should stand.

FACTS

The Delaware Department of Corrections (hereinafter "DOC") hired Regina Potter (hereinafter "Potter") on May 31, 2007. In 2009, Potter worked as a Correctional Officer at the Plummer Community Corrections Center in Wilmington, Delaware, which was headed by Warden Steven Wesley (hereinafter "Warden"). On Thursday, August 20, 2009, Correctional Lieutenant Knight brought to the Warden's attention the fact that Potter had a web page on the popular social networking website "Facebook" and that two offenders were on her "Friends" list. The Warden investigated Potter's web page and found that indeed two men who had been under the care of DOC were listed as Potter's Facebook friends. One of the men was under Potter's direct supervision.

On Friday, August 21, 2009, the Warden sent out an e-mail to staff regarding Potter's conduct on Facebook and ordered a "210 investigation" into the issue to examine for breaches of DOC policy. Before the investigation began, however, Potter resigned on Monday, August 24, 2009. Previous to the resignation, Potter consulted with the President of the Correctional Officers Association of Delaware, Stephen Martelli (hereinafter "Martelli"). Martelli advised Potter that she had two options: resign or be terminated. Martelli's advice was based upon consultation with the Union's lawyer, Martelli's knowledge of the facts of the case, and Martelli's

experience with previous similar cases.

On September 8, 2009, Potter filed for unemployment benefits with the Delaware Department of Labor. On September 29, 2009, the claims deputy rejected Potter's application for benefits, finding that "the claimant quit her job without exhausting all administrative remedies."[1] Potter appealed to the appeals referee who found that "[t]he claimant left her work without good cause attributable to her work,"[2] and her appeal was denied, but she appealed to the Unemployment Insurance Appeal Board (hereinafter "the Board"). The Board hearing was scheduled to occur on April 13, 2010. The hearing was continued due to the absence of Martelli. At the hearing on May 4, 2010, the Board heard testimony from Potter's witness, Martelli, and from DOC's witness, Janet Durkee. In a decision finalized on June 18, 2010, the Board found that Potter had been constructively discharged, and DOC did not have just cause to discharge her. DOC timely appealed to this Court.

Standard of Review

The reviewing court serves to determine whether substantial evidence supports the Board's decision.[3] Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a particular conclusion.[4] It is more than a

---

[1]Appellant's Br. at A-13.

[2]*Id.* at A-21.

[3]*Kondzielawa v. Ferry, Joseph & Pearce, P.A.*, 2003 WL 21350538, at *3 (Del. Super. June 6, 2003).

[4]*Parks v. Wal-Mart*, 2004 WL 1427016, at *2 (Del. Super. June 24, 2004).

scintilla and less than a preponderance.[5] In addition, the Court must determine whether the Board's decision is free from legal error.[6] Superior Court does not hold responsibility as a trier of fact with authority to weigh evidence, determine credibility, or to make findings of fact and conclusions.[7]

DISCUSSION

On appeal, DOC makes four arguments. First, it argues that the Board committed legal error in excusing Potter from the "good cause" analysis of 19 *Del. C.* §§ 3314 and 3315. Indeed, the statute requires that an individual be disqualified from receiving benefits if "the individual left work voluntarily without good cause attributable to such work . . . ."[8] Thus, whether the individual left work voluntarily is critical as to whether good cause analysis is required.

The Board found that DOC constructively discharged Potter. In its explanation, the Board stated, "Delaware courts have long accepted the definition of constructive discharge to include resignation induced by pressure from the employer and held that 'resignation under pressure is tantamount to a discharge.'"[9] The Court

---

[5]*City of Wilmington v. Clark*, 1991 WL 53441, at *2 (Del. Super. Mar. 20, 1991) (*citing Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981)).

[6]*PAL of Wilmington v. Graham*, 2008 WL 2582986, at *4 (Del. Super. June 18, 2008) (*citing Unemployment Ins. Appeal Bd. v. Martin*, 431 A.2d 1265 (Del. 1981)).

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

[8]19 *Del. C.* § 3314(1).

[9]*State of Delaware et al. v. Regina L. Potter*, No. 40112662, at 3 (Del. U.I.A.B. June 18, 2010) (*citing Anchor Motor Freight, Inc. v. Unemployment Ins. Appeal Bd.*, 325 A.2d 374, 376 (Del.

does not agree that Potter was constructively discharged. Potter quit her job on Monday, August 24, 2009 after she met with Union President Martelli. In that meeting, Martelli told Potter that she had two options: (1) resign or (2) be terminated. The Board did not find that any discussion occurred between DOC and Potter.[10] Thus, the only pressure that could be tantamount to a discharge would have come from Martelli. The Board did not find that Martelli was an agent of anyone other than the Union. It is unfortunate that Martelli's advice persuaded Potter to resign without utilizing her administrative remedies. This advice, however, cannot be imputed to DOC. On these facts, neither of the cases cited by the Board for constructive discharge squarely apply because the employer, here DOC, did not apply the pressure to resign.[11] Therefore, the Board's constructive discharge analysis fails as a matter of law.

Second, DOC argues that the Board committed legal error in finding that DOC's administrative remedies were a "charade." In making its assessment of the administrative remedies available to Potter, the Board analyzed an e-mail regarding the Warden's initial investigation of Potter's matter. Based upon the Warden's initial

---

Super. 1974); *PAL of Wilmington v. Graham*, 2008 WL 2582986 (Del. Super. June 18, 2008)).

[10]*See id.* at 4.

[11]*Anchor Motor Freight, Inc.*, 325 A.2d at 375 (constructive discharge when employer threatened employee with loss of paycheck and vacation pay if she did not sign letter of resignation); *PAL of Wilmington*, 2008 WL 2582986, at *7 (constructive discharge when employee resignation was induced by employer's evaluation plan containing implied threats of termination that employee refused to sign).

impressions in that e-mail, the Board concluded that it would be unnecessary for Potter to engage her administrative remedies because "[t]he Board sees nothing to be gained in requiring employees to engage in a charade to obtain remedies that are mere chimera and considers such a requirement contrary to policy that the statute should be construed liberally in favor of such an employee."[12] The Court notes that it does not hold responsibility as a trier of fact with authority to weigh evidence, determine credibility, or to make findings of fact and conclusions,[13] so the Court defers to the Board on this item of evidence.

"The Court reviews questions of law *de novo* to determine 'whether the Board erred in formulating or applying legal concepts.'"[14] In this vein, the Court comments on the Board's utilization of *Rodney Square Building Restoration*,[15] which cites to *Johnston v. Chrysler Corporation*.[16] The Board cites these cases in order to circumvent the general requirement for the exhaustion of administrative remedies.[17] Although the Court does not comment as to the Board's finding of facts, the Court

---

[12]*Potter*, No. 40112662, at 3 (*citing Rodney Square Bldg. Restoration v. Noel*, 2008 WL 2943376, at *5 (Del. Super. July 22, 2008)).

[13]*Johnson*, 213 A.2d at 66.

[14]*Rodney Square*, 2008 WL 2943376, at *4 (*citing Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991)).

[15]*Id.* at *5.

[16]178 A.2d 459, 464 (Del. 1962).

[17]*O'Neal's Bus Serv., Inc. v. Employment Sec. Comm'n*, 269 A.2d 247, 249 (Del. Super. 1970).

feels compelled to caution the Board in its use of these precedents as they are useful in the context of looking past technical requirements in close cases in the interests of justice, not to create exceptions that swallow the statute. The Court agrees that Chapter 33 of Title 19 was created to protect citizens from the effects of involuntary unemployment. The Court also notes that the Legislature deemed it fit to award unemployment benefits only in circumscribed cases. "Good cause" is a key portion of 19 *Del. C.* § 3314, and it should not be so easily dispensed with as the technical filing requirements of the statute.[18] Neither should the exhaustion of administrative remedies be so easily discarded. Proper use of administrative remedies provides not only an opportunity for the grievant to be heard, but also for the Court to attain a greater understanding of the particular administrative process and its adequacy or inadequacy. When this process is circumvented, the reviewing court is left with a hole in the record that both sides attempt to fill with speculation – a matter that leaves courts suspicious at least, uncomfortable at best.

Third, DOC asserts that the Board erred by shifting the burden to the DOC to prove just cause in terminating Potter. Given the Court's decision as a matter of law that Potter resigned voluntarily, the Board's shifting of the burden to DOC to prove just cause was incorrect.

Fourth, DOC complains that the Board erred in predicting the result of the DOC's incomplete investigation. The Court finds it unnecessary to comment on the

---

[18]Notably, in *Rodney Square*, the statute explicitly allows the Board to excuse the employer for missing the seven day deadline. 2008 WL 2943376, at *4.

Board's prediction of the result of DOC's investigation since it would implicate the factual findings and conclusions of the Board.[19]

CONCLUSION

The Court rules, as a matter of law, that Potter was not constructively discharged, and therefore, she resigned from employment voluntarily. This case is remanded to the Board for a determination of whether the Claimant had good cause for her voluntary resignation, pursuant to 19 *Del. C.* § 3314.[20] Jurisdiction is not retained.

IT IS SO ORDERED.

/s/ William L.Witham, Jr.
Resident Judge

WLW/dmh
oc: Prothonotary
xc: Catherine Damavandi, Esquire
Ms. Regina L. Potter

[19]As noted earlier in this opinion, the Board heard testimony from Janet Durkee regarding the administrative procedure of the DOC and from Union President Martelli on past outcomes of this procedure.

[20]*Longobardi v. Unemployment Ins. Appeal Bd.*, 287 A.2d 690, 692 (Del. Super. 1971), *aff'd*, 293 A.2d 295 (Del. 1972).