

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

MARY J. BENJAMIN,)	
)	
Appellant,)	
)	
v.)	C.A. No. N12A-04-001 EMD
)	
NET, INC., and UNEMPLOYMENT)	
INSURANCE APPEALS BOARD,)	
)	
Appellees.)	

Submitted: January 4, 2013
Decided: February 26, 2013

On Appeal from the Unemployment Insurance Appeal Board
*Decision **AFFIRMED***

Mary Benjamin, Middletown, Delaware, pro se *Appellant*.

Laurence V. Cronin, Esquire, Smith, Katzenstein & Jenkins LLP, Wilmington, Delaware,
Attorney for Appellee NET, Inc.

Caroline Lee Cross, Esquire, and Thomas H. Ellis, Esquire, Wilmington, Delaware,
Attorneys for Appellee Department of Justice.

DAVIS, J.

INTRODUCTION

This is an appeal from a decision of the Unemployment Insurance Appeal Board (the “Board”) affirming findings by a Department of Labor claims deputy and an appeals referee that Claimant-Appellant Mary Benjamin voluntarily resigned from her position of employment with Appellee Northeast Treatment Centers, Inc., named in this matter as NET, Inc. (“NET”). The Board based its determination on evidence presented at a

hearing before the Board, namely that Ms. Benjamin signed a settlement agreement for her voluntary resignation and subsequently did not return to work for two weeks.¹ Ms. Benjamin contends that the Board erred in finding she voluntarily ended her employment with NET. For the reasons set forth below, the Board's decision is **AFFIRMED** as the record on appeal contains substantial evidence to support the Board's determination and is otherwise free from legal error.

PROCEDURAL POSTURE

Ms. Benjamin filed a claim for unemployment benefits with the Delaware Department of Labor Division of Unemployment Insurance on October 2, 2011.² On October 24, 2011, a claims deputy determined Ms. Benjamin was disqualified for the receipt of benefits due to her resignation without good cause from employment with NET.³ The deputy arrived at this determination by concluding from the facts presented that Ms. Benjamin voluntarily quit her employment for personal reasons.⁴

Ms. Benjamin filed an appeal of the claims deputy's decision on October 28, 2011.⁵ An appeals referee held a hearing on the appeal on November 29, 2011.⁶ On November 30, 2011, the appeals referee affirmed the claims deputy's decision,⁷ finding that Ms. Benjamin left work voluntarily without good cause attributable to her work because she signed a settlement agreement for her resignation.⁸

¹ Record [hereinafter "R."] at 103.

² *Id.* at 13.

³ *Id.*

⁴ *Id.* at 14.

⁵ *Id.* at 18.

⁶ *Id.* at 19.

⁷ *Id.* at 58.

⁸ *Id.*

Ms. Benjamin then filed an appeal to the Board on December 8, 2011.⁹ The Board held a hearing on March 7, 2012, receiving testimony and other evidence from the parties.¹⁰ The Board issued its decision affirming the appeals referee's decision on March 16, 2012.¹¹ Consistent with the decisions below, the Board relied upon Ms. Benjamin having signed the settlement agreement for her resignation as the basis for its conclusion that she voluntarily quit her employment without good cause.¹² Specifically, the Board found and concluded as follows:

In this case, [Ms. Benjamin] worked as a youth counselor for [NET] from 2007 until September 8, 2011. On that date, as part of a mediation before the Division of Industrial Affairs, [Ms. Benjamin] and [NET's] representative signed a Settlement Agreement that stated that [Ms. Benjamin] agreed to "a voluntary resignation from her employment...as of September 8, 2011...." [citation omitted] [Ms. Benjamin] had no further contact with [NET], nor did she come to work, until two weeks later, on September 22, 2011, when [Ms. Benjamin's] then-attorney informed [NET] that she was not signing the General Release.

It is clear from the record that [Ms. Benjamin] signed a settlement agreement on September 8, 2011 indicating that she intended to resign voluntarily as of that day. Some two weeks later, she changed her mind. [NET] had already accepted her resignation and sent [Ms. Benjamin's] attorney the General Release as agreed upon.

Based on the evidence before it, the Board is convinced by a preponderance of the evidence that [Ms. Benjamin] voluntarily quit her employment, and that she did so without good cause in connection with her work.¹³

Ms. Benjamin filed her Petition for Appeal with this Court on March 26, 2012.¹⁴

The Court issued a briefing schedule on September 6, 2012. Ms. Benjamin filed her Opening Brief on September 27, 2012. On October 2, 2012, the Board filed a letter with

⁹ *Id.* at 75.

¹⁰ *Id.* at 82.

¹¹ *Id.* at 104.

¹² *Id.* at 103-04.

¹³ *Id.*

¹⁴ *Id.* at 115.

the Court expressing its intention not to take a position as to the merits of the case. NET filed its Answering Brief on October 16, 2012. Ms. Benjamin filed her Reply Brief on October 31, 2012.

On November 1, 2012, Ms. Benjamin submitted to the Court a letter requesting that the Court consider an attached email as additional evidence. On November 7, 2012, counsel for NET requested that the Court deny Ms. Benjamin's request, as the evidence was not offered in the proceedings below and thus was not of record before the Court. Ms. Benjamin reiterated her request in a letter to the Court dated November 12, 2012.

On January 4, 2013, this matter was referred to this Judge for decision.

FACTUAL BACKGROUND

Ms. Benjamin was employed as a youth counselor with NET from December 5, 2007 to September 7, 2011.¹⁵ Ms. Benjamin's employment concluded as part of settlement negotiations between the parties for Ms. Benjamin to drop discrimination charges she filed against NET with the Delaware Department of Labor in April 2011.¹⁶ On September 8, 2011, the parties signed a settlement agreement which provided for Ms. Benjamin's voluntary resignation, in exchange for payment of \$5,000.00. In addition, NET was to provide Ms. Benjamin with her accrued vacation time and health insurance and prescription benefits until December 31, 2011.¹⁷ Under the settlement agreement's terms, the parties were to enter into an independent general release. NET's obligations to pay Ms. Benjamin and provide her health and prescription benefits were contingent upon

¹⁵ *Id.* at 1.

¹⁶ *See id.* at 7, 30-31.

¹⁷ *Id.* at 68-69. The settlement agreement provided that NET would submit to the Delaware Department of Labor "notification confirming that the agreed upon terms and conditions" were met within 30 days completion. *Id.* at 69.

execution of a general release.¹⁸ The settlement agreement sets September 8, 2011 as Ms. Benjamin’s resignation date pending full execution of a general release.¹⁹ Ms. Benjamin subsequently did not return to work.

On September 8, 2011, counsel for NET—Brenda Flock, Esquire—emailed Ms. Benjamin’s attorney a general release for Ms. Benjamin to sign.²⁰ Ms. Benjamin testified that after reviewing the general release on September 15, 2011, she was not satisfied with its terms and did not sign it.²¹ In a letter dated September 20, 2011, Ms. Benjamin informed her attorney that she would not execute the release and “decided to drop the mediation process” in favor of returning to work if she could.²² She wrote that she did not realize the general release would affect her ability to claim workers’ compensation benefits and attain employment with other companies.²³ In a letter dated September 22, 2011, Ms. Benjamin’s attorney informed Ms. Flock that Ms. Benjamin refused to sign the release.²⁴

On September 22, 2011, Ms. Flock called Ms. Benjamin to inform her that, without the signed general release, NET would not provide health insurance benefits after the end of September.²⁵ In a letter dated September 22, 2011, Ms. Flock informed Ms. Benjamin that NET accepted her “voluntary oral resignation . . . made on September 8, 2011 . . . in the presence of and through [her] attorney.”²⁶ On the same day, Ms.

¹⁸ *Id.* at 69.

¹⁹ *Id.*

²⁰ *Id.* at 106.

²¹ *Id.* at 36, 97.

²² *Id.* at 71.

²³ *Id.*

²⁴ *Id.* at 66.

²⁵ *Id.* at 45-46, 94.

²⁶ *Id.* at 67. Ms. Flock testified that she wrote to Ms. Benjamin because NET had not received a resignation letter from Ms. Benjamin, and as far as NET knew, Ms. Benjamin had resigned. *Id.* at 52. Ms. Flock

Benjamin wrote a letter to the Department of Labor. In that letter, Ms. Benjamin explained that she did not execute the general release because she felt concerned about its potential to (i) affect her ability to file workers' compensation claims and (ii) force her to pay for benefits through a COBRA plan.²⁷ Moreover, Ms. Benjamin refused to execute the general release because she felt the process was rushed.²⁸

On October 7, 2011, a supervisor for the Division of Industrial Affairs for the Delaware Department of Labor sent a letter to Ms. Benjamin and to NET with attention to Ms. Flock, stating that the settlement agreement appeared to be intact despite potential breach of contract issues which either party could pursue in a court of competent jurisdiction.²⁹ The letter contains a statement that "it [] appears [Ms. Benjamin] did not voluntarily resign."³⁰

PARTIES' CONTENTIONS

Ms. Benjamin raises two main arguments in this appeal. First, she argues that the Board's decision is based on inaccurate and incomplete information. Specifically, she contends the Board failed to consider an understanding between Ms. Benjamin and NET that the settlement agreement would not be binding until Ms. Benjamin reviewed, agreed to, and signed a general release. Second, Ms. Benjamin argues NET refused to accept her proposed amendments to the general release and did not inform her of this refusal for two weeks.

testified that sending such a letter is standard practice when someone resigns orally and does not submit a resignation letter. *Id.*

²⁷ *Id.* at 72, 43-44.

²⁸ *Id.* at 72, 43-44.

²⁹ *Id.* at 70.

³⁰ *Id.*

NET contends that the Board had substantial evidence to support its decision denying Ms. Benjamin's claim for unemployment benefits because the Board found that Ms. Benjamin voluntarily resigned without good cause.

STANDARD OF REVIEW

On review, pursuant to 19 *Del. C.* § 3323, “the findings of [the Board] 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.”³¹ Therefore, this Court's role upon appeal is to determine whether the Board's findings are “supported by substantial evidence and free from legal error.”³² Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”³³ Moreover, the Court may only consider the record before it.³⁴ In reviewing the record for substantial evidence, the Court considers the record in “the light most favorable to the party prevailing below.”³⁵

Consequently, the Court will not disturb the Board's determination absent an abuse of discretion by the Board.³⁶ The Court will find an abuse of discretion only if “the Board ‘acts arbitrarily or capriciously’ or ‘exceeds the bounds of reason in view of

³¹ 19 *Del. C.* § 3323 (2012); *Coleman v. Dep't of Labor*, 288 A.2d 285, 287 (Del. Super. 1972) (“[T]he credibility of the witnesses, the weight of their testimony, and the reasonable inferences to be drawn therefrom are for the Board to determine.”).

³² *Ridings v. Unemployment Ins. Appeal Bd.*, 407 A.2d 238, 239 (Del. Super. 1979); *Crews v. Sears Roebuck & Co.*, N10A-08-011, 2011 WL 2083880, at *2 (Del. Super. May 11, 2011).

³³ *Oceanport Indus. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994).

³⁴ *Hubbard v. Unemployment Ins. Appeal Bd.*, 352 A.2d 761, 763 (Del. 1976).

³⁵ *Steppi v. Conti Elec., Inc.*, 2010 WL 718012, at *3, 991 A.2d 19 (table) (Del. Mar. 16, 2010); *Gen. Motors Corp. v. Guy*, 90A-JL-5, 1991 WL 190491, at *3 (Del. Super. Aug. 16, 1991).

³⁶ *Crews*, 2011 WL 2083880, at *2; *see also Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991) (“The scope of review for any court considering an action of the Board is whether the Board abused its discretion.”).

the circumstances and has ignored recognized rules of law or practice so as to produce injustice.”³⁷

DISCUSSION

A. The Court cannot consider the email Ms. Benjamin submitted to the Court on November 1, 2012.

Ms. Benjamin submitted an e-mail (the “E-Mail”) to the Court on November 1, 2012 for the Court’s consideration here. Ms. Benjamin did not offer the E-Mail as evidence in any of the proceedings below. On appeal, the Court can only consider the record comprised in the proceedings below. As the E-Mail was not a part of the record, the E-Mail cannot be considered now in this Court’s determination of whether the evidence supported the findings of the deputies and the Board.³⁸

B. The Board’s determination that Ms. Benjamin left her employment with NET without good cause is supported by substantial evidence and free from legal error.

An employee who resigns from work voluntarily and “without good cause attributable to such work” is disqualified from the receipt of unemployment compensation benefits.³⁹ A claimant bears the burden of establishing good cause.⁴⁰ Good cause is “such cause as would justify one in voluntarily leaving the ranks of the employed and joining the ranks of the unemployed.”⁴¹ The Supreme Court of Delaware has stated:

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

³⁷ *Straley v. Advanced Staffing, Inc.*, 2009 WL 1228572, at *2 (Del. Super. 2009) (citations omitted).

³⁸ *Hubbard*, 352 A.2d at 763.

³⁹ 19 *Del. C.* § 3314.

⁴⁰ *Moore v. Fulton Paper Co.*, 14, 1995 WL 389765, at *2, 663 A.2d 488 (table) (Del. June 23, 1995).

⁴¹ *White v. Sec. Link*, 658 A.2d 619, 622 (Del. Super. 1994).

reasonable alternatives to resolve the issues before voluntarily terminating his or her employment.⁴²

“Whether an employee’s voluntary resignation constitutes ‘good cause’ is a question of law”⁴³ and should be considered under the standard of a reasonably prudent person acting under similar circumstances.⁴⁴

At a hearing, the Board received into evidence testimony and documents, and heard the arguments of the parties. The Board then found and concluded that Ms. Benjamin resigned from her employment with NET voluntarily and without good cause attributable to her employment. The Board based that on a series of enumerated facts set out in its March 7, 2012 decision. The Court has reviewed the Boards written findings of fact and conclusions of law.

The Board found that Ms. Benjamin signed the settlement agreement which stated, “Charging Party agrees to a voluntary resignation from her employment with Respondent as of September 8, 2011 and will provide Respondent with a resignation letter indicating September 8, 2011 as a resignation date pending the full execution of Respondent’s general release.”⁴⁵ The Board also found that Ms. Benjamin had no further contact with NET after signing the agreement—including coming to work or otherwise contacting her employer—until two weeks later, on September 22, 2011, when Ms.

⁴² *Thompson v. Christiana Care Health Sys.*, 25 A.3d 778, 783 (Del. 2011); see *Crews v. Sears Roebuck & Co.*, N10A-08-011, 2011 WL 2083880, at *2 (Del. Super. May 11, 2011) (stating that a substantial reduction in work hours from the number of hours specified in an original employment agreement may constitute good cause); *O’Neal’s Bus Serv., Inc. v. Employment Sec. Comm’n*, 269 A.2d 247, 249 (Del. Super. 1970) (affirming that a school bus driver left his employment for good cause attributable to such employment when he resigned after raising multiple complaints about the conduct of pupils aboard his bus out of fear for the safety of himself and other motorists); *White*, 658 A.2d at 624 (finding good cause exists where a sudden change in working hours creates a conflict in an employees parenting obligations which reasonable efforts of the parent cannot resolve).

⁴³ *Crews*, 2011 WL 2083880, at *2 (citing *Dept. of Labor v. Unemployment Ins. Appeal Bd.*, 297 A.2d 412, 414 (Del. Super. 1972)).

⁴⁴ *White*, 658 A.2d at 622.

⁴⁵ R. at 69.

Benjamin's attorney informed NET that she was not signing the release. Applying the applicable statute and generally accepted case law, the Board was "... by a preponderance of the evidence that [Ms. Benjamin] voluntarily quit her employment, and that she did so without good cause in connection with her work."⁴⁶

The record lacks evidence to support Ms. Benjamin's contention that she and NET understood that the settlement agreement would not be binding until Ms. Benjamin signed a general release. The record also lacks evidence that Ms. Benjamin or her attorney contacted NET to propose amending the general release so that Ms. Benjamin would feel comfortable signing it. On the contrary, the record shows, and the Board's decision reflects, that Ms. Benjamin had a change of heart about her decision to resign after NET accepted her resignation.⁴⁷

Ms. Benjamin cites the October 7, 2011 letter from a supervisor with the Department of Labor Division of Industrial Affairs stating it appeared that Ms. Benjamin did not voluntarily resign.⁴⁸ As a finder of fact, the Board was free to ascribe little to no value to the letter as evidence. The Board would have been justified in disregarding the supervisor's opinion because she did not witness Ms. Benjamin signing the settlement agreement.⁴⁹

The Court holds that the findings of the Board, as to the facts, are supported by the evidence. The record demonstrates that Ms. Benjamin's resignation from her employment with NET stems from her voluntary decision to drop the discrimination charges she filed against NET in exchange for certain payments and benefits. Moreover,

⁴⁶ *Id.* at 104.

⁴⁷ *See id.* at 67.

⁴⁸ Appellant's Op. Br. 9.

⁴⁹ D.R.E. 701.

the Court holds that the Board applied recognized rules of law (statutory and otherwise) and is, therefore, free from legal error.

CONCLUSION

For the reasons stated above, the Board's finding that Ms. Benjamin quit her employment with NET without good cause is supported by substantial evidence and is free from legal error. Therefore, the Board's decision is **AFFIRMED**.

IT IS SO ORDERED.

Eric M. Davis

Eric M. Davis
Judge