

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

LINDA REDMON,)	
)	
)	
Appellant,)	
)	
v.)	C.A. No. N12A-08-004-CLS
)	
GILPIN HALL and UNEMPLOYMENT)	
INSURANCE APPEAL BOARD,)	
)	
)	
Appellees.)	
)	

Date Submitted: January 2, 2012
Date Decided: April 10, 2013

On Appeal from the Decision of the Unemployment Insurance Appeal Board.
AFFIRMED.

ORDER

Linda Redmon, Bear, Delaware. *Pro Se* Appellant.

Jennifer Gimler Brady, Esq., Michael B. Rush, Esq., Potter Anderson & Corroon LLP, Wilmington, Delaware. Attorneys for Appellee, Home for Aged Women-Minquadale Home, Inc. d/b/a Gilpin Hall

Scott, J.

Introduction

Before this Court is the Appellant Linda Redmon's ("Appellant") appeal from the decision of the Unemployment Insurance Appeal Board ("Board") in which the Board concluded that Appellant terminated her employment without good cause attributable to her employment. The Court has reviewed the parties' submissions. For the following reasons, the decision of the Board is **AFFIRMED**.

Background

On October 14, 2011, Gilpin Hall ("Employer") hired Appellant as a part-time security front desk receptionist. When Appellant was hired, an individual who was a member of the National Guard was employed by Employer, but was scheduled to be away for military duty from October 14, 2011 until February 2012. After the serviceman returned, Employer requested that Appellant sign an "Employee's Request for Change in Status" form ("Request Form") to indicate that Appellant would be transitioning from part-time status to "PRN", which meant that Appellant would be working on an "as needed" basis. Appellant refused to sign the form and her employment ended on March 5, 2012.

Appellant filed for unemployment benefits and the Claims Deputy determined that Appellant was discharged without just cause. Employer appealed the decision and a hearing was held on April 26, 2012. Vicki Roberts ("Roberts"),

a witness for Employer, testified that Appellant's position was a part-time, *temporary* position and that Appellant was informed when she was hired that it "may be possible that [the position] would become full time [when the serviceman returned] but [the employer] was not sure until the serviceman was to return."¹ Paul Smiley ("Smiley"), another witness for Employer, gave similar testimony. Employer provided the Board with a "Verification of Employment" form, dated October 14, 2011, which indicated that Appellant's position was temporary with a "[p]ossibility of becoming permanent [part-time] in January."² Appellant testified that she was unaware that she was being hired on a temporary basis or that her hours would be reduced when the serviceman returned until four months into the job.

Employer's witnesses testified that, when the serviceman returned, Appellant's temporary position ended and Employer offered Appellant a position on "as needed" basis. Appellant testified that she refused to sign the form due to her belief that the wording of the form was misleading. Appellant believed that the form indicated that Appellant was requesting to work less hours when she was not. Smiley testified that it was explained to Appellant that signing the form was not

¹ Record, at 27.

² The word "Temporary" was typewritten and the portion that provided that the position had a "possibility of becoming permanent" was handwritten. Appellant asserts that "Temporary" was "penciled-in" after she had signed the form. The Court will not consider this argument because it was within the Board's discretion to determine the weight of this evidence.

actually a request to reduce her hours because her position had ended after the serviceman returned. He further testified that the signing the form was, instead, a request to be put on a list to be called to work on an “as needed” basis.

Reversing the decision of the Claims Deputy, the Appeals Referee determined that Appellant left work without good cause attributable to her work. Appellant appealed this decision to the Board and a hearing was held on July 11, 2012. During the hearing, Appellant and Smiley reiterated much of the same testimony given at the April 2012 hearing. The Board affirmed the Referee’s decision after examining the record and the additional testimony and evidence received during the July hearing. The Board deemed the Employer’s witnesses’ testimony to be “consistent and credible”³ that Appellant was hired for a temporary period while the service member was away on military service and that Appellant conceded to the Referee that she was aware she was hired on a temporary basis. The Board found that, when Appellant refused to sign the Request Form after her temporary position expired, she was “refusing to continue her employment.”⁴ The Board also found the evidence to be insufficient to conclude that Appellant had good cause to leave her work for reasons attributable to the work since the position was temporary and the change in employment status was foreseeable.

³ R., at 69.

⁴ *Id.* at 68.

Issues on Appeal

Appellant sets forth several facts and challenges to the testimony given by the Employer's witnesses in the hearings below as the basis for this appeal. Appellant explains that she was never informed that she was filling in temporarily for military personnel and gives further details about the circumstances surrounding Employer's request that she sign the Request Form. Appellant also argues that the record shows that she did not voluntarily quit work. Employer argues that the Board's decision was free of legal error and supported by substantial evidence which showed that Appellant's decision to leave her employment was without good cause.

Standard of Review

When this Court reviews a decision from the Board, its review is limited to whether the Board has committed legal error and whether its decision was supported by substantial competent evidence.⁵ “‘Substantial evidence’ means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”⁶

⁵ See 19 Del. C. § 3323(a); *Martin v. Goodwill Indus. of Delaware & Delaware County, Inc.*, 2011 WL 6000830, *2 (Del. Super. Nov. 18, 2011).

⁶ *Turbitt v. Blue Hen Lines, Inc.*, Del.Supr., 711 A.2d 1214, 1215 (1998), quoting *Histed v. E.I. Du Pont De Nemours & Co.*, Del.Supr., 621 A.2d 340, 342 (1993).

It is for the Board, and not this Court, to make determinations as to the weight of evidence, credibility of witnesses, factual findings and conclusions.⁷

“Accordingly, if the record supports the Board's findings, the Court should accept those findings even if the Court might reach a different conclusion upon review of the facts presented.”⁸

Discussion

The Board’s decision was supported by substantial evidence and free from legal error. 19 *Del. C.* § 3314 sets forth the circumstances under which an employee is disqualified from receiving unemployment benefits. Under § 3314(1), an employee who “voluntarily left work without good cause attributable to such work” is precluded from receiving unemployment benefits.⁹ An employee voluntarily leaves when she has a “conscious intention to leave or terminate the employment.”¹⁰ Where a temporary employee works less than 130 days, she will be considered to have “left work voluntarily” at the termination of the employment; otherwise, the totality of the circumstances, such as the period and

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

⁸ *Ryle v. Bancroft Neurohealth*, 2011 WL 2088547, at *3 (Del. Super. Apr. 28, 2011).

⁹ 19 *Del. C.* § 3314(1).

¹⁰ *Laipe v. Casapulla's Sub Shop*, 1997 WL 524063, at *3 (Del. Super. May 20, 1997).

nature of employment, should be evaluated to determine whether the employee has “left work voluntarily.”¹¹

The employee’s burden to show that she has left with “good cause”¹² is met if it is established that: “(i) an employee voluntarily le[ft] 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 exhaust[ed] all reasonable alternatives to resolve the issues before voluntarily terminating his or her employment.”¹³ If the employee’s reasons for leaving are connected to the employment, “such as [...] a substantial reduction in wages or hours, or a substantial, detrimental deviation from the original employment agreement”, “good cause” will be established.¹⁴

The Court finds that substantial evidence exists to support Board’s conclusion that that Appellant “voluntarily left” her work. Appellant argues that the evidence shows that she did not voluntarily leave work; however, the Board heard testimony that Appellant’s temporary position had ended when the Employer requested that that Appellant sign the form in order to continue to work for the Employer on the “as needed” basis. The Board

¹¹ See *City of Wilmington v. Unemployment Ins. Appeals Bd.*, 516 A.2d 166, 169-70 (Del. 1986).

¹² *Crews v. Sears Roebuck & Co.*, 2011 WL 2083880, *2 (Del. Super. May 11, 2011).

¹³ *Thompson v. Christiana Care Health Sys.*, 25 A.3d 778, 783 (Del. 2011).

¹⁴ *Laimé*, 1997 WL 524063, at *3.

acted within its discretion to weigh the credibility of witnesses and to determine that Employer's witnesses' testimony was "consistent and credible." Based on the testimony provided, the Board found that Employer offered to retain Appellant, but "she effectively quit by refusing to stay on as an "as needed" employee."¹⁵ The Court finds that substantial evidence existed to show that Appellant voluntarily left work by not signing the Request Form, which would have enabled her to continue her employment after her temporary position ended.

The Court also finds that the Board correctly applied § 3314(1) to the evidence in determining that Appellant failed to establish that she left for "good cause attributable to her work." The Board found that Appellant was aware that her position was temporary and created in relation to the serviceman's absence. Appellant expressed that her refusal to sign the Request Form was based on her belief that the wording of the form made it appear that she was requesting reduced hours and that she did not want part-time hours. The Court agrees that Appellant failed to establish that Appellant's disagreement with the wording of the Request Form was "good cause attributable to her work" since the Employer was not obligated to offer

¹⁵ R., at 69.

or to allow Appellant to continue her employment after the temporary position ended.

Conclusion

Based on the forgoing, the decision of the Board is **AFFIRMED**.

IT IS SO ORDERED.

/S/CALVIN L. SCOTT
Judge Calvin L. Scott, Jr.