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

MARILYN LAMBERTH,	)	
	)	
Appellant,	)	
	)	
v.	)	C.A. No. N12A-10-010-DCS
	)	
BRANDYWINE COUNSELING and UNEMPLOYMENT INSURANCE APPEAL BOARD,	)	
	)	
Appellees.	)	

Submitted: April 25, 2013
Decided: July 23, 2013

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

OPINION

Marilyn Lamberth, *Pro Se* Appellant.

Lori A. Brewington, Esquire and Jennifer C. Jauffret, Esquire, Richards, Layton & Finger, P.A., Wilmington, Delaware, Attorneys for Appellee Brandywine Counseling.

Lynn A. Kelly, Deputy Attorney General, Department of Justice, Wilmington, Delaware, Attorney for Appellee the Unemployment Insurance Appeal Board.

STREETT, J.

Appellant Marilyn Lamberth (the "Claimant") has appealed the October 21, 2012 decision of the Unemployment Insurance Appeal Board (the "Board"). The Board affirmed the Appeals Referee's determination that Claimant was ineligible for unemployment benefits because she voluntarily resigned from her position with Appellee Brandywine Counseling & Community Services (the "Employer") without good cause. In her appeal, Claimant maintains that she is entitled to unemployment benefits and reiterates her contention that she was "forced" to resign from her position.

Factual Background

The Board held a hearing on September 26, 2012. Witnesses included Claimant, three of her co-workers (Latisha Ferby, Amy Limosino, and Mark Cosenta), Claimant's Clinical Supervisor (Nicole Taylor), Claimant's Program Manager (Domenica Personti), and Employer's Human Resources Director (Denise Stypinski).[1]

The record showed that Claimant was employed at will as an Intensive Outpatient Program Counselor with Employer's Drug Diversion Program from August 2011 until March 2, 2012.[2] During the course of her employment, Claimant received one verbal warning, one written warning, a notification that her

[1] As part of the record, the Board also had the testimony of Claimant, Personti, and Taylor before the Appeals Referee on June 11, 2012.

[2] R. at 3, 43, 88.

introductory period would be extended, and one suspension without pay. Claimant drafted a letter of resignation within hours of receiving the suspension.

On January 6, 2012, Employer issued a verbal warning to Claimant for her failure to appropriately handle a suicidal client.[3] Claimant had failed to immediately contact her supervisor, complete a safety contract, and provide a referral for the suicidal client to be evaluated by mental health services. Nicole Taylor, Claimant's supervisor, testified that she (Taylor) met with Claimant, issued a verbal warning, witnessed Claimant sign the corrective action notification pertaining to the verbal warning, and provided Claimant with a copy in accordance with procedures.[4] Claimant denied meeting with Taylor or receiving a verbal warning, stated that she received her first corrective action notification on February 7, 2012, and claimed that neither her signature nor acknowledgement were on the January 6th form (inferring that someone had forged her signature).[5]

On February 7, 2012, approximately one month later, Employer issued a corrective action notification of a written warning for Claimant's failure to follow policy. It was alleged that Claimant failed to immediately contact her supervisor about a separate incident involving the same client.[6] Amy Limosino, Claimant's

[3] R. at 71.

[4] R. at 53-54.

[5] R. at 23, 47, 51.

[6] R. at 73-76.

co-worker and a fellow counselor, testified that she overheard the client tell Claimant that the client had taken four extra methadone pills on January 26, 2012. However, Claimant failed to take any action. In addition, Claimant received the written warning because she did not complete court reports that were to be submitted to her supervisor on January 27, 2012 and then she incorrectly uploaded the reports to the court.

Also on February 7, 2012, separate from the corrective action notification (written warning), Employer extended Claimant's probationary period through May 15, 2012 based on "performance deficiencies" and issued an "Introductory Period Extension Notification."[7]

On February 13, 2013, Claimant submitted to Human Resources a written request for review of the employer's actions taken with respect to the incidents on January 6, 2012 and February 7, 2012.[8] That same day, Claimant met with Denise Stypinski, Human Resources Director for Employer.[9] Stypinski testified that she explained to Claimant that Employer does not make it a practice to forge documents and that the January 6, 2012 corrective action would stand regardless of

[7] R. at 85.

[8] R. at 84. The Court notes that, in her Opening Brief, Claimant attached a second page to the letter, which is not part of the Record, indicating "…it was discovered that falsified information on a forged document was entered into my personal [sic] file unbeknown [sic] to me." Curiously, Claimant's reference, in her request for review of the January 6th corrective action, seems to contradict her denial of receiving such an action; also, the Appeals Referee noted in his decision that her "complaint to the human resource department *does not* mention a forged signature." R. at 66.

[9] R. at 118.

whether Claimant's signature was on the form.[10] Stypinski also informed Claimant that she would look into Claimant's complaints, speak with Claimant's supervisors, and follow up with Claimant but she did not promise her a second meeting.

On February 20, 2012, Stypinski sent a follow up email to Claimant informing Claimant that she reviewed the corrective action notifications and concurred with the actions that were taken.[11] She also responded to Claimant's questions from the February 13th meeting.

That same day, shortly after Claimant received the email, Elizabeth Lombino (Director), Domenica Personti (Program Manager), and Taylor met with Claimant regarding a new infraction – email communication with the Public Defender's Office regarding clients without the clients' consent.[12] Employer, having confirmed the infraction at a drug diversion team meeting on February 17, 2012, notified Claimant that Claimant would be suspended without pay for five days.[13]

[10] R. at 119. An employee's signature on the corrective action notification confirms that the employee read and understood the notice. The disciplinary action is effective with or without the employee's signature on the notice.

[11] R. at 83.

[12] R. at 33; 77-82.

[13] R. at 77.

Following the meeting, Claimant went home and submitted a resignation letter dated that same day, February 20, 2012, effective March 2, 2012.[14] In her letter, Claimant referenced conflicts with her supervisors, "falsified documents," and "unclear corrective action notification."[15] She also stated, "[i]t is clear to me that this agency will not be able to resolve our ethical differences."[16] Claimant additionally wrote, "I feel that resigning is the best option for me."[17]

On April 8, 2012, Claimant submitted a claim for unemployment benefits,[18] and upon denial, maintained that she was "forced to resign."[19]

On May 5, 2012, Claimant applied for a different position as a supervisor with Employer.[20]

Procedural Background

On April 18, 2012, the Claims Deputy determined that the Claimant was disqualified from receiving benefits pursuant to 19 *Del. C.* § 3314(1) because she voluntarily quit her position without good cause.[21] The Claims Deputy had

[14] R. at 37, 72.

[15] R. at 72.

[16] *Id.*

[17] *Id.*

[18] R. at 8.

[19] R. at 9.

[20] R. at 133-37.

[21] R. at 8.

reviewed a copy of Claimant's resignation letter that Employer had submitted in support of its contention that Claimant voluntarily quit. The Claims Deputy also considered Claimant's assertions that her resignation was forced because she had been unjustly reprimanded on several occasions, she was fearful that her certification with the National Association of Social Workers ("NASW") would be jeopardized, her signature was allegedly falsified on corrective action documents, and no one from Human Resources met with her following an investigation into allegedly inaccurate corrective action documents.

On April 19, 2012, the Claimant appealed the Claims Deputy's determination and maintained that she was "forced to resign."[22] A hearing before an Appeals Referee was held on June 11, 2012 and a decision affirming the Claims Deputy's determination was issued on June 12, 2012.[23] Crediting the testimony of Nicole Taylor (Claimant's Clinical Supervisor) and Domenica Personti (Claimant's Program Manager) that Claimant's work performance warnings were justified, the Appeals Referee found that Claimant failed to establish good cause to quit and did not follow Employer's written policy which outlined the steps that she could have taken to address her contention of unfair treatment.

[22] R. at 9.

[23] R. at 64-67.

Claimant appealed the Appeals Referee's decision to the Board on June 13, 2012, alleging that Ms. Taylor's testimony regarding the verbal warning was "untrue."[24] A hearing was held on September 26, 2012 and the Board issued its decision on October 11, 2012 affirming the Appeals Referee.[25] The Board found that "Claimant may have had good personal reasons to leave her employment, but because she failed to exhaust her administrative remedies in addressing her complaints, those reasons cannot be considered 'good cause attributable to such work' within the meaning of the law."[26] Claimant appealed the Board's decision on October 24, 2012.[27]

Contentions of the Parties

Claimant's grounds for appeal are: "(1) forgery is a criminal offense and to review unsubstantiated accusations; (2) documented evidence shows 4 corrective actions presented within 10 days; (3) false testimony by Domenica Personti and other staff members; and (4) a retaliatory conducted suspension without pay."[28] In her opening brief, Claimant opines that Employer's actions have not been

[24] R. at 89.

[25] R. at 125-29.

[26] R. at 128.

[27] Pursuant to 19 *Del. C.* § 3323(a), the Board's decision becomes final unless the aggrieved party files an appeal in this Court within 10 days. Here, Claimant had until October 21, 2012 to file a timely appeal. Although Claimant's Notice of Appeal was untimely by three days, Claimant is *pro se* and Employer did not address this issue in its Brief. Therefore, the Court will address the merits of Claimant's appeal.

[28] R. at 156.

addressed and, in support thereof, attaches a copy of her February 3, 2012 request to transfer to another position at a different location, a copy of the letter she submitted to Human Resources, and an April 20, 2012 letter addressed to the Delaware Department of Labor's Office of Anti-Discrimination.[29]

In response, the Board notified the Court that it did not intend to take a position on the merits of this case, so it would not submit an answering brief.[30] Employer submitted an answering brief and responds that Claimant has failed "to set forth any legal arguments or point to any error of law made by the Board in connection with her appeal."[31] Employer maintains that Claimant is not entitled to unemployment benefits because Claimant voluntarily resigned without good cause and failed to exhaust her administrative remedies.

In reply, Claimant reiterates her allegation that discrimination and retaliation resulted in her resignation.

Standard of Review

On appeal from a Board decision, the Court's role is to determine whether the Board's findings are supported by substantial evidence and are free from legal

[29] The Court is precluded from considering the majority of the attachments to Claimant's Opening and Reply Briefs because they are not part of the record of this case. The Court will only consider those documents that are included in the record. *See Benjamin v. Net, Inc.*, 2013 WL 1091219, at *4 (Del. Super. Feb. 26, 2013) ("On appeal, the Court can only consider the record comprised of the proceedings below"). So too, Employer has asked the Court to take judicial notice of the Delaware Department of Labor's Final Determination and Right to Sue Notice, dated November 29, 2012. Appellee's Answering Br., 14 (Apr. 8, 2013). However, because Appellee's Exhibit B is not part of the record of this case, the Court will not take judicial notice of it.

[30] Letter to J. Streett from Lynn A. Kelly (Mar. 18, 2013).

[31] Appellee's Answering Br. at 10.

error.[32] The Court evaluates the record in the light most favorable to the prevailing party below.[33] Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[34] The Court does not weigh evidence, determine questions of credibility, or make findings of fact.[35] A Board decision that is supported by substantial evidence and that is without legal error will be affirmed.[36]

Discussion

Pursuant to the Delaware Unemployment Compensation Act, a claimant will be disqualified from receiving unemployment benefits if the claimant "left work voluntarily without good cause attributable to such work."[37] In *Thompson v. Christiana Care Health System*[38], the Supreme Court of Delaware held that in order to qualify for benefits after voluntarily quitting employment, the claimant must establish that she: (1) "voluntarily [left] employment for reasons attributable to issues within the employer's control and under circumstances in which no

[32] *Unemployment Ins. Appeal Bd. v. Duncan*, 337 A.2d 308, 308-09 (Del. 1975);

[33] *Campbell v. Sojourners Place, Inc.*, 2010 WL 3386464, at *2 (Del. Super. Aug. 12, 2010).

[34] *Teears v. Unemployment Ins. Appeal Board*, 2013 WL 1908688, at *2 (Del. May 7, 2013) (citing *Oceanport Ind., Inc. v. Wilm. Stevedores, Inc.*, 636 A.2d 892, 899 (Del. 1994)).

[35] *Edmonds v. Kelly Services*, 2012 WL 4033377, at *1 (Del. Sept. 12, 2012) (citing *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965)).

[36] *Thompson v. Christiana Care Health Sys.*, 25 A.3d 778, 780 (Del. 2011).

[37] 19 *Del. C.* § 3314(1).

[38] *Thompson*, 25 A.3d at 783.

reasonably prudent employee would have remained employed;" and (2) "exhaust[ed] all reasonable alternatives to resolve the issues before voluntarily terminating … her employment."[39]

In the instant case, the Board applied the *Thompson* standard in determining Claimant's ineligibility for unemployment benefits, resolved conflicts in witness testimony, and assessed witness credibility.[40] The Board did not find circumstances in which no reasonable prudent employee would have remained employed or that Claimant exhausted all reasonable alternatives to resolve her issues before she voluntarily terminated her employment.

The Court will address whether substantial evidence supports the Board's determination that Claimant voluntarily quit without good cause and that she failed to exhaust her administrative remedies.

Claimant Voluntarily Quit Employment without Good Cause

Despite Claimant's contention that she was "forced" to resign, the record supports that she voluntarily quit employment without good cause. Claimant testified that she was not forced to write her resignation letter[41] and the Board considered whether Claimant voluntarily quit for reasons attributable to her work,

[39] *See also Gardner v. Del. Div. of Soc. Servs.*, 2013 WL 2453721, at *2 (Del. Super. Apr. 24, 2013) ("The claimant bears the burden of showing 'good cause' for voluntarily terminating employment").

[40] *See Cassidy v. Liberty Staffing*, 2011 WL 7452778, at *1 (Del. Super. Oct. 25, 2011) ("The function of the UIAB is to resolve conflicts in testimony and evaluate witness credibility").

[41] R. at 45.

including Claimant's allegation of her forged signature on the January 6th corrective action notification, her disagreement with the corrective actions that were taken, and her contention that Human Resources provided her with no relief.[42] The Board determined that Claimant's testimony and evidence did not establish that Claimant resigned for good cause because these reasons were not related to her work.

Good cause exists if the claimant demonstrates that her circumstances involve "a substantial reduction in wages or hours or a substantial deviation in working conditions from the original agreement of hire."[43] Conversely, "unhappiness arising out of an unpleasant work environment, without more, does not constitute good cause."[44] So too, good cause does not exist if a claimant voluntarily quits employment for personal feelings of unhappiness not related to her work,[45] and disagreement with co-workers and supervisors is an insufficient reason to justify voluntarily quitting employment.[46]

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[42] Although the Board did not address it in its decision, there is no evidence in the record to suggest that the Claimant's suspension without pay was retaliatory. Claimant was suspended for a separate infraction (direct communication with the Public Defender's Office regarding clients without the clients' consent) after she had an opportunity to meet with her supervisors. Prior to receiving the suspension, the Human Resources Director informed Claimant that Employer wanted her to be successful by following her supervisors' directives and that the "intent of any corrective action is to alert an employee to performance issues that need to be fixed." R. at 83.

[43] *Gardner v. Del. Div. of Soc. Servs.*, 2013 WL 2453721, at *2 (Del. Super. Apr. 24, 2013).

[44] *Thompson*, 25 A.3d at 784 (citing *Swann v. Cabinetry Unlimited*, 1993 WL 487892, at *1-2 (Del. Super. Oct. 15, 1993) (finding intolerance for the employer's temper did not constitute "good cause") and *Ament v. Rosenbluth*, 2000 WL 1610770, at *2 (Del. Super. Aug. 31, 2000) (holding "good cause" did not exist where employee quit due to the stress of her new job)).

[45] *See Barnes v. Quillen's Rent-All, Inc.*, 2013 WL 3340411 (Del. Super. Jun. 19, 2013) (rejecting the claimant's contention of a "hostile work environment" and holding his "hasty departure was related to personal feelings of

Here, Claimant did not have a substantial wage or hour reduction or substantive deviation in working conditions. Claimant acknowledged that her pay and hours would not have changed if she had returned to work following her five day suspension.[47] So too, she would have returned to the same position and had the same responsibilities that she had prior to her suspension. Thus, Claimant's decision to quit was not based on diminution of pay, hours, or responsibilities.

Furthermore, Claimant references "falsified documents," "unclear corrective action notification," conflict with supervisors, and the inability to reconcile "ethical differences" in her resignation letter. However, the Board characterized these as her "extreme dissatisfaction with her work conditions."[48]

The Board also rejected Claimant's denials about receiving or signing any corrective action notification on January 6, 2012 because her signature was not necessary for the corrective action to stand.[49]

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frustration" regarding another employee – not the claimant's work); *Darring v. K12 Services*, 2012 WL 5949221, at *1 (Del. Super. Nov. 13, 2012) (finding the claimant voluntarily quit for personal reasons despite his contentions that his authority had been reduced because he was excluded from the decision-making process and that he had heard he was at risk for being fired).

[46] *Thompson*, 25 A.3d at 784 (holding the claimant's repeated disagreements with other employees and her supervisor did not constitute "good cause" for voluntarily quitting).

[47] R. at 45-47. Although Claimant testified that she felt her "status" would change and she would be precluded from advancing to a supervisory position, the record is devoid of any evidence to support this belief.

[48] R. at 128.

[49] R. at 126, 128.

As to the February 7, 2012 corrective action notification, the Board noted that Claimant denied engaging in the conduct, but it credited her co-worker's testimony and found that corrective action was warranted.

The Board also rejected Claimant's contention that she received four corrective action notifications in ten days and instead credited the Human Resource Director's testimony[50] because the record shows that three corrective action notifications for different infractions were issued over a span of approximately six weeks (from January through mid-February).

The Board found that Claimant, unhappy with criticism of her work, chose to resign for reasons unrelated to her work. There is substantial evidence in the record to support the Board's determination that Claimant's voluntary resignation was for personal reasons, none of which amounted to good cause.[51]

Claimant Did Not Exhaust Her Administrative Remedies

In addition, Claimant seems to contend that the Employer did not provide her with the appropriate remedies for addressing her complaints because the Human Resources Director did not meet with Claimant following the investigation. However, the Board determined that the Claimant did not sufficiently follow

[50] The Board decision incorrectly identifies Denise Stypinski as Domenica Personti. However, Ms. Stypinski testified before the Board, and it can be inferred that the Board is actually referring to her in its decision.

[51] Moreover, any claim that good cause existed is further undermined by Claimant's desire to return to that workplace and taking the affirmative step to apply for another position with Employer approximately three months later. R. at 133-37.

through with Employer. The Board found that "Claimant had an obligation to inform Employer of resolvable problems, describe problems in sufficient detail to allow for resolution, and give Employer enough time to correct the problems."[52] Claimant, however, resigned immediately upon receiving a suspension.

It is settled law that an employee is obligated to "inform an employer of resolvable problems and to make a good faith effort to resolve them before simply leaving." The employee must notify her employer of the problem, request a solution, provide sufficient detail as to the nature of the problem, and allow the employer adequate time to address the problem.[53] Claimant did not follow protocol.

In the instant case, Claimant did not give the Human Resources Director an opportunity to review the appropriateness of the corrective actions and meet with her again because Claimant submitted her resignation letter the same day that she was suspended. The record is clear that all employees, including Claimant, were provided with a copy of Employer's grievance policy, and Claimant signed an

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[52] R. at 128.

[53] *Thompson*, 25 A.3d at 784 (quoting *Sandefur v. Unemployment Ins. Appeals Bd.*, 1993 WL 532451, at *3 (Del. Super. Aug. 27, 1993) (internal quotation marks omitted) and finding the claimant's efforts to secure a transfer did not "absolve her obligation to exhaust all reasonable alternatives" because she did not go to the person with appropriate authority to remedy her complaints). *See also Stewart v. Christiana Care Hosp.*, 2012 WL 2553423, at *2 (Del. Super. May 11, 2012) (noting the claimant's complaints to his supervisor, which did not identify the co-workers who allegedly engaged in misconduct, lacked sufficient detail and were not made to human resources prior to his quitting); *Strunk v. Northeastern Music Programs*, 2012 WL 1409625, at *3 (Del. Super. Jan. 18, 2012) (holding a voluntarily resignation without allowing the company president to correct the situation before the *potential* change in the claimant's hours and wages did not constitute a good faith effort to resolve the issue before "simply leaving").

acknowledgment that she received a copy.[54] Moreover, there was testimony that Claimant's supervisors met with her to discuss each corrective action notification and that she was also aware that she could contact Human Resources regarding her complaints. Furthermore, there is a place on the corrective action notification for the employee to indicate her disagreement with the corrective action.[55] A review of all three corrective action notifications in the record shows that Claimant did not indicate her disagreement in writing on the form. So too, Employer's Human Resources Director testified that nothing was written on Claimant's form indicating her disagreement with the five-day suspension.[56]

Additionally, during the course of her investigation into Claimant's complaints about the corrective action notifications, and in response to one of Claimant's questions ("What am I to work on?"), Employer's Human Resources Director learned that Claimant's supervisors had asked Claimant to provide an action plan whereby Claimant could identify her training needs and other resources that would help her be a successful employee.[57] Claimant, however, failed to provide an action plan to her supervisor.[58]

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[54] R. at 56.

[55] R. at 121.

[56] R. at 77, 121.

[57] R. at 120.

[58] R. at 83. This was referenced in the Human Resource Director's follow up email.

The record is clear that Claimant did not make a good faith effort to resolve her problems prior to submitting her letter of resignation. Claimant "made no effort to take advantage of [her] employer's offer to remedy [her] complaints."[59] Rather, Claimant viewed resignation as an *option*.[60] As such, substantial evidence supports the Board's finding that Claimant voluntarily quit without taking advantage of the administrative remedies Employer made available.

Conclusion

Therefore, because Claimant voluntarily quit her employment without good cause and failed to exhaust her administrative remedies, she is ineligible for unemployment benefits under 19 *Del. C.* § 3314(1).

ACCORDINGLY, the Board's decision is **AFFIRMED**.

IT IS SO ORDERED.

/a/ Diane Clarke Streett
Diane Clarke Streett
Judge

Original to Prothonotary

cc: Marilyn Lamberth
Lori A. Brewington, Esquire
Jennifer C. Jauffret, Esquire
Lynn A. Kelly, Deputy Attorney General

[59] *Miller v. Sleep Inn & Suites*, 2012 WL 3860659 (Del. Super. Jul. 24, 2012).

[60] R. at 72 ("I feel that resigning is the best option for me").