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

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| VALERIE BAADEN, | ) | |
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| Appellant, | ) | |
| | ) | |
| v. | ) | C.A. No. 09A-01-010 WCC |
| | ) | |
| AMER INDUSTRIAL, | ) | |
| | ) | |
| Appellee. | ) | |

Submitted: January 27, 2010
Decided: April 27, 2010

**MEMORANDUM OPINION**

**Appeal from Unemployment Insurance Appeal Board. AFFIRMED.**

Valerie Baaden, 607 Sandburg Place, Newark, DE 19701. *Pro Se* Appellant.

David P. Primack, Esquire, Drinker Biddle & Reath LLP, 1100 N. Market Street, Suite 1000, Wilmington, DE 19801. Attorney for Appellee.

**CARPENTER, J.**

Before this Court is Valerie Baaden's (the "Appellant") appeal from the Department of Labor, Division of Unemployment Insurance Appeal Board's decision affirming the Appeals Referee's November 14, 2008 decision finding Appellant disqualified from receiving benefits under 19 *Del. C.* §3314(1)[1] because Appellant voluntarily, without good cause, left employment with Amer Industrial Technologies (the "Appellee"). Upon review of the record in this matter, this Court hereby affirms the decision below.

**Facts**

Appellant Valerie Baaden was employed by Appellee Amer Industrial Technologies to work as a quality assurance assistant from 8 a.m. to 5 p.m. Monday through Friday. Appellant was employed for a total of four days from May 27, 2008 to June 1, 2008. During this time it became apparent that the demands of her employment, which on occasion would require her to stay past 5 p.m., made it extremely difficult for her to reach her children's day care by the 5:30 p.m. deadline. Appellant approached Appellee regarding changing her working hours, and the Appellee presented her with the alternatives of leaving earlier but making up the lost hours on Saturday or changing her hours from 8:00 a.m. to 4:00 p.m. Since there is

[1] 19 *Del. C.* §3314(1) in pertinent part states:

> An individual shall be disqualified for benefits: For the week in which he left work voluntarily without good cause attributable to such work and for each week thereafter until the individual has been employed in each of 4 subsequent weeks (whether or not consecutive) and has earned wages in covered employment equal to not less than 4 times the weekly benefit amount.

no day care available on Saturday, that option was not viable, and the reduction in her number of hours would have affected her benefits as she would no longer be a full time employee. As such, Appellant declined each of these options.

Appellant also claims she left her employment with Appellee because she was sexually harassed by the Appellee President, Mr. Amer ("Amer"). The alleged harassment includes Amer looking down Appellant's blouse, telling Appellant he expected more from her because she was a woman, and telling Appellant he was a "bad boy." Appellant never filed a complaint with the company and there is no evidence to support her claim other than her testimony before the Board.

**Procedural History**

Appellant filed a claim with the Delaware Department of Labor on June 20, 2008.[2] On June 30, 2008, it was determined that under 19 *Del. C.* §3314(1), Appellant was disqualified from receiving benefits because Appellant voluntarily quit and left employment for personal reasons.[3] Appellant appealed and a hearing was scheduled on August 7, 2008.[4] On August 8, 2008, Referee Theresa Matthews affirmed the decision.[5] Appellant then filed another appeal in which the Unemployment Insurance Appeal Board (the "Board") remanded the case to the

[2] Finding of Facts at 1.
[3] Notice of Determination at 6.
[4] Notice of Appeal to Referee at 7.
[5] Decision of Referee at 14.

Referee to allow Appellee to provide testimony regarding the complaint.[6] On November 14, 2008 the Referee again found in favor of the Appellee.[7] Appellant then appealed to the Board, which affirmed the decision of the Referee on January 26, 2009.[8] Appellant then appealed the Board's decision to this Court.

After receiving the record and transcript from the Board, the Court set a July 6, 2009 deadline for the Appellant to file her brief. She failed to meet the Court's deadline, and on November 6, 2009 the Court forwarded to the Appellant a delinquent brief notice requiring a response within ten days. On November 16, 2009 the Court received a handwritten letter from the Appellant that she entitled as a "brief." In spite of its non-compliance with the rules of this Court, since the Appellant was acting *pro se*, the document was accepted. After the Appellee timely filed an answering brief, the Appellant again failed to file a reply brief and ignored the Court's delinquent notice. Thus, on January 20, 2010, the Appellant was notified that the Court would make a decision on the papers that had been filed.

**Standard of Review**

When reviewing an appeal from the Board, this Court's role is limited to evaluating the record in a light most favorable to the prevailing party in order to

[6] Decision of Appeal Bd. at 20 (case remanded because the Board accepted Appellee's reason for not attending the Referee hearing on Aug. 7, 2008).
[7] Decision of Referee at 22.
[8] Decision of Appeal Bd. at 41-43.

determine if the record before the Board included substantial evidence that a reasonable mind could accept as adequate support for the conclusion and that it is free from legal error.[9] Substantial evidence is evidence from which an agency fairly and reasonably could reach the conclusion it did.[10] It is more than a scintilla but less than a preponderance of evidence.[11]

Since the Board is the fact-finder, it is the Board's duty to resolve any conflicting testimony and evidence presented and to decide which is more credible.[12] Thus, this Court accepts the Board's findings of credibility and weight of the evidence.[13] 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.[14]

**Discussion**

The Appellant's notice of appeal states four grounds: (1) the Board misconstrued testimony regarding the sexual harassment; (2) Appellant was never late to work, only leaving work; (3) Amer told Appellant "I expect more from you because you're a woman" and (4) Appellant was denied benefits which were

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[9] *Unemployment Ins. Appeal Bd. of Dept. of Labor v. Duncan*, 337 A.2d 308, 309 (Del. 1975).
[10] *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981).
[11] *Id.*
[12] *Reeves v. Conmac Sec.*, 2006 WL 496136, at *3 (Del. Super. Feb. 21, 2006).
[13] *Id.*
[14] *Id.*

promised upon employment.[15] While these grounds are listed on the appeal form, her letter brief failed to specifically address any of these areas. Instead it appears the Appellant is really asserting that the Appellee kept her past working hours causing her to be late in picking up her children from day care and a claim for sexual harassment. It is these two grounds that the Court will address.

A person is not entitled to unemployment benefits if they leave a job voluntarily without good cause pursuant to 19 *Del. C.* §3314(1). Good cause has been defined as that which would "justify one in voluntarily leaving the ranks of the employed and joining the ranks of the unemployed."[16] The good cause for voluntarily leaving employment must be for reasons connected with the employment and not for personal reasons.[17]

Here, the record reveals that Appellant was employed to work the hours of 8 a.m. to 5 p.m. However, within four days of employment, Appellant realized the hours were not conducive with her childcare needs. Even if the Court accepts as true that during these four days Amer kept her past 5:00 p.m., it cannot find such conduct unreasonable. The Appellant was a new employee in a relatively small company, and

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[15] Notice of Appeal to Super. Ct. at 57.
[16] *O'Neal's Bus Serv., Inc. v. Employment Sec. Comm'n*, 269 A.2d 247, 249 (Del. Super. 1970) (citing *Zielenski v. Bd. of Review*, 203 A.2d 635 (1964)).
[17] *Weathersby v. Unemployment Ins. Appeal Bd.*, 1995 WL 465326, at *5 (Del. Super. June 29, 1995) (citing *Brainard v. Unemployment Compensation Comm'n*, 76 A.2d 126, 127 (Del. Super. 1950)).

it was reasonable for her supervisor to review the work of this new employee at the end of each day to ensure that she was appropriately performing the assigned task. Perhaps if such conduct persisted over a longer period of time a sinister motive could be implied, but not here when the total employment was less than a week. It is also clear that when the day care issue was raised with her supervisor, several reasonable alternatives were provided to the Appellant. The fact that she did not want to work on Saturdays again because of day care issues and did not want to lose her benefits by working less than as a full-time employee does not make the actions of the employer unreasonable or provide good cause for leaving this employment. From the Court's view, this was simply an employment situation that did not fit the demands of the Appellant's family obligations. While it appreciates the difficulty of balancing these demands, the employer's conduct has not provided the Appellant good cause for terminating the employment.

Next, the Appellant claims that Amer's conduct created a working environment with such sexual overtones that she could not continue with the employment. While such claims are always serious and if they occur, are clearly inappropriate, there is nothing beyond the Appellant's statement to support the allegation. It was never reported to the appropriate management authority so there is no administrative record of the company that reflects that they were asked to address the issue. While the

Board's decision is based upon the Appellant's failure to exhaust her administrative remedies, which is true, it is also likely that the underlying basis of the denial is the finding that the evidence simply fails to support the Appellant's claim. It is the Appellant's burden to establish her good faith basis for leaving the employment, and this cannot be met by simple allegations without supporting evidence. It is also the Board's obligation to assess the credibility of the witness and this Court will not substitute its own judgment unless it is clear the evidence does not substantially support those conclusions. In this case, the Court cannot find the basis to reverse the Board's decision.

**Conclusion**

For the foregoing reasons, the decision of the Unemployment Insurance Appeal Board is AFFIRMED.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.
Judge William C. Carpenter, Jr.