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

JOURDEAN S. LORAH, Appellant,	)	
	)	
v.	)	
	)	C.A. No.: 10A-01-010 FSS
HOME HELPER'S, INC./DELAWARE RESPITE and UNEMPLOYMENT INSURANCE APPEAL BOARD, Appellees.	)	

Submitted: June 9, 2010
Decided: September 29, 2010

ORDER

Upon Appeal From the Unemployment Insurance Appeal Board –
AFFIRMED

This is an administrative appeal. Jourdean Lorah claims she was forced to leave her job as an in-home, caregiver because of reduced hours and a dangerous work environment. First a referee, then the Unemployment Insurance Appeal Board found that Lorah quit without good cause and, therefore, is disqualified by law from receiving benefits.[1] Lorah was represented before the Board. Now, she appeals the Board's decision, *pro se*.

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[1] 19 *Del. C.* § 3314(1).

1. Lorah started working for Home Helpers in May 2007 as a caregiver. She provided practical care and did basic household chores for patients on an as-needed basis. Lorah was reliable, with a good work ethic.

2. On November 28, 2007, several months after she started working, Lorah signed an employee handbook, requiring all caregivers to report immediately any work-related injury even if no medical care was needed. It also explained all caregivers' schedules were permanent part-time positions. Home Helpers agreed to make every effort to meet each caregiver's desired hours but warned a worker's hours depended on the patient's condition and the level of care needed. Thus, Lorah could work a full-time schedule, as she did at least once during her two years with Home Helpers, but this was based on the patient's needs.

3. From March 2009 until June 2009, Lorah's bi-weekly hours fluctuated between fifteen and twenty hours. At some point in June 2009, Lorah notified Home Helpers' president about a patient who made unwanted sexual contact with her on May 20, 2009. The president started an investigation, but did not finish before Lorah quit. On June 12, 2009, Lorah gave notice. Home Helpers accepted. Consistent with her notice, Lorah's final day was June 27, 2009, after she covered another caregiver's shift. Lorah worked three hours during her final week with Home Helpers.

4. On July 20, 2009, Lorah applied for unemployment benefits. A claims deputy denied the request and Lorah appealed to an appeals referee. On September 10, 2009, the referee concluded the facts disqualified Lorah from receiving unemployment benefits because she voluntarily left without good cause. The referee noted Lorah's position was part-time and her hours were never guaranteed. Further, Lorah never submitted a written report about the incident.

5. In October 2009, Lorah retained counsel and appealed the referee's decision to the Board. Following her counsel's advice, she filed a police report on October 26, 2009, concerning the alleged sexual contact five months earlier. An officer recorded Lorah's statements, but was unable to contact the former patient, the alleged offender.

6. On November 18, 2009, the Board heard conflicting testimony about when Home Helpers learned of the unwanted sexual contact. According to Lorah, she notified the president on June 4, 2009. Lorah claims this led Home Helpers to drop her hours to practically zero. She introduced several payroll sheets documenting her fluctuating schedule.

7. Home Helpers's president testified she learned about the unwanted sexual contact on June 12, 2009, when Lorah gave notice. She investigated the claim, as she had on similar claims by Lorah involving other patients. Those investigations

revealed no inappropriate contact occurred. Lorah did not provide further care to those patients, but she continued to work for Home Helpers. Finally, the president did not dispute that Lorah's hours fluctuated, but attributed it to Home Helpers's lack of patients requiring the same level of care as Lorah's most recent patient.

8. Based on the witnesses' testimony and the evidence submitted, the Board found for Home Helpers. As mentioned above, it held Lorah "voluntarily quit her employment and she has failed to provide competent evidence that it was done for good cause." The Board noted her hours were never guaranteed and Lorah did not give Home Helpers enough time to locate a new patient in the period between May 20, 2009, and June 12, 2009, when she gave notice. Finally, the Board noted the seriousness of the alleged unwanted sexual contact, but stated "these allegations, without proper findings of fact, do not amount to a 'substantial deviation in working conditions from the original agreement of hire.'"[2]

9. On January 13, 2010, Lorah filed this timely appeal. On April 12, 2010, she filed her opening brief. At their own risk, neither Home Helpers nor the Board's legal representative chose to file an answer.

10. In her filings here, Lorah asserts the Board erred because it did

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[2] *Lorah v. Del. Respite*, No. 20106817, at 3 (Unemployment Ins. Appeal Bd. Jan. 10, 2010).

not attach enough weight to the late-filed police report. She also asserts the Board failed to consider the reduction of her bi-weekly hours following her report of the unwanted sexual contact.

11. On appeal, this court's review of the Board's decision is very limited.[3] Under the law, the court does not resolve conflicts of credibility, nor does it make its own factual findings.[4] That task is reserved to the Board.[5] This court examines the Board's decision for legal errors and whether it is supported by more than mere conjecture or speculation.[6] Finally, it is the claimant's burden to show the Board erred.[7] In other words, this court is not allowed to overturn the Board's decision unless the claimant shows the Board made a clear legal error or that the decision is not supported by the evidence.

12. An employee is disqualified from receiving unemployment benefits

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[3] *Unemployment Ins. Appeal Bd v. Div. of Unemployment Ins.*, 803 A.2d 931, 936 (Del. 2002) citing 19 *Del. C.* § 3323(a).

[4] *Coury v. Lowe's Home Ctrs., Inc.*, 2009 WL 3290730 at *3 (Del. Super. Aug. 31, 2009) (Vaughn, P.J.).

[5] 19 *Del. C.* § 3323(a).

[6] *Ridings v. Unemployment Ins. Appeal Bd.*, 407 A.2d 238, 239 (Del. Super. 1979).

[7] *Longobardi v. Unemployment Ins. Appeal Bd.,* 287 A.2d 690 (Del. Super. 1971).

by Delaware law when she voluntarily ends her employment without good cause.[8] An employee has good cause when her employer substantially reduces her hours[9] or fails to correct unsafe working conditions brought to its attention by the employee.[10]

13. The Board reasonably concluded from the evidence that Lorah was not forced to work in a known, dangerous environment. As mentioned above, the Board noted Lorah's allegation of unwanted sexual contact was serious. But, compared to the opposing evidence, the Board concluded the evidence, including the police report Lorah filed several months after the alleged incident occurred, did not establish a known, dangerous environment. Further, the Board credited the president's testimony she did not learn of the alleged incident until June 12, 2009. Thus, even if Lorah successfully proved the incident happened, Home Helpers had no chance to rectify the problem before Lorah quit. And, Lorah stopped providing care to the patient after the alleged contact. Lorah has not provided the court with any evidence showing either conclusion is unreasonable.

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[8] 19 *Del. C.* § 3314.

[9] *Weathersby v. Unemployment Ins. Appeal Bd.*, 1995 WL 465362 * 5 (Del. Super. June 29, 1995) (Terry, P.J.).

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

14. Lorah's hours were not substantially reduced before she gave notice. The payroll documents Lorah submitted only provided a glimpse of her schedule. They do not show the number of patients or working hours available to Home Helpers. The court cannot conclude the Board's view was unreasonable, even if Lorah sees it differently. Again, the court is not allowed to re-weigh the evidence on its own.

15. Finally, Lorah filed three other motions. The first, filed on April 13, 2010, is to seal medical records identified as "exhibits #2 Dr. Gordon and #7 Prescription List." The court has examined the record and sees neither record was submitted in either of the hearings below. Thus, these medical records are not part of this case's record. In the second motion, filed on May 28, 2010, Lorah disputes she neglected to serve her Opening Brief on the Attorney General's office. This is moot because the Attorney General's office acknowledged it received and reviewed Lorah's Opening Brief. Finally, on August 19, 2010, Lorah filed a motion concerning "finances of adult poverty." This motion involves a fence on Lorah's property, which plays no part in this appeal.

16. For the foregoing reasons, the Unemployment Insurance Appeals Board's November 18, 2009 decision denying benefits is **AFFIRMED.** Upon request, Lorah may withdraw the new documents that she submitted here.

IT IS SO ORDERED.

/s/ Fred S. Silverman
Judge

cc: Prothonotary
Jourdean S. Lorah, *Pro Se*
Krista Gaul, Employer Representative
Phillip G. Johnson, Esquire