IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

SCOTT M. WHARTON,	)	
	)	
Appellant,	)	
v.	)	C.A. No. 01A-12-007-JRJ
	)	
UNEMPLOYMENT INSURANCE	)	
APPEAL BOARD and	)	
HOBOKEN FLOORS,	)	
	)	
Appellees.	)	

Date Submitted: March 20, 2002
Date Decided: May 16, 2002

M E M O R A N D U M O P I N I O N

Upon Appeal of Decision of the Unemployment Insurance Appeal Board Affirming Referee's Decision.
*Decision **AFFIRMED**.*

Joseph J. Rhoades, Esquire and A. Dale Bowers, Esquire, 1225 King Street, 12th Floor, Wilmington, Delaware 19801, for Appellant.

Stephani J. Ballard Esquire, Office of the Attorney General, Carvel State Office Building, 820 North French Street, Wilmington, Delaware 19801, for U.I.A.B.

Jennifer C. Bebko, Esquire, Richards, Layton & Finger, One Rodney Square, P.O. Box 551, Wilmington, Delaware 19899, for Appellee Hoboken Floors

JURDEN, J.

PROCEDURAL HISTORY

Scott Wharton ("Claimant") applied for unemployment benefits after he terminated his employment with Hoboken Floors ("Employer") on July 13, 2001. Claimant contended that he left his employment because of harassment and unsafe working conditions. On September 11, 2001, the Claims Deputy determined that Claimant left work without good cause and denied him benefits. Claimant appealed and, pursuant to the September 28, 2001 hearing, the Appeals Referee found Claimant's contentions were "vague and lacking in specificity" and that he failed to exhaust administrative remedies. Pursuant to a hearing before the Appeals Board on November 28, 2001, the Industrial Accident Board ("Board") affirmed the Referee's decision and denied Claimant benefits. Claimant filed this timely appeal on February 14, 2002.

FACTS

Employer is engaged in the business of distributing hardwood flooring and employs about 20 employees. Claimant began his employment with Employer in August, 1999, as a warehouse forklift operator and held that position until he submitted his two weeks termination notice in July 2001. When Claimant began his employment he was paid at a rate of $9.50 per hour. At the time he left employment he was paid at a rate of $12.00 per hour. Claimant alleged that he was forced to work in a hostile environment and was subject to continuous harassment and verbal abuse by his Divisional Manager, Robert Blevin. Specifically, Claimant alleged that Blevin yelled and cursed at employees at least once a week. Claimant alleged he submitted complaints on several occasions to his immediate supervisor, Dean Herfindahl, but Employer took no action against Blevin. Herfindahl testified that Blevin never cursed directly at the employees. Jeffrey Cline,

Claimant's co-worker, testified that Blevin cursed and screamed at employees once or twice a week but that for the majority of his employment Blevin was "good" to him. Blevin admitted yelling at employees but denied name calling and that he cursed at employees.

Claimant also alleged that he was forced to work with an intoxicated employee, Matt Ventresca, until Ventresca was fired shortly before Claimant asked Blevin for a pay raise in June 2001. Claimant testified that Ventresca was frequently intoxicated at work and would sometimes operate the forklift while intoxicated. Claimant offered no specific dates for these incidents. The evidence showed no one was injured as a result of Ventresca's conduct and no accident reports were ever filed. Herfindahl testified that Ventresca was sent home from work once or twice a week because he was intoxicated but no supporting documentation regarding this fact was provided. Blevin testified that he instructed Ventresca not to operate any machinery when he was intoxicated and instead either had him sweep floors or sent him home.

Claimant told the Appeals Referee that he was asked to dispose of toxic materials in the trash or grass but refused to do so. Claimant alleged that Blevin poured the material "into the rocks," which are a type of drainage ditch. Claimant did not provide any other specific details. Blevin denied having dumped the material and Claimant's coworker, Cline, testified that he was not aware of any such activity.

Claimant testified that his work was unsafe because Blevin's children were permitted to rollerblade throughout the warehouse. Herfindahl admitted that the children were sometimes in the warehouse during work hours but that they were always supervised by an adult.

Claimant testified that his workplace was unsafe because for a "few days" the Employer allowed illegal fireworks to be stored in the warehouse. Herfindahl admitted that two boxes of fireworks were stored in the warehouse for a "short period of time." No evidence was presented that suggest anyone was injured or that any accidents occurred as a result of the fireworks.

Claimant testified that, toward of the end of his employment, he had difficulty breathing and was experiencing chest pains. Claimant also testified that he began treatment with a psychologist after he quit but presented no records to support this claim and did not provide dates of treatment.

Claimant testified that in June of 2001, he asked Blevin for a raise and notified Blevin that he may seek other employment unless he received a salary. Claimant testified that he approached Blevin again on July 6, 2001 about the issue and also told Blevin that he could not handle Blevin yelling and cursing at him anymore. Claimant testified that Blevin responded by cursing and shouting and, as a result, Claimant submitted his two weeks termination notice. Subsequently, Claimant felt he could not remain for the entire two weeks and walked out of his employment on July 13, 2001.

Blevin's account of this interaction differs. Blevin testified that on July 6, 2001, Claimant demanded a dollar raise and threatened to quit unless be received it. Blevin told Claimant he could not afford to give Claimant a raise and reminded Claimant that he just received a fifty cent raise in April, 2001. Blevin testified that after he refused to give Claimant a raise he submitted his two weeks notice and walked off the job a week later.

The Appeals Referee upheld the Claims Deputy's decision to deny Claimant benefits. The Appeals Referee found that Claimant's allegations of unsafe working

conditions were vague and that he did not exhaust his administrative remedies prior to terminating his employment. The Board affirmed the Appeals Referee's decision.

Claimant's primary reason for terminating his employment was Ventresca's operation of heavy machinery while intoxicated. The Board determined that this reason was not credible for two reasons. First, because Ventresca was terminated two weeks prior before Claimant quit, the "unsafe condition" about which Claimant complained was eliminated. Second, the Board determined that if Claimant believed that working with Ventresca was as dangerous as he alleged, he would not have continued to work with him for two years, but instead, would have quit sooner. The Board believed that Claimant left his position because he was refused a pay increase and considered this a personal reason unconnected to the job conditions. The Board did not address Claimants complaints about Blevin cursing and yelling at employees or any of Claimant's other allegations that the workplace was unsafe.

Claimant contends that the Board's finding that he quit for personal reasons unrelated to the job conditions was not supported by substantial evidence. Claimant argues that the Board neglected to consider all the evidence presented by the Claimant and was wrong to focus only on the issue relating to Ventresca. Claimant argues that the Board did not consider that he was forced to work in a hostile environment due to Blevin's harassment and verbal abuse. Claimant also argues that the work environment was unsafe not only because of Ventresca's continual employment despite his intoxication, but also because the Employer allowed illegal fireworks to be stored in the warehouse, and Blevin's children were permitted to rollerblade in the warehouse.

Claimant argues that the Board failed to consider the issues of fireworks and rollerblading.

Claimant also appeals the finding that he failed to exhaust all administrative remedies. Claimant argues that the Board ignored evidence indicating that he and other employees complained to his immediate supervisor, Herfindahl, about Blevin's verbal abuse. Claimant also argues that he and other employees reported Ventresca's intoxication regularly to Blevin.

DISCUSSION

This Court's scope of review is limited to determining whether the Board's decision is supported by substantial evidence and free from legal error.[1] In the absence of legal error, this Court will not disturb the Board's factual findings if there is substantial evidence to support them.[2]

Del. Code ANN. tit. 19, § 3315(1) provides:

> An individual shall be disqualified for benefits:
>
> (1) For the week in which he left work voluntarily without good cause attributable to such work and for each week thereafter until he has been employed in each of 4 subsequent weeds (whether or not consecutive) and has earned wages in covered employment equal to not less than 4 times the weekly benefit amount.

Claimant has the burden of proof to show that he had good cause for voluntarily terminating his employment.[3] Good cause is such cause that would justify one in

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[1] *Longobardi v. Unemployment Ins. Appeal Board,* 287 A.2d 690, 692 (Del. Super. 1971), aff'd, 293 A.2d 295 (Del. 1972).
[2] *DiSabatino Bros. v. Wortman,* 453 A.2d 102 (1983).
[3] *Longobardi*, 287 A.2d at 692.

voluntarily leaving the ranks of the employed and joining the ranks of the unemployed.[4] Good cause does not exist simply because there is an "undesirable or unsafe situation connected with [the] employment."[5] The Claimant must exhaust his or her administrative remedies by seeking to have the situation corrected by giving proper notice to the employer.[6]

In *Swann v. Cabinetry Unlimited*,[7] this Court affirmed the Board's decision that Claimant did not have good cause to quit her job because of claims that her employer continuously verbally abused her by belittlement. The Board in that case "reasoned that unsatisfactory work relationships do not rise to the level of good cause if there is no 'lessening of basic employment rights or cruel and harsh punishment by the employer.'"[8] In *Hall v. Doyle Detective Agency*,[9] this Court upheld the Board's denial of benefits to a Claimant who voluntarily terminated his job because his supervisor frequently used profanity directly toward the Claimant. The Board held that good cause does not exist because an employee is addressed by his supervisor in profane and abusive language unless the employee has exhausted his administrative remedies.[10] In this case, the Claimant had told his supervisor that he would not tolerate her use of profanity but he had not reported the problem to a higher authority. In *McDonald v. Christiana Care Health*

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[4] *O'Neal Bus Service, Inc. v. Employment Sec. Comm'n*, 269 A.2d 247, 249 (Del. Super. 1970).
[5] *Id.*
[6] *Id.*
[7] 1993 Del. Super. LEXIS 311.
[8] *Id*. at *5 (quoting the Board's decision).
[9] 1994 Del. Super. LEXIS 36.
[10] *Id.* at *15.

Services,[11] this Court affirmed the Board's denial of benefits to a Claimant who voluntarily terminated her job because her supervisor addressed her as "my chubby friend", "my little Polish fat girl" and an "imbecile". The Board denied benefits because it found Claimant had not exhausted her administrative remedies when she reported her complaints to the Human Resources Department but not her other supervisor.[12] The Court stated that the employee must give an employer notice of the reason for "dissatisfaction with the employment situation and …an opportunity to remedy the situation."[13]

For the reasons that follow, the Board's decision is affirmed.

The Board's finding that Claimant did not have good cause to quit because of Ventresca's actions is supported by substantial evidence. The record indicates that Ventresca was terminated two weeks prior to when Claimant submitted his two weeks notice. Therefore, when Claimant quit, this claim was moot because the alleged unsafe condition had already been eliminated by the Employer.

With respect to Claimant's allegations relating to the fireworks, Blevin's children, and dumping of hazardous materials, there is insufficient evidence in the record to support a finding that these conditions presented a safety concern. The Claimant did not present evidence to the Board that these conditions caused accidents or injury to him or any other employee. Nor did Claimant present evidence reflecting dates or times when these incidents occurred. In addition, there is no evidence in the record that Claimant notified his supervisor that he was concerned about his safety because of these

[11] 2000 Del. Super. LEXIS 290.
[12] *Id.* at *1-*2.
[13] *Id.* at *6.

conditions. The Board did not specifically address these conditions in its decision. Rather the Board affirmed the decision of the Appeals Referee, which found these claims to be "vague and indefinite and lacking in specificity."[14] Because of the lack of evidence in the record pertaining to these allegations, the Board's decision to affirm the Appeals Referee should be upheld.

The Board was presented with testimony from both sides regarding Blevin's alleged cursing and yelling. The Board apparently did not believe that Blevin's alleged treatment of the Claimant was the motivation behind his desire to quit. Claimant indicated that he sought treatment by a psychologist to deal with the stress caused by Blevin but was unable to present any evidence supporting this other than his own testimony. Claimant did not present sufficient testimony indicating the frequency or severity of Blevin's abusive behavior or that it had disturbed Claimant to such a degree that he had to quit. Claimant's testimony was contradicted by Cline, Claimant's own witness, who said that although Blevin cursed once or twice a week, Blevin "treated [Cline] good for the most part."[15] Claimant's supervisor, Herfindahl, testified that although Blevin cursed and yelled, he "never cursed directly at anybody."[16]

Indeed, the case law indicates that being addressed by a supervisor in an undesirable manner does not support a decision to voluntarily terminate one's employment. This Court has been particularly reluctant to find good cause when the claimant has not notified the employer of the undesirable treatment and provided the employer with an opportunity to rectify the situation. Although the record indicates that

[14] Referee's Decision, page 3.
[15] Tr. of IAB Hr'g, page 32.
[16] *Id.* at 37.

Claimant's supervisor was aware that Claimant was not pleased about Blevin's treatment, it is not apparent that Claimant made a clear complaint to his supervisor stating that he could not tolerate Blevin's treatment and that he would be forced to quit if it did not stop.

The Board was faced with conflicting testimony as to the events that transpired when Claimant submitted his two week notice of termination. The Board apparently believed the testimony on behalf of the Employer stating that Claimant informed Blevin that he would quit if he did not receive a pay increase. The Board found this testimony to be credible and found that Claimant quit because he did not receive a raise. This Court must defer to such findings of credibility when sufficient evidence supports the finding.[17]

The decision of the Board affirming the Appeals Referee's decision is supported by substantial evidence and is free from legal error. Accordingly it is **AFFIRMED**.

Jan R. Jurden, Judge

[17] *Barbour v. Unemployment Insurance Appeal Board*, 1990 WL 199514, *5 (Del. Super.).