

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

CITY OF WILMINGTON,	)	
	)	
Appellant,	)	
	)	
v.	)	C.A. No. 01A-03-011-JEB
	)	
SHARON HAMILTON,	)	
and UNEMPLOYMENT INSURANCE	)	
APPEAL BOARD,	)	
	)	
Appellees.	)	

*Submitted: July 24, 2001*  
*Decided: October 18, 2001*

***Appeal From a Decision of The Unemployment Insurance Appeal Board.  
Reversed and Remanded.***

OPINION

*Appearances:*

Brenda James-Roberts, Esquire, Wilmington, Delaware.  
Attorney for Appellant, City of Wilmington.

Philip Bartoshesky, Esquire, Wilmington, Delaware.  
Attorney for Appellee, Sharon Hamilton.

Stephani Ballard, Esquire, Wilmington, Delaware.  
Attorney for Appellee, Unemployment Insurance Appeal Board.

**JOHN E. BABIARZ, JR., JUDGE.**

This case is an appeal from a decision of the Unemployment Insurance Appeal Board (“Board” or “UIAB”) granting unemployment benefits to Claimant Sharon Hamilton. As discussed below, the Court finds that the record evidence does not support the Board’s finding that Claimant was terminated from her employment because of undue absenteeism. The decision of the Board is therefore reversed, and the case is remanded to the Board for further consideration.

### **FACTS**

In December 1996, Claimant was hired by the City of Wilmington (“City” or “Employer”) on a temporary basis as an administrative aid specialist in the Division of Economic Development. In August 2000, Claimant told certain friends and co-workers that she was being harassed by Thornton Carroll, acting director of Economic Development, because of a federal lawsuit she filed against the City in July 2000. Claimant’s last day of work was September 15, 2000. The next day she not report to work and did not call in to explain her absence. After her third consecutive day of unexplained absence, Claimant’s supervisor, Thomas Moyer, called her at home. Claimant said she had not gone to work because her child had suffered a severe asthmatic attack. Although she indicated that she would return to work the following Monday, she never returned to her job.

On September 21, 2000, Moyer wrote Claimant a letter memorializing their phone conversation and stating that if she did not come to work on Monday, September 25, 2000,

Moyer would assume that she had quit. Because the letter was sent to Claimant's previous address, she never received it, and she did not return to work. In fact, Claimant had filed for unemployment benefits the previous week, stating that she quit her job because of harassment.

The matter was referred to a claims referee, who determined that Claimant had not been harassed and that she voluntarily quit her job without just cause, therefore disqualifying her from receiving unemployment benefits. Claimant appealed to the Board. After conducting a hearing, the Board reversed the referee, finding that Claimant was terminated because of her absenteeism. The Board also found that because the City had not adequately warned Claimant about the consequences of continued absenteeism, it had discharged her without just cause and that she was therefore entitled to unemployment benefits. The City filed a timely appeal to this Court.

### **STANDARD OF REVIEW**

In reviewing decisions of the UIAB, the Court must determine whether the Board's findings and conclusions are free from legal error and supported by substantial evidence on the record.<sup>1</sup> Substantial evidence is defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.<sup>2</sup> This Court does not weigh the evidence

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<sup>1</sup>*Unemployment Ins. Appeal Bd. v. Martin*, Del. Supr., 431 A.2d 1265 (1981).

<sup>2</sup>*Streett v. State*, Del. Supr., 669 A.2d 9, 11 (1995).

or make factual findings,<sup>3</sup> but merely determines if the evidence is adequate to support the Board's findings.<sup>4</sup>

## DISCUSSION

The Board found that although Claimant "genuinely felt harassed,"<sup>5</sup> she was terminated without warning because of her absenteeism. However, the evidence clearly shows that Claimant quit her job. As she stated on the record, "I quit because of the harassment that I was getting."<sup>6</sup> She made a similar claim on her application for unemployment benefits, which was filed on September 17, 2000,<sup>7</sup> three days prior to Moyer's letter. In fact, neither party took the position that Claimant was fired. The Court concludes that the record does not support the Board's finding that Claimant was terminated

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<sup>3</sup>*Johnson v. Chrysler Corp.*, Del. Supr., 164 A.2d 686 (1960).

<sup>4</sup>Title 29 *Del. C.* § 10142(d).

<sup>5</sup>Certified Record of UIAB Proceedings, C.A. No. 01A-03-01 at 0073. Subsequent references appear as "Rec. at page no."

<sup>6</sup>Rec. at 0031.

<sup>7</sup>Rec. at 0001, 0004.

by the City.

A claimant who quits work voluntarily bears the burden of showing “good cause attributable to such work.”<sup>8</sup> Good cause for quitting is “such cause as would justify one in voluntarily leaving the ranks of the employed and joining the ranks of the unemployed.”<sup>9</sup>

In this case, Claimant said she quit because of harassment, which she described as follows:

[Carroll] told me to start looking for another job. If I was late, he would say something about me being late. I don’t have no control over my daughter being sick. If I had to leave to go pick her up from school it was always something said.<sup>10</sup>

That was basically, that was all that he harassed me for was me being there, me coming in, me not being, I was sick, if I had to leave.<sup>11</sup>

In its decision, the Board made no findings as to whether Claimant was in fact being harassed because of the lawsuit she filed. On remand, the Board must answer this question and

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<sup>8</sup>Title 19 *Del. C.* § 3315(1).

<sup>9</sup>*O’Neal’s Bus Serv., Inc. v. Employment Sec. Comm’n*, Del. Super., 269 A.2d 247, 249 (1970).

<sup>10</sup>Rec. at 0032.

<sup>11</sup>Rec. at 0033.

determine whether Claimant had good cause to quit her job and join the ranks of the unemployed.<sup>12</sup>

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<sup>12</sup>See *O'Neal's Bus Service*, 269 A.2d at 249.

## **CONCLUSION**

For the foregoing reasons, the decision of the Board granting unemployment benefits to Sharon Hamilton is ***Reversed***, and the case is ***Remanded*** to the Board for further proceedings consistent with this Opinion.

***It Is So ORDERED.***

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John E. Babiarz, Jr.

JEB,jr/RMP/BJW  
Original to Prothonotary