IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

DOROTHY L. FINNEY,	)	
	)	
Appellant,	)	
	)	**CIVIL ACTION NUMBER**
v.	)	
	)	**00A-12-006-JOH**
HERCULES, INC., and	)	
UNEMPLOYMENT INSURANCE	)	
APPEAL BOARD,)		
	)	
Appellees.	)	

Submitted: July 12, 2001
Decided: October 3, 2001

MEMORANDUM OPINION

Upon Appeal from a Decision of the
Unemployment Insurance Appeal Board - AFFIRMED
Upon Hercules, Inc's Motion for Costs
Pursuant to Superior Court Rule 72(i) - DENIED

Ms. Dorothy Finney, of New Castle, Delaware, *Pro Se*

Matthew F. Boyer, Esq., of Connolly, Bove, Lodge & Hutz, attorney for Hercules, Inc.

Stephani J. Ballard, Esq., Deputy Attorney General, Department of Justice, for Unemployment Insurance Appeal Board

HERLIHY, Judge

Dorothy L. Finney has appealed the decision of the Unemployment Insurance Appeal Board denying her claim for compensation. When Hercules, Inc. was downsizing several years ago, Finney elected to take an early retirement package rather than either possibly being let go or accepting other employment within the company. The issue presented is whether her choice was good cause for terminating her employment allowing her to receive benefits or an act disqualifying her from benefits. The Court holds Finney's departure from work was voluntary and without good cause.

FACTUAL BACKGROUND

The factual record in this case was made before the Appeals Referee.[1] Finney had been employed by Hercules for nearly 28 years, the last ten as a senior clerk in the accounts payable section of the Wilmington Research Center. This was one of several sites Hercules identified on January 13, 1999 as sites where 700 jobs would be eliminated. One of the options provided to employees at each of these sites was severance pay at the rate of two weeks for each year of service plus twelve more weeks. A number of insurance benefits were available for that same period, too. Employees had to elect this option by February 28, 1999. If any employee chose not to accept this severance option, he or she might still be employed after the deadline or, if dismissed, face an apparently less financially desirable severance package. Hercules wanted to downsize forty employees at the Research Center site, but seventy employees, including

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[1]**Finney has sought to supplement that record in her filings with this Court. The Court cannot consider those filings. *Hubbard v. Unemployment Ins. Appeal Bd.*, Del.Supr., 352 A.2d 761, 762 (1976).**

Finney, chose the voluntary plan. She also decided not to try to get other employment within the company. In the end, her severance program included 66.1 weeks of pay.

When that pay expired, Finney applied for unemployment compensation. The claims deputy denied her application. She appealed. The appeals referee conducted a hearing at which Finney testified and introduced the severance announcement. He denied her claim, stating:

> **[Finney]'s acceptance of the voluntary severance pay program and take early retirement must be considered a voluntary leaving of her employment for personal reasons. There had been continuing work available for [Finney] at the time she accepted early retirement. [Finney] made a personal decision to accept the incentive package offered by [Hercules] which included two weeks of severance pay for each year of credited service plus twelve additional weeks of severance pay plus medical, dental and life insurance continuation for the total severance period and an opportunity for out placement services. Although it is certainly understandable that [Finney] may not have wanted to jeopardize her entitlement to the voluntary severance pay program, this was a voluntary decision on the part of [Finney] and consequently, her reason for leaving did not fall within the good cause criteria of the [19 *Del.C.* §3315(1)]. Consequently, [Finney] is not entitled to receive unemployment benefits based upon her decision to take early retirement.[2]**

Finney appealed this decision to the Board. It reviewed the record before the appeals referee and determined that a hearing was unnecessary. It upheld the appeals referee holding that:

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[2]Appeals Referee Decision (November 14, 2000) at 3-4.

> **The appeal is without merit because the issue on appeal from the Appeals Referee is factual, and there is substantial evidence to support the finding of fact below and the Board adopts these findings. The Appeal's Referee made the following findings: [Finney] decided to accept the voluntary severance pay program and take early retirement so that she would be entitled to receive the severance pay package.**
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> **Furthermore, the appeal is without merit as the Referee's decision is controlled by settled Delaware Law. The Appeals Referee concluded as a matter of law that: [Finney] voluntarily left her work without good cause in connection with her work and is disqualified from the receipt of benefits. The law in this area is well settled: Leaving work to avoid losing her entitlement to the voluntary severance pay program was leaving for a personal reason.**
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> **Furthermore, the Board finds that [Finney]'s reason for appeal does not provide a sufficient basis for the Board to review and reconsider the decision rendered below by the Appeals Referee. Pursuant to 19 *Del.C.* §3320, the Board "*may* permit any of the parties . . . to initiate further appeal before it." (Emphasis added.). The Board's review is discretionary. Given the above reasons, the Board has decided not to review this matter.[3]**

PARTIES' CLAIMS

Finney asserts that she felt that she would be asked to involuntarily leave, be demoted or moved to a less desirable position by Hercules to meet the downsizing quota had she not elected the voluntary severance program. In support of this feeling, Finney points to rumors of the company's intention to lay her off. She was the senior person in the accounting department at the Hercules location where she worked. She claims to have received outstanding evaluations and work reviews, but did not receive

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[3]Board Decision (December 8, 2000) at 1-2.

a promotion over the last ten years of employment. She also states that she trained others that did receive promotions over that time. These events led her to believe that she would eventually be targeted for an involuntary job termination.

Considering the economic condition of Hercules and the lack of a promotion over the past ten years, Finney felt her voluntary separation from the company was the best choice of the options available. Hercules' position is that Finney voluntarily left employment to qualify for the severance program at a time when continuing work was available. Since she left without good cause, it contends she is disqualified from receiving unemployment compensation benefits.

STANDARD OF REVIEW

When the Board affirms an appeals referee's decision, this Court relies upon the referee's determination for the findings of fact.[4] The duty of this Court on an appeal is to determine whether the referee's decision is supported by substantial

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[4]***Boughton v. Division of Unemployment Ins. of Dept. of Labor*, Del.Super., 300 A.2d 25, 26 (1972).**

evidence.[5] Since the Board adopted the referee's factual findings, this Court must determine whether its legal conclusion is free from legal error.[6]

DISCUSSION

A

[5] ***Histed v. E. I. Du Pont de Nemours & Co.*, Del.Supr., 621 A.2d 340, 342 (1993).**

[6] ***General Motors Corp. v. Jarrell*, Del.Super., 493 A.2d 978, 980 (1985).**

The Board elected not to have a factual hearing finding the facts were not really in dispute. Finney was the only witness to testify and she introduced the one document key to the resolution of this case, Hercules' downsizing announcement with early retirement option. The appeals referee accepted Finney's testimony and still determined she voluntarily terminated her employment without good cause. Under these circumstances, the Board did not abuse its discretion by not taking additional evidence.[7]

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[7] ***Funk v. Unemployment Ins. Appeal Bd.*, Del.Supr., 591 A.2d 222, 225 (1991).**

Delaware law provides that an individual who voluntarily leaves his or her employment without good cause attributable to work is disqualified from unemployment benefits.[8] The burden of proof to show good cause for voluntarily terminating employment is on the claimant.[9] In *Longobardi v. Unemployment Ins. Appeal Bd.*[10] this Court stated that "one who had a protection of a contract and the opportunity to retain his employment but chooses a layoff instead must be considered to have left his work voluntarily."[11] To leave employment voluntarily under the statute, "an employee must have had a conscious intention to leave or terminate the employment."[12] A voluntary termination has also been defined as leaving on one's own motion, as opposed to being discharged.[13]

The determination that Finney left her job voluntarily is supported by substantial evidence. Finney was not discharged, despite her speculative belief that at some point she may be subjected to involuntary termination. Finney accepted early retirement from Hercules to take advantage of the severance pay program. She had

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[8] **19 *Del.C.* §3315(1).**

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

[10] **Del.Super., 287 A.2d 690 (1971).**

[11] ***Id.* at 692.**

[12] ***Laime v. Casapulla's Sub Shop*, Del.Super., C.A.No. 96A-11-006, Cooch, J. (May 20, 1997) at 3 (citing *Andress v. F. Schumacher & Co.*, Del.Super., C.A.No. 93A-03-7, Herlihy, J. (November 3, 1993).**

[13] ***Id.***

worked for the company for 28 years. When the program was offered, she was eligible for early retirement. The program that she accepted offered incentives such as the many weeks of severance pay, the continuation of benefits and the opportunity for out-placement services. This Court finds that there was substantial evidence for the Board and the appeals referee to determine that Finney left her employment with Hercules voluntarily.

Having established that Finney voluntarily left her employment with Hercules, the Court must determine if there was substantial evidence to support the appeals referee's and the Board's decisions that Finney voluntarily left work without good cause. In *Laime*, this Court discussed Delaware law regarding good cause under 19 *Del.C.* §3315(1). Good cause is that which would "justify one in voluntarily leaving the ranks of the employed and joining the ranks of the unemployed."[14] Reasons for voluntarily leaving employment for good cause include: reasons connected with employment and not for personal reasons, not being paid when wages are due, a substantial reduction in wages or hours, or a substantial, detrimental deviation from the original employment agreement.[15]

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[14] ***Id.*** **at 3 (citing *O'Neal's Bus Service v. Employment Security Com'n.*, Del.Super., 269 A.2d 247, 249 (1970).**

[15] ***Id.*** **(citing *Brainard v. Unemployment Comp. Com'n.*, Del.Super., 76 A.2d 126, 127 (1950); *Sandefur v. Unemployment Ins. Appeal Bd.*, Del.Super., C.A.No. 92A-01-002, Goldstein, J. (August 27, 1993); *Harris v. Academy Heating and Air*, Del.Super., C.A.No. 93A-10-001, Graves, J. (June 6, 1994).**

Finney did not have good cause under the statute to voluntarily leave her employment with Hercules. Finney's reasons were personal, not connected with employment, in that her choice to accept the early retirement program was a monetary decision. At the time she made the decision to take early retirement, she felt that she did not have advancement potential and was a possible candidate to be laid off. Taking advantage of an early retirement program after 28 years of service to a company did not amount to Finney leaving her job for good cause under the statute.

CONCLUSION

For the reasons stated herein, the decision of the Board is AFFIRMED. The request of Hercules, Inc. for costs pursuant to Superior Court Rule 72(i) is DENIED.

IT IS SO ORDERED.

J.