

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

INGLESIDE HOMES, INC.)
Employer Below - Appellant,)
)
v.) C.A. No. 02A-12-009 PLA
)
MARIE C. GLADDEN,)
Claimant Below - Appellee.)

Submitted: July 8, 2003
Decided: August 27, 2003

APPEAL FROM A DECISION OF THE
UNEMPLOYMENT INSURANCE APPEAL BOARD
REVERSED AND REMANDED.

ORDER

Davis H. Williams, Esq., and Jill S. Di Sciullo, Esq., of Morris, James, Hitchens & Williams, LLP, Wilmington, Delaware, Attorneys for Employer Below - Appellant.

Joseph M. Bernstein, Esq., Wilmington, Delaware, Attorney for Claimant Below - Appellee.

Stephani J. Ballard, Esq., Deputy Attorney General, Wilmington, Delaware, Attorney for Unemployment Insurance Appeal Board.

ABLEMAN, JUDGE

In this appeal from the decision of the Unemployment Insurance Appeal Board, employer Ingleside Homes, Inc. ("Ingleside") challenges the Board's determination that employee Marie C. Gladden did not voluntarily quit her position, but was rather constructively discharged by the adverse working conditions imposed upon her.

Gladden filed a claim for unemployment benefits based on her contention that she was forced to resign from her employment. Ingleside, on the other hand, claims that Gladden voluntarily quit her employment without good cause and was therefore disqualified from benefits. The Claims Deputy found that Gladden voluntarily quit her employment without good cause and the Appeals Referee affirmed that decision. On appeal, the Board reversed the Appeals Referee's determination, finding that Gladden was faced with either working under very difficult conditions or quitting, a situation that constituted constructive discharge. In the alternative, the Board noted in its decision that "even were it to find that claimant's separation constituted a voluntary quit, claimant had good cause in connection with the work to quit and made genuine efforts to resolve the problems administratively before leaving."¹

Ingleside appeals the Board's decision to this Court, arguing that the Board erred as a matter of law insofar as it 1) failed to make the threshold determination that Gladden is eligible to receive benefits under 19 Del. C. §3314 before awarding her benefits, 2) improperly shifted the burden to Ingleside to establish that Gladden was discharged for cause, and 3) disregarded the substantial weight of the evidence. For the reasons stated below, the decision below is **REVERSED AND REMANDED.**

Statement of Facts

Appellant Marie C. Gladden was employed by Ingleside Homes, Inc. ("Ingleside") from August 2000 until February 28, 2002, as the Vice President of Fund Development, Marketing and Public Relations. Over that time period, Gladden earned a salary ranging from \$60,000 to \$62,000 per year.

In the fall of 2001, Ingleside underwent significant corporate restructuring, which included the changing of job titles and responsibilities, as well as the physical rearranging of employees' offices. Gladden was out of the office for part of the restructuring due to maternity leave, which she began in December 2001. During her absence, it was decided that all corporate functions should be moved to a single floor within the office, as opposed to scattered throughout the building as it had been before. The employees were responsible for moving their respective offices, but because Gladden was on maternity leave, another employee moved her possessions. It was also decided that Gladden's position would be limited to fund development, thereby eliminating her responsibility for public relations and marketing. Gladden's salary, however, remained the same.

At some point in February 2002, Jim Cuart, another member of Ingleside's senior staff, called Gladden to update her as to the changes within the company. Soon thereafter, Gladden visited the office to show her co-workers pictures of her baby.² Gladden returned to the office to resume her work on Monday, February 25, 2002. According to Ingleside, Gladden was not expected to return to work for a couple more weeks and her co-workers were surprised to see her in the office. At that time Cuart showed Gladden to her new office, which, according to Gladden, was a "disaster area",³ adjacent to the bathroom "in a cubby hole".⁴ Ingleside,

¹ Bd. Dec. at 3.

² Tr. Bd. Hr'g at 14.

³ *Id.* at 15.

however, submits that the new office was actually three feet larger than Gladden's old office.⁵ Gladden reported that her assistant was given a larger office and that another "marketing person" had an office at least twice the size of her office.⁶ When Gladden objected, Cuart responded "if you don't like it, Marie, you are free to resign".⁷

Gladden also testified that her files were "trashed", her pictures were in the garbage, and the back of her computer was removed.⁸ Her office was so packed with files that she had to walk sideways to reach her desk. This was problematic because, as vice president of fund development, Gladden was required to meet with donors in her office.⁹ The phone was unusable because her pin number had been changed and her computer access was denied, presumably due to a password change.¹⁰ Gladden testified that she called Cuart to inform him of these problems. His response was "well you know we've moved everybody around and this is what we had to do until we find somewhere to put you." Gladden suggested moving back to her old office, but Cuart advised that her former office had been turned into a storage room.¹¹ According to Gladden, Cuart said he would meet with Steven Wisniewski, another senior staff member, to try to resolve the situation.¹² Gladden then went home.

Gladden testified that when she returned to work the following day, the door to her office was blocked by a number of boxes.¹³ Since she had had a caesarian-section, Gladden was unable to move the boxes.¹⁴ Gladden attempted to find Wisniewski to determine who had

⁴ *Id.* at 18.

⁵ *Id.* at 42.

⁶ *Id.* at 19.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 16.

¹² *Id.*

¹³ *Id.* at 17.

¹⁴ *Id.*

authorized the boxes.¹⁵ At this point, Gladden admitted, she was "agitated", particularly because no one seemed to have any information about the boxes.¹⁶ Eventually a co-worker, Deanna Jenks, assisted Gladden in moving the boxes.¹⁷ Gladden expressed to Jenks her frustration with the changes made during her leave, as well as her concern over the state of her office. At this point, both Gladden and Jenks became emotional and upset.¹⁸ Karen Peterson, another co-worker, testified that the boxes were placed outside her office because they were to be moved to the fourth floor, near the location of the elevators.¹⁹ She further testified that Gladden was not expected to return so soon and that had she returned to work at the scheduled time, none of these problems would have arisen.²⁰

At some point after her return,²¹ presumably on Monday or Tuesday of her first full week, Gladden spoke with Cuart about reactivating her phone and providing her access to the computer system. Cuart told her to contact maintenance, but the maintenance department was on vacation. In her testimony, Gladden seems to imply that Cuart knew that maintenance was unavailable but told her to call them anyway.²²

On the next day, Wednesday, Cuart came to Gladden's office, to discuss a meeting that Gladden had missed and the incident with Jenks that had upset her.²³ Gladden said that Cuart started "reaming" her about how she had offended Jenks.²⁴ Gladden testified that she had spoken with Jenks who reported to her that she was upset for personal reasons totally unrelated to Gladden. According to Gladden, she confronted Cuart with what Jenks had told her, and that

¹⁵ *Id.*

¹⁶ *Id.* at 22.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 42.

²⁰ *Id.*

²¹ The chronology of the events is unclear because Gladden's testimony jumps around temporally without distinguishing between different days.

²² Tr. Bd. Hr'g at 18.

²³ *Id.* at 23.

they "just kept going back and forth, back and forth."²⁵ Finally she just left.²⁶ It was approximately one or two o'clock.²⁷

Gladden returned to work on Thursday and Cuart again came to her office. The discussion from the day before resumed, and, according to Gladden, Cuart again told her that if she "wasn't satisfied" she "can always leave."²⁸ The argument continued until Gladden "had it to here" at which time she said "I'm out of here" and then "took her stuff and left."²⁹

On August 18, 2002, Gladden filed an application for unemployment benefits. The Claims Deputy characterized the issue as whether Gladden voluntarily resigned or whether she was forced to resign. The Claims Deputy found that Gladden had the burden of proof to show good cause for leaving the job, but failed to satisfy her burden, thereby disqualifying her from receiving benefits. On appeal, the Referee framed the issue as whether Gladden had good cause to leave her employment and found that she had not.

The Board reversed the decisions below, reasoning as follows:

The majority of the Board finds that the adverse working conditions which claimant was subject to following her return from maternity leave constituted a constructive discharge. Claimant could not be expected to work under conditions where her office was inaccessible and she could not have access to the business phones. In addition, claimant was given a smaller office, while her assistant kept her old larger office. The Board finds that claimant did not voluntarily terminate her employment; rather, she was constructively discharged. An employee who is faced with resignation induced under pressure may be considered to have been constructively discharged and will be eligible for unemployment compensation provided there was no just cause for discharge. See *Anchor Motor Freight v. UIAB*, Del. Super., 325 A.2d 374 (1974). Under the circumstances, claimant was faced with either working under very difficult conditions or quitting.

In a discharge situation, the burden is on the employer to show that claimant engaged in some wilful or wanton misconduct which would justify the discharge. No such evidence was presented here. Accordingly, the Board finds that claimant was discharged from her work without just cause and is entitled to

²⁴ *Id.* at 23.

²⁵ *Id.* at 24.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 25.

²⁹ *Id.*

the receipt of benefits. The majority notes that even were it to find that claimant's separation constituted a voluntary quit, claimant had good cause in connection with the work to quit and made genuine efforts to resolve the problems administratively before leaving.³⁰

Parties' Contentions

Ingleside has appealed the Board's decision to this Court and argues three different grounds for reversal. First, it asserts that the Board erred in failing to determine whether Gladden is eligible to receive benefits under Section 3314 of Title 19 before awarding her benefits. In this case, the Board reversed the Appeals Referee's determination that Gladden was disqualified from receiving benefits under Section 3315, but never addressed the threshold issue of eligibility. Therefore, Ingleside maintains, this Court must remand the case back to the Board for further proceedings.

Second, Ingleside argues that the Board committed legal error insofar as it analyzed this case under the "constructive discharge" framework, as opposed to the "voluntary quit" framework. This error, it contends, resulted in the improper shifting of burdens to Ingleside. Because the Board found a constructive discharge, it placed the burden on Ingleside to demonstrate just cause for Gladden's dismissal. But Ingleside has never alleged that Gladden was discharged for cause. Instead, the argument continues, Ingleside has consistently maintained that Gladden left voluntarily and that the onus is on her to demonstrate that she had good cause to leave work.

Ingleside's third argument is that the substantial weight of the evidence supports a finding that Gladden voluntarily resigned her employment with Ingleside, and that Gladden failed to give Ingleside an opportunity to remedy her problems before she resigned. Accordingly, she is not entitled to benefits.

³⁰ *Id.* at 3.

In response to Ingleside's first argument, Gladden points out that the Board noted in its decision that Gladden is only entitled to benefits if she is "otherwise qualified and eligible as determined by the Department of Labor."³¹ Therefore, she argues, although not in the record, the Department of Labor presumably has determined that Gladden meets the eligibility requirements of the statute. Additionally, she notes that Ingleside had the opportunity to contest such a determination before the Referee and the Board, but saw no need to do so. Gladden further maintains that the Board's finding of constructive discharge is supported by substantial evidence and free from legal error.

The Board's brief "takes no position on whether its findings on the merits of the case should be upheld."³² The Board does argue, however, that it did not err in failing to address eligibility because Gladden's eligibility was never disputed at any point during the proceedings. The Board also contends that it did not improperly shift the burden of proof. Rather, as the fact finder, it merely determined that Gladden's separation from Ingleside constituted a constructive discharge and not a voluntary dismissal.

Standard of Review

The duty of this Court on an appeal from the Board is to determine whether the Board's decision is supported by substantial evidence and free from legal error.³³ This Court does not sit as a trier of fact with authority to weigh the evidence, determine questions of credibility, or make its own factual findings and conclusions.³⁴ The Board's decision must be affirmed if it is supported by substantial evidence.³⁵ Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.³⁶ The credibility of

³¹ Bd. Dec. at 3.

³² Board's Brief at 12 n.4.

³³ *Histead v. E.I. du Pont De Nemours & Co.*, 621 A.2d 340, 342 (Del. 1993).

³⁴ *DABCC v. Newsome*, 690 A.2d 906, 910 (Del. 1996).

³⁵ *M.A. Harnett, Inc. v. Coleman*, 226 A.2d 910 (Del. 1967).

³⁶ *Oceanport Indus., Inc. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del. 1994).

witnesses, the weight of their testimony, and the factual inferences drawn therefrom are for the Board to determine.³⁷ This Court does not substitute its judgment for that of the Board.³⁸ Accordingly, this Court must view the record in the light most favorable to the party prevailing below.³⁹

Discussion

I.

Delaware's unemployment insurance program was statutorily created and is governed by Title 19, Section 33 of the Delaware Code. The core of that Chapter is the interaction of Section 3314, which outlines eligibility requirements, and Section 3315, which addresses circumstances where otherwise eligible persons shall be disqualified from benefits. This Court has described the framework as follows:

Sections 3314 and 3315 establish a two-tier test which the Department of Labor ("Department") must employ in determining whether an unemployed individual is entitled to unemployment benefits. First, the Department must determine if the individual is *eligible*. If the individual is *eligible*, the Department must determine if the individual is *disqualified*.⁴⁰

Generally speaking, a person is eligible for benefits under Section 3314 if he or she is registered for work, has claimed benefits, is able to work, and is actively seeking employment.⁴¹ As noted above, however, even if an individual meets all of those requirements, he or she may nevertheless be disqualified under Section 3315. The most common ways to be disqualified are

³⁷ *Keeler v. Metal Masters Equip. Co., Inc.*, 712 A.2d 1004, 1006 (Del. 1998).

³⁸ *Stewart v. Delaware Alcoholic Bev. v. Alfred I. DuPont Sch. Dist.*, 385 A.2d 1123, 1125 (Del. 1978).

³⁹ *General Motors Corp. v. Guy*, Del. Super., C.A. No. 90A-JL-5, Gebelein, J. (August 16, 1991).

⁴⁰ *Division of Unemployment Insurance v. Unemployment Insurance Appeal Bd.*, Del. Super. LEXIS 144 at *6 (Del. Super.).

⁴¹ *Sikorski v. Boscov's Department Store*, 1995 WL 656831 at *2 (Del. Super.).

leaving work "voluntarily without good cause attributable to such work...."⁴² and being "discharged from the individual's work for just cause...."⁴³

The issue presented in this appeal is whether this Court may presume that the Department of Labor has reviewed and determined eligibility, even though the Claims Deputy, Appeals Referee, and the Board have each failed to make such explicit findings, where none of the parties have disputed the issue. Moreover, there is nothing in the record to raise the possibility of ineligibility.

The tribunals below have focused exclusively on whether Gladden was disqualified from receiving benefits, presumably because both the Claims Deputy and the Appeals Referee denied benefits on disqualification grounds, such that there was no need to discuss eligibility. It was only at the level of the Board that eligibility became determinative, after it ruled that Gladden was not disqualified. But it is important to note that neither party has ever raised any eligibility concerns and there is nothing in the record that suggests ineligibility.

Gladden argues that the Board's decision only granted benefits if she is "otherwise qualified and eligible as determined by the Department of Labor."⁴⁴ Therefore, she presumes, the Department has made such a determination. The Board argues in its brief that eligibility is an ongoing evaluation, susceptible to change at any point during the continuing submission of claims. The Board also notes that most of the eligibility issues are determined by a claimant's submission of weekly claim forms, certifying that the claimant is available for work and actively seeking work, among other things. In short, according to the Board, eligibility is an issue that needs to be addressed only if it is disputed.

⁴² 19 *Del. C.* §3315(1).

⁴³ 19 *Del. C.* §3315(2).

⁴⁴ Bd. Dec. at 3.

This Court faced a similar issue in *Division of Unemployment Ins. v. Unemployment Ins. Appeal Bd.*⁴⁵ In that case, the claims deputy denied benefits after finding that the claimant had refused to accept a job opportunity. In the alternative, the claims deputy also found that the restrictions claimant placed on the work she would be willing to accept were so rigorous that she could not be considered available for work as required. The appeals referee affirmed on both grounds. The Board reversed the appeals referee, finding that the claimant's refusal of the job opportunity did not disqualify her from benefits. The Board did not address the availability issue. This Court remanded the case back to the Board, reasoning as follows:

The record below indicates that both the claims deputy and the appeals referee found that the claimant was not available because of the restriction that claimant placed upon the work that she was willing to accept. The Board did not address this issue of availability, and hence eligibility. The Board should have addressed all of the issues on claimant's eligibility that were raised by the referee before reversing his decision.... A remand is necessary for the Board to address this issue.⁴⁶

A related issue arose in *McManus v. Christina Service Co.*⁴⁷ There, the referee found the claimant to be qualified to receive benefits. In reversing the referee, the Board found that the claimant voluntarily quit without just cause, thereby disqualifying him from benefits under Section 3315. However, the record contained evidence that the claimant may have accepted work during the period for which he sought benefits. This Court held:

Although the parties have litigated and prior proceedings have focused on whether Claimant was disqualified, this case appears to turn on whether Claimant is eligible for benefits. The record suggests that had Claimant worked when work was available, i.e., November 13, 1995, Claimant would be ineligible for benefits. The Court, therefore, will remand this case for further consideration, including if necessary, a new hearing.

...
The Court is mindful that if Claimant were disqualified, he could not receive benefits despite his eligibility. Nevertheless, the Court cannot evaluate,

⁴⁵ 1990 Del. Super. LEXIS 144 (Del. Super.).

⁴⁶ *Id.* at *6-7.

⁴⁷ 1997 WL 127953 (Del. Super.).

much less rely on, the administrative findings concerning disqualification until the facts regarding eligibility have been determined and considered. Accordingly, if the UIAB finds that Claimant is eligible for benefits, the UIAB must reconsider its finding as to disqualification under the totality of the circumstances and in light of its finding concerning eligibility.⁴⁸

*United Propane, Inc. v. Sowers-Vescovi*⁴⁹ also bears on this case. In that case, interestingly, the claims referee, who found no grounds for disqualification, determined that the claimant was eligible for benefits if she was "otherwise qualified and eligible".⁵⁰ The referee reversed the claims deputy. The Board reversed the referee's determination that the claimant was disqualified, but as in this case, failed to address eligibility. This Court found remand to be appropriate. After explaining that Sections 3314 and 3315 establish a two-tier test, this Court noted that, when making the determination of whether a claimant is both eligible and not disqualified, the Board must make adequate findings of fact and conclusions of law as to the pivotal issues raised by the claimant's application.⁵¹ The Court likened the situation to *McManus*, explaining:

This case presents the same problem. The UIAB is required to apply a two-step test but has glossed over or skipped the first step. This error first appears in the Claims Deputy's Notice of Decision. There, the only determination the Deputy made was that Claimant was "eligible for receipt of benefits, *if otherwise qualified and eligible....*" The Findings of Fact, however, do not reflect that the Deputy considered the factors required by §3314 for eligibility. That is, there is no showing that the Deputy considered whether the claimant was both able to work and available to work. The decision of the Appeals Referee suffers from the same flaws. It skips straight to a determination that Claimant was discharged and that the discharge was for "cause" thus disqualifying Claimant for benefits. Finally, the decision of the UIAB does not indicate that the Board considered any issue other than whether the Claimant was discharged for just cause.⁵²

The Court finds this reasoning to be equally applicable to the case at bar. While the Court recognizes that in each of the foregoing cases some evidence existed on the record tending

⁴⁸ *Id.* at *2 (citations omitted).

⁴⁹ 2000 WL 305504 (Del. Super.).

⁵⁰ *Id.* at *2.

⁵¹ *Id.* at *4.

to put eligibility in doubt, the basic principle is nonetheless applicable here. In order to be entitled to benefits, both eligibility and disqualification requirements must be met. And while the parties certainly could have raised eligibility concerns before, the burden ultimately lies with the Board to make a determination as to eligibility. Put simply, this Court cannot presume that such a determination has been made, as Gladden would have it, when the record is completely devoid of any discussion of the issue. This case must be remanded for further proceedings as to Gladden's eligibility.

II.

The Court must now address the Board's findings as to Gladden with regard to disqualification under Section 3315. The Board determined that Gladden did not voluntarily quit, but instead was constructively discharged. Ingleside argues that the Board erred in using the constructive discharge analysis rather than addressing the issue within the voluntary quit framework.

In a termination situation, the employer has the burden of proving just cause. Employee performance and conduct is highly relevant in assessing just cause.⁵³ Just cause refers to a "wilful or wanton act in violation of either the employer's interest, or of the employee's duties, or of the employee's expected standard of conduct."⁵⁴ Wilful and wanton conduct is that which is evidenced by either conscious action, or reckless indifference leading to a deviation from established and acceptable workplace performance; it is unnecessary that it be founded in bad motive or malice.⁵⁵

In a voluntary quit situation, on the other hand, the employee bears the burden of proving good cause existed to justify quitting. "Good cause for quitting a job must be such cause as

⁵² *Id.* at *5.

⁵³ See *Abex Corp. v. Todd*, 235 A.2d 271, 272 (Del. Super. Ct. 1967).

⁵⁴ *Id.* at 272

would justify one in voluntarily leaving the ranks of the employed and joining the ranks of the unemployed."⁵⁶ "Good cause should be determined by the standard of a reasonably prudent person under similar circumstances."⁵⁷ "In Delaware, substantial reduction in an employee's pay constitutes good cause for [an] employee's voluntary quitting."⁵⁸ However, an employee must make a good faith effort to resolve problems with the employer before quitting; the employee must exhaust administrative remedies.⁵⁹ An employee may not quit under the pretext of good cause merely because he finds the employment situation personally untenable.⁶⁰ And finally, "[w]here reasons for quitting include personal reasons, justice requires that the evidence be carefully scrutinized in order to ascertain whether or not the primary motivating cause for the quit was connected with the employment."⁶¹

Here, the Board analyzed Gladden's separation within the discharge framework, ruling as follows:

The majority of the Board finds that the adverse working conditions which claimant was subject to following her return from maternity leave constituted a constructive discharge. Claimant could not be expected to work under conditions where her office was inaccessible and she could not have access to the business phones. In addition, claimant was given a smaller office, while her assistant kept her old larger office. The Board finds that claimant did not voluntarily terminate her employment; rather, she was constructively discharged. An employee who is faced with resignation induced under pressure may be considered to have been constructively discharged and will be eligible for unemployment compensation provided there was no just cause for discharge. See *Anchor Motor Freight v. UIAB*, Del. Super., 325 A.2d 374 (1974). Under the circumstances, claimant was faced with either working under very difficult conditions or quitting.

In a discharge situation, the burden is on the employer to show that claimant engaged in some wilful or wanton misconduct which would justify the discharge. No such evidence was presented here. Accordingly, the Board finds

⁵⁵ See *Coleman v. Department of Labor*, 288 A.2d 285, 288 (Del. Super. Ct. 1972).

⁵⁶ *O'Neal's Bus Service, Inc. v. Employment Security Commission*, 269 A.2d 247, 249 (Del. Super. Ct. 1970).

⁵⁷ *White v. Security Link*, 658 A.2d 619, 621 (Del. Super. Ct. 1994).

⁵⁸ *Harris v. Academy Heating & Air*, 1994 WL 319231, *1-2 (Del. Super.) (citing *Performance Shop v.*

Unemployment Insurance Appeal Board, Del. Super. C.A. No. 84A-MR-31, Stifel, J. (February 25, 1985).).

⁵⁹ See *Harris v. Academy Heating & Air*, 1994 WL 319231, *2 (Del. Super.).

⁶⁰ See *Hall v. Doyle Detective Agency*, 1994 WL 45361, *5 (Del. Super.) (citing *O'Neal's Bus Service, Inc.*, 269 A.2d at 249). Cf. *King v. K & T Enterprises*, 1989 WL 25906 (Del. Super.).

⁶¹ *Redding v. Medical Center of Delaware*, 1994 WL 45351 (Del. Super.).

that claimant was discharged from her work without just cause and is entitled to the receipt of benefits. The majority notes that even were it to find that claimant's separation constituted a voluntary quit, claimant had good cause in connection with the work to quit and made genuine efforts to resolve the problems administratively before leaving.⁶²

The Court concludes that the Board utilized the wrong standard in this case. A review of Delaware case law has revealed that constructive discharge has arisen in two distinct types of situations. The first, more traditional, and common situation involves an employer giving an employee an ultimatum with regard to the employment. For instance, in *Anchor Motor Freight v. Unemployment Insurance Appeal Bd.*,⁶³ the case the Board cites herein, the claimant was presented with a letter of resignation and was told to sign it or she would be terminated and would forfeit vacation pay. Similarly, in *MRPC Financial Management LLC v. Carter*,⁶⁴ the Court found constructive discharge where the employee was faced with the decision of taking a substantial demotion, including a significant reduction in pay, or resignation.

The second situation involves employee resignation due to poor working conditions. This case falls squarely within this category. While the Court has found a few cases containing some language supporting a finding of constructive discharge under such circumstances if the work conditions are poor enough,⁶⁵ no cases have been found which uphold a finding of constructive discharge in a unemployment benefits situation based solely on poor working conditions.

⁶² Bd. Dec. at 3.

⁶³ 325 A.2d 374 (Del. Super. Ct. 1974).

⁶⁴ 2003 WL 21517977 (Del. Super.).

⁶⁵ See, e.g., *Gryzwyna v. Department of Corrections*, 1982 Del. Super. LEXIS 935 at *4 (Del. Super.) ("There is no substantial evidence to establish that appellant was forced or induced to resign under pressure by the employer or on account of a truly serious deficiency in her working conditions."); *Bali v. Christiana Care Health Services*, 1998 Del. Ch. LEXIS 172 at *13 (Del. Ch.) ("The theory of constructive discharge recognizes 'that while an employer may not go so far as to actually and formally discharge an employee, he may nevertheless make conditions of continued employment so intolerable as to result in a constructive discharge.'" (quoting 15 AM. JUR. 2d Civil Rights §148 (1976).)

In this Court's judgment, that the facts of this case warrant analysis under "voluntary quit" framework, such that the basic issue for the Board to decide is whether the claimant had "good cause" to leave her employment. The burden should be on the claimant to demonstrate such good cause, not on the employer to demonstrate just cause. The Board found constructive discharge because Gladden's office, phone, and computer were inaccessible for three days following her return from maternity leave, and Gladden's coworkers were given larger offices than she was. While there may be situations where an employer's flagrant disregard for an employee's working conditions and/or overt discriminatory/retaliatory work environment rises to the level of constructive discharge, this case, at least based on the grounds cited by the Board, is not one of them.

Lastly, the Board's alternative holding -- that "even were it to find that claimant's separation constituted a voluntary quit, claimant had good cause in connection with the work to quit and made genuine efforts to resolve the problems administratively before leaving" -- is simply not sufficient for appellate review. This Court requires a more thorough analysis and findings of fact before passing judgment on the Board's determination.

III.

On remand, the Board should first explicitly determine whether Gladden is eligible for unemployment benefits under Section 3314. If the Board finds that she meets the requirements of eligibility, it must then address disqualification under Section 3315. In particular, the Board shall, with specificity, detail its findings as to whether Gladden had good cause for leaving work.

Conclusion

For the foregoing reasons, the Court **REMANDS** this case to the Unemployment Insurance Appeal Board for proceedings consistent with this decision.

IT IS SO ORDERED.

PEGGY L. ABLEMAN, JUDGE

cc: Davis H. Williams, Esquire
Jill S. DiSciullo, Esquire
Joseph M. Bernstein, Esquire
Stephani J. Ballard, Esquire