IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

MARY ANN WASHINGTON, Appellant v. DIAMOND STATE SECURITY, Appellee and UNEMPLOYMENT INSURANCE APPEAL BOARD, Appellee	)	C.A. No. 03A-11-007 MMJ

Submitted: May 11, 2004
Decided: June 15, 2004

ORDER

UPON APPEAL FROM A DIVISION OF THE UNEMPLOYMENT INSURANCE APPEAL BOARD

AFFIRMED

Having reviewed the parties' submissions in this appeal of a decision of the Unemployment Insurance Appeal Board ("Board") affirming the decision of the Appeal Referee, and denying Mary Ann Washington ("Claimant")'s appeal on the basis that the Claimant voluntarily quit her employment without good cause attributable to the work, the Court concludes as follows:

1. Claimant was employed by Diamond State Security ("Employer") from February 21 to June 8, 2003. She was injured at the Port Authority on April 15, 2003 and was under a doctor's care for approximately two months. Claimant returned to Employer, but had childcare issues.

2. Claimant was assigned by Employer to National Car Auction ("Auction"). According to Claimant, she worked there every time she was assigned, even though she was not supplied with necessary equipment, such as a proper radio. Employer refused to send Claimant anywhere else even though Claimant felt that the site was dangerous. Claimant asked Employer to take her off the schedule until they had somewhere else to assign her. Employer agreed to do so.

3. Claimant then called periodically, but was informed that there was no work. Claimant was told to return her uniform. As Claimant was in the process of doing so, another officer gave her a work schedule of four days a week. Claimant went into the office to speak with Employer's operation manager, but the manager refused to place Claimant in the position.

4. At times, Claimant refused work due to childcare issues. Claimant needed Employer to complete documentation for the Department of Health and Social Services ("DHSS") in order to provide childcare, but according to Claimant, Employer refused.

5. Claimant filed a claim for unemployment benefits against the State of Delaware. Based upon the information obtained, the Claims Deputy determined on August 4, 2003 that Claimant had not been available for suitable work offers by the employer due to personal issues and was disqualified from the receipt of benefits, effective with or for week ending June 21, 2003.

6. Claimant filed an appeal with the Division of Unemployment Insurance Appeals on August 12, 2003. The Appeals Referee modified and affirmed the decision of the Claims Deputy in accordance with 19 Del. C. § 3315(1), which provides:

> AN INDIVIDUAL SHALL BE DISQUALIFIED FOR BENEFITS: For the week in which the individual left work voluntarily without good cause attributable to such work and for each week thereafter until the individual has been employed in each of 4 subsequent weeks (whether or not consecutive) and has earned wages in covered employment equal to not less than 4 times the weekly benefit amount.

7. According to the Referee's opinion, an employee who voluntarily terminates her employment will be disqualified from the receipt of unemployment benefits unless she can show that she had good cause for leaving, and that her reason or reasons for doing so were directly related to her work or to her employer.

8. Good cause can be found where there has been a substantial reduction in hours or wages, or a substantial deviation in the working conditions from the original agreement of hire to the detriment of the employee. Dissatisfaction with the workplace or dangerous working conditions will not be good cause to quit unless the employee does something akin to exhausting her administrative remedies by placing the employer on clear notice of the problem so that it might be corrected.

9. The Referee found that Claimant was unemployed because she was dissatisfied with the working conditions at the main assignment she was given.

There was no evidence that she tried to go through channels to correct the problem. Instead, she asked to be taken off the schedule until a new assignment came along. This amounted to voluntarily quitting her employment. Employer was under no obligation to take Claimant back when there was other work available. Claimant ended the employment relationship by asking to be taken off the schedule.

10. As to whether Claimant had good cause to quit, the Referee stated that Claimant may have had concerns about the assignment at the Auction, but there was no evidence of any change in Claimant's working conditions. It appears that she simply asked for another assignment and when none was available, asked to be taken off the schedule. Claimant's choice to be unemployed, therefore, was a personal one and not sufficiently attributable to the work so as to constitute good cause.

11. According to the Referee's decision, Claimant voluntarily quit her employment without good cause attributable to the work. Therefore, she is disqualified from the receipt of unemployment benefits, effective with the week ending June 21, 2003.

12. Claimant then appealed the decision of the Referee to the Board. A hearing was held and a decision rendered on Wednesday, October 8, 2003, affirming the decision of the Appeals Referee.

13. Employer's witness testified at the hearing that she had never received DHSS verification. Claimant asked for a letter to DHSS on July 18, 2003, but never brought in the proper form which DHSS required. Employer took Claimant off the work schedule because it was impossible for Employer to work around the restrictions on Claimant's schedule due to child-care problems. There also were complaints from Employer's clients that Claimant was sleeping on the job or playing "Game Boy" while on duty. Employer made two-way radios available.

14. Employer's witness testified that she spoke with Claimant on July 21, 2003, when Claimant told her that she wished to be taken off the schedule because she was going back to school and taking another part-time job. Claimant was offered a four-day-per-week assignment on the day Claimant returned her uniform. Employer never told Claimant that her services were no longer needed.

15. In its decision, the Board stated that in a case where the claimant has voluntarily terminated employment, "the employee must have had a conscious intention to leave or terminate the employment."[1] The burden of proof is on the claimant to show "good cause" for leaving her employment.[2] "[A]n employee does not have a good cause to quit merely because of an undesirable or unsafe situation connected with his employment" without first "seeking to have the situation corrected by proper notice to his employer."[3]

16. The Board considered two issues: (1) whether Claimant voluntarily quit her employment; and (2) whether Claimant had good cause to terminate her employment.

17. As to the first issue, the record indicates that Claimant last worked for Employer on June 8, 2003 and filed for unemployment on June 15. Claimant is presumed to have believed that she was unemployed at the time of filing. Nothing in the record or in the testimony before the Board indicates that

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[1] *Gsell v. Unclaimed Freight*, 1995 WL 339026 (Del. Super. 1995).

[2] *Longobardi v. Unemployment Insurance Appeal Brd.*, 287 A.2d 690 (Del. Super. 1971).

[3] *O'Neal's Bus Service, Inc. v. Employment Security Comm.*, 269 A.2d 247, 249 (Del. Super. 1970).

Employer took any job action against Claimant prior to that date. Therefore, if the Claimant was unemployed on June 15, it could only be because she had terminated her employment voluntarily.

18. As to the second issue, the Board stated that the record shows that Claimant was dissatisfied with her job conditions and had a restricted schedule resulting from childcare responsibilities. Claimant testified specifically about being sent to potentially dangerous sites but was not sufficiently anxious about her safety to prevent her from sleeping in her car or playing electronic games on the job. Security guards are sent to job sites where security is presumably needed for a reason, and it is presumed that when a person accepts employment, he or she assumes the normal risk inherent in that employment. There is no evidence in the record that indicates that Claimant was ever sent to a job site where armed security personnel were required. There is no evidence of abnormal risks. No evidence was presented that there was substantial reduction in hours or wages, or a substantial deviation in the working conditions from the original agreement of hire to the detriment of the employee.

19. The Supreme Court and this Court repeatedly have emphasized the limited appellate review of the factual findings of an administrative agency. In

reviewing the decisions of the agency, this Court must determine whether the findings and conclusions of the Board are free from legal error and supported by substantial evidence in the record.[4] The function of the reviewing Court is to determine whether the agency's decision is supported by substantial evidence.[5] Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[6] The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.[7] It merely determines if the evidence is legally adequate to support the agency's factual findings.[8]

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[4]19 *Del. C.* § 3323(a)("In any judicial proceeding under this section, the findings of the [UIAB] as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the Court shall be confined to questions of law."); *see Unemployment Insurance Appeal Board v. Martin*, 431 A.2d 1265 (Del. 1981); *Ponchvatilla v. United States Postal Service*, Del. Super., C.A. No. 96A-06-19, Cooch, J. (June 9, 1997), Mem. Op. at 2.

[5]*Johnson v. Chrysler Corporation*, 213 A.2d 64, 66-67 (Del. 1965); *General Motors v. Freeman*, 164 A.2d 686, 688 (Del. 1960).

[6]*Oceanport Ind. V. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battisa v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super. 1986), *app. dism.*, 515 A.2d 397 (Del. 1986).

[7]*Johnson v. Chrysler*, 213 A.2d at 66.

[8]29 *Del. C.* § 10142(d).

20. The Court finds that the decision of the Board took into account not only the record of the case but also additional testimony of both Claimant and Employer. In determining whether Claimant voluntarily quit her employment, the Board did not simply rely on the evidence considered by Referee, but looked at evidence inherent in the dates of the last day worked and the filing for unemployment. Further testimony was heard on the issue of whether Claimant had voluntarily terminated employment. Similarly in determining whether Claimant had good cause to terminate her employment, the Board looked into Claimant's dissatisfaction with her job conditions, especially concerns regarding security to determine their validity.

21. It appears to the Court that in affirming the decision of the Appeals Referee and denying benefits to Claimant, the Board adopted the pertinent findings of fact and conclusions of law of the Appeals Referee, for which there was adequate evidence in the record.

22. Based on the foregoing reasons, the Board's decision denying Claimant's appeal based upon the Board's finding that Claimant is disqualified

from the receipt of unemployment benefits for the week in which she left her work voluntarily without good case attributable to such work is AFFIRMED.

IT IS SO ORDERED.

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The Honorable Mary M. Johnston

Orig: Prothonotary