IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

KARA-LEE GILLIE,	:	
	:	C.A. No. 06A-03-003 WLW
Appellant,	:	
	:	
v.	:	
	:	
D & N BUS SERVICE and	:	
UNEMPLOYMENT INSURANCE	:	
APPEALS BOARD,	:	
	:	
Appellees.	:	

Submitted: June 14, 2006
Decided: September 26, 2006

ORDER

Upon Appeal From a Decision of the
Unemployment Insurance Appeals Board.
Affirmed.

Kara-Lee Gillie, *pro se*.

Noel E. Primos, Esquire of Schmittinger and Rodriguez, P.A., Dover, Delaware; attorneys for D & N Bus Service.

WITHAM, R.J.

Upon consideration of the parties' briefs and the record below, it appears to the Court that Kara-Lee Gillie, ("Gillie"), filed a *pro se* appeal with this Court from the decision of the Unemployment Insurance Appeals Board ("the Board") dated March 9, 2006 regarding her unemployment claim against D&N Bus Service ("D&N"). The Board affirmed the Appeals Referee's ("Referee") prior decision denying benefits to Ms. Gillie, and determined she voluntarily left her employment without good cause. Gillie argues that she never indicated to Neil Moore ("Moore"), owner of D&N, that she would be unable to return to work in the autumn of 2005, if she were to become pregnant. Secondly, Gillie claims she contacted Moore in May 2005 after being told by a co-worker that her bus run had been given to another D&N employee, and Moore verified that it had been. Thirdly, Gillie claims that Moore never checked with her at the end of the 2005 school year concerning her future plans. Finally, Gillie argues she was prejudiced in the prior proceedings, because she was not afforded the opportunity to cross examine co-workers who submitted letters on Moore's behalf. She argues the letters are inadmissable hearsay. D&N responds by asserting that there was substantial evidence to support the Board's decision that Gillie left her work voluntarily without good cause attributable to such work, and the decision should be permitted to stand.

The salient facts are as follows: Gillie began work for D&N in August 2003 as a school bus driver. In August 2004, she informed Moore that she intended to undergo an in vitro fertilization in order to become pregnant. Moore claims that Gillie informed him that she would not be able to return to work for the 2005-2006

school year, if she became pregnant, but Gillie claims to have never made the statement. Gillie became pregnant and suffered medical problems beginning in December 2004, forcing her to take time off from work. She returned to work in March 2005. In May 2005, Gillie was told by a co-worker that Moore had given away her run. Moore claims that Gillie did not discuss with him why her run had allegedly been assigned to another driver, nor did she try to get Moore to change his mind and take her back. Gillie claims that she called Moore after finding out about the run (bus route) from a co-worker, and Moore confirmed to her that the run had been given away. Late in the summer of 2005, Gillie contacted Moore indirectly to find out if driving work was available. Gillie claims that Moore told her no driving work was available, but Moore claims to have directly informed Gillie's Uncle that there was no available work.

For the reasons set forth below, Gillie's appeal from the Board's decision is *denied*.

Standard of Review

The review of an Industrial Accident Board's decision is limited to an examination of the record for errors of law and a determination of whether substantial evidence exists to support the Board's finding of fact and conclusions of law.[1] Substantial evidence equates to "such relevant evidence as a reasonable mind might

[1]*Histed v. E.I. Dupont de Nemours & Co.*, 621 A.2d 340, 342 (Del. 1993).

accept as adequate to support a conclusion."[2] This Court will not weigh the evidence, determine questions of credibility, or make its own factual findings.[3] Errors of law are reviewed de novo. Absent error of law, the standard of review for a Board's decision is abuse of discretion.[4] The Board has abused its discretion only when its decision has "exceeded the bounds of reason in view of the circumstances."[5] Additionally, "this Court will give deference to the expertise of administrative agencies and must affirm the decision of an agency even if the Court might have, in the first instance, reached an opposite conclusion."[6] "Only where no satisfactory proof exists to support the factual finding of the Board may the Superior Court overturn it."[7]

Discussion

All of Gillie's contentions attack the testimony and evidence before the Board and the evidentiary findings of the Board. Therefore, the Board's decision will be examined to determine whether there was substantial evidence to support the Board's

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[2]*Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981) (*quoting Consolo v. Federal Mar. Comm'n*, 383 U.S. 607, 620 (1966)).

[3]*Collins v. Giant Food, Inc.*, 1999 Del. Super. LEXIS 590 (*quoting Johnson v. Chrysler Corp.*, 213 A.2d 64, 66-67 (Del. 1965)).

[4]*Digiacomo v. Bd. of Pub. Educ.*, 507 A.2d 542, 546 (Del. 1986).

[5]*Willis v. Plastic Materials*, 2003 Del. Super. LEXIS 9 at *2-3.

[6]*Collins*, 1999 Del. Super. LEXIS at *9.

[7]*Jules-Hall v. Cash Systems, Inc.*, 2006 WL 1679572 (Del. Super.) at *1.

finding of fact and conclusions of law. Gillie and Moore disagree as to whether Gillie informed Moore that she would be unable to work during the 2004-2005 school year, if she became pregnant. The parties further disagree as to whether Gillie called Moore to verify that her run (bus route) had been given away after a co-worker told her it had been. Also, Gillie claims that Moore failed to ask her about her future plans at the end of the 2005 school year. The Board determined that Gillie left her employment voluntarily without good cause because "Gillie failed to take all reasonable measures to remain employed. Further, Gillie's decision to get pregnant and the consequences that followed cannot be attributed to her work."[8]

There is substantial evidence to support the Board's conclusion. The claimant bears the burden of demonstrating "good cause" for voluntarily terminating her employment.[9] The Board found that when Gillie learned from a co-worker that her run (bus route) had been given to another employee, she did not discuss the matter with Moore, concluded that there would be no work for her the next year and failed to pursue the matter further. Moore testified that Gillie told him she would not be returning to work for the 2005 school year, if she became pregnant. Moore also testified that Gillie never contacted him concerning the information she received from a co-worker concerning her run (bus route) being given away. Moore further testified that he would not have been allowed to approve Gillie's plan to bring her infant on

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[8] *Gillie v. D&N Bus Serv.*, UIAB Appeal Docket No. 436384 (March, 19 2006), *aff'g* Decision of Appeals Referee (November 18, 2005).

[9] *Longobardi v. Unemployment Ins. Appeal Bd.*, 287 A.2d 690, 692 (Del. Super. 1971).

a school bus without first checking with both his insurance carrier and the school district transportation supervisor. Moore's failure to contact Gillie concerning her future plans was included in the record considered by the Board. It did not factor into the Board's decision, because Moore was under no obligation to inquire into Gillie's future plans. Based on all the evidence before it, the Board concluded that Gillie did not meet her burden of persuasion and, consequently, agreed with the Referee.

Gillie was not prejudiced in the prior proceedings due to the fact that she was not afforded the opportunity to cross examine co-workers who submitted letters on Moore's behalf. It appears that the letters included in the record of the prior proceedings were supplied to the claims deputy by D&N, and there is no indication that the letters were considered by either the appeals Referee or the Board in making their determinations. This Court would not normally question the factual determination of the Board without a clear demonstration of a failure to adequately consider the factual presentation before the Board.

In the case *sub judice*, there is ample evidence to find that the Board's decision is supported by substantial evidence. Thus, the Board's decision is proper.

THEREFORE, IT IS ORDERED that the judgment of the Unemployment Insurance Appeals Board be, and the same hereby is, AFFIRMED.

/s/ William L. Witham, Jr.
R.J.

WLW/dmh
oc: Prothonotary
xc: Order Distribution