

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2012 CA 1852

GWENDOLYN CROWLEY

VERSUS

**SUSAN SONNIER, ADMINISTRATOR OFFICE OF UNEMPLOYMENT
SECURITY, CURT EYSINK; ADMINISTRATOR LOUISIANA WORKFORCE
COMMISSION AND REGIONAL EXTENDED HOMECARE**

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Judgment Rendered: JUN 07 2013

On Appeal from the Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
No. 604,893

Honorable Kay Bates, Judge Presiding

Gwendolyn Crowley Dupree
Baton Rouge, Louisiana

Plaintiff/Appellant
In Proper Person

Danelle L. Gilkes
Baton Rouge, Louisiana

Counsel for Defendant/Appellee
Louisiana Workforce Commission

BEFORE: WHIPPLE, C.J., McCLENDON, AND HIGGINBOTHAM, JJ.

McCLENDON, J.

Appellant seeks review of a district court judgment affirming a decision of the Louisiana Board of Review, which concluded that appellant was disqualified for unemployment benefits based on her unavailability to work under LSA-R.S. 23:1600(3). For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

Gwendolyn Crowley was employed by Regional Extended Homecare as a licensed practical nurse to work in the homes of severely disabled children. On her last assignment on April 6, 2011, she had a disagreement with one of the patient's grandparents and the grandparent asked Ms. Crowley not to return. The employer then attempted to place Ms. Crowley on several other assignments, but none were deemed acceptable by her.

On April 8, 2011, Ms. Crowley sought unemployment benefits with the Louisiana Workforce Commission. The Louisiana Workforce Commission determined that Ms. Crowley was ineligible for unemployment benefits because it determined that she was "not available for work" as required by LSA-R.S. 23:1600(3).

Ms. Crowley appealed the Commission's decision to an administrative law judge (ALJ). Following a hearing, the ALJ affirmed the Commission's decision, reasoning as follows:

Evidence and testimony indicate that the claimant has changed her availability to such a degree that it is very difficult for the company to place her with an assignment. The claimant knew what was involved with the assignments when she was hired. Therefore, the claimant is not available for employment with this employer and is not qualified for benefits.

Ms. Crowley filed an appeal of the ALJ's decision with the Louisiana Board of Review. The board, adopting the ALJ's findings of fact and conclusions of law, affirmed the ALJ's decision.

Subsequently, Ms. Crowley filed a petition for judicial review in district court. The district court, after hearing arguments and reviewing the record and briefs of the parties, affirmed the board's decision.

Ms. Crowley has appealed to this court, asserting that the district court erred in concluding that she was disqualified from receiving unemployment benefits.

DISCUSSION

Judicial review of the board's decision is governed by LSA-R.S. 23:1634. Louisiana Revised Statutes 23:1634(B), provides, in part: "In any proceeding under this Section the findings of the board of review as to the facts, if supported by sufficient evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the court shall be confined to questions of law."

Courts may not disturb factual findings of the board when questions of weight and credibility are involved and when the conclusions are supported by sufficient evidence. **King v. Tangipahoa Parish Police Jury**, 96-0934 (La.App. 1 Cir. 2/14/97), 691 So.2d 194, 196. Judicial review of the findings of the Board does not permit weighing of evidence, drawing of inferences, re-evaluation of evidence, or substituting views of the court for that of the board as to the correctness of the facts presented. **Id.**

Pertinent hereto, an unemployed individual shall be eligible to receive benefits only if the administrator finds, among other things, that the individual "is able to work, available for work, and is conducting an active search for work."¹ LSA-R.S. 23:1600(3). The individual shall be disqualified for benefits "[i]f the administrator finds that [the individual] has failed, without good cause, either to apply for available, suitable work when so directed by the administrator or to accept suitable work when offered him." LSA-R.S. 23:1601(3). When determining whether offered work is suitable, the following factors must be

¹ Louisiana Revised Statutes 23:1600(3)(b)(i) provides:

For the purpose of this Section, a claimant shall have satisfied the requirements of making an active search for work if he is pursuing a course of action to become reemployed as contained in his eligibility review and reemployment assistance plan approved by the administrator. The reemployment assistance plan shall not contain factors which, when judged on the basis of reasonableness for a similarly unemployed worker to follow, would be contrary to the individual's interest, taking into account the claimant's qualifications for work, the distance of his residence from employing establishments, his prior work history, and current labor market conditions related to his normal and customary occupation.

considered: "the degree of risk involved to his health, safety and morals, his physical fitness and prior training, his experience, his length of unemployment, his prospects for securing local work in his customary occupation, the distance of the available work from his residence, and his highest level of educational attainment as evidenced by a formal degree." LSA-R.S. 23:1601(3)(a).

The record reflects that the employer offered Ms. Crowley opportunities to work with other patients. The first offer involved Ms. Crowley traveling with a client from Baton Rouge to New Orleans for a doctor's appointment. According to the employer, Ms. Crowley turned down the one-day assignment, indicating that she had housework to do. Ms. Crowley avers that asking her to travel to work in New Orleans, which would have been over a two-hour drive to and from Baton Rouge, for a one-day assignment as a fill-in is deemed unsuitable under LSA-R.S. 23:1601(3)(a).

Ms. Crowley declined a second offer because, according to the employer, Ms. Crowley wanted to work from 9:00 a.m. until 2 p.m. or 3 p.m. each day and the job extended past those hours. The employer also indicated that Ms. Crowley stated that given the prior incident in April 2011 wherein the grandfather told her to leave the patient's home, Ms. Crowley did not want to take any cases where a patient's parents would be home. According to the employer, Ms. Crowley stated that if the parents are home then they do not need nursing services and that she did not want somebody looking over her shoulder and watching to see what she was doing.

The employer explained that it could not accommodate Ms. Crowley's conditions of employment, stating:

[Our cases] are generally severely disabled children or adults that we get from Medicaid and they're specified x number of hours per week. Generally anywhere from twenty-eight to eighty-four. And we then staff the cases from the pool of nurses that are available and typically we like to staff, and the parents like to staff one nurse per day. Unless it's going to be an extended twelve hour day, they really don't want several people coming into the home. And the parents have a lot of control over these cases. So we have to accommodate them when it comes to staffing. And the difficulty was that Ms. Crowley's alleged hours precluded us from assigning her a case that she would accept.

The employer further explained that "the limitation that she had, [that] she doesn't want the parents in the home, most of these parents are home with these severely disabled children. So that's something we just can't accommodate."

On the other hand, Ms. Crowley asserts that she refused the second assignment because it involved a tracheotomy, which she declined for lack of experience, training, and for the client's safety. Crowley avers that given her lack of adequate training in this area, she was not qualified for the referenced assignment.

The employer also indicated that it offered Ms. Crowley a third opportunity, but Ms. Crowley declined because she had certain criteria of when and how she wanted to work. Ms. Crowley asserts, however, that only two offers had been made by the employer.

After a thorough review, we conclude that the record contains sufficient and competent evidence to support the board's finding that Ms. Crowley was unavailable for work. Although Ms. Crowley disputes the suitability of the jobs offered, a reasonable interpretation of the record reflects that Ms. Crowley refused suitable assignments because of personal issues and an unwillingness to work at the homes of clients whose parents would be present. Because a reasonable basis exists in the record to support the board's findings, we cannot substitute our views for that of the board regarding its findings of fact. See King, 691 So.2d at 196. Accordingly, we find no merit in Ms. Crowley's assignment of error.

CONCLUSION

For the foregoing reasons, the August 23, 2012 judgment of the district court is affirmed. Costs of this appeal are assessed to appellant, Gwendolyn Crowley.

AFFIRMED.