IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

KENDALL S. MONCRIEF,	:	
	:	C.A. No. K14A-07-001 WLW
Appellant,	:	
	:	
v.	:	
	:	
CELTIC CROSSING and	:	
UNEMPLOYMENT INSURANCE	:	
APPEALS BOARD,	:	
	:	
Appellees.	:	

Submitted: December 2, 2014
Decided: February 6, 2015

ORDER

Upon an Appeal from the Decision of the
Unemployment Insurance Appeal Board.
Affirmed.

Kendall S. Moncrief, *pro se.*

Lauren E. M. Russell, Esquire of Young Conaway Stargatt & Taylor, Wilmington, Delaware; attorney for Celtic Crossing.

Paige J. Schmittinger, Esquire of Department of Justice, Wilmington, Delaware; attorney for the Unemployment Insurance Appeals Board.

WITHAM, R.J.

Before the Court is the *pro se* appeal of Appellant Kendall S. Moncrief (hereinafter "Appellant") from the decision of the Unemployment Insurance Appeals Board (hereinafter "the Board" or "the UIAB") disqualifying Appellant from receiving unemployment benefits. Appellant was disqualified from receiving unemployment benefits because he voluntarily quit working without good cause after not receiving paid vacation time. Because Appellant voluntarily terminated employment without good cause, the Board's decision is AFFIRMED.

FACTS AND PROCEDURE

Appellant Kendall Moncrief was employed by Celtic Crossing (hereinafter "Appellee-Employer" or "Celtic") from December 2009 through January 2014. Appellant worked as a cook for the entire duration of his employ, and was an hourly worker who received one week of paid vacation time per year (equal to $440.00) beginning in 2013. From January 20-January 27, 2013, the Appellant took time off for vacation. About eleven (11) months later, the Appellant took another week of vacation in December of 2013. However because Appellant had already used one week of vacation in the same year, his December 2013 Christmas leave was unpaid.

On January 5, 2014, the Appellant went to Celtic to pick up his paycheck; it was then that he realized he was not paid for his second week of vacation time. Celtic's owner, Shirley Sheridan (hereinafter "Sheridan"), informed Appellant that his non-payment for the second week of vacation time was accurate. The parties quibbled over whether or not Appellant should have received paid vacation time. The

Appellant testified that he never said he was quitting[1] yet Sheridan testified that Appellant stated he *was* quitting.[2] Sheridan asked him to leave the premises or she would call the police, because she did not feel comfortable. There is discrepancy as to whether the Appellant first declared (or in fact did declare) that he quit or whether the owner requested he leave the premises prior to his quitting.

Regardless, the Appellant did not further inquire as to his employment. Instead he assumed he was terminated and only corresponded with Appellee in order to pick up his final paycheck. Appellant did not return to Celtic to work his scheduled shifts nor did he contact anyone at Celtic.

On March 28, 2014 a Claims Deputy determined that Appellant was disqualified for benefits because he voluntarily quit his job and thus was not entitled to unemployment insurance benefits. Appellant timely appealed on April 1, 2014.

On April 28, 2014, the Appeals Referee reversed the Claims Deputy, finding that the Appellant left work voluntarily with good cause, and as such was entitled to unemployment benefits pursuant to Title 19 *Del. C.* § 3314(1). The Appeals Referee determined that because the resulting argument between Sheridan and the Appellant was that Sheridan told the Appellant to leave or she would call the police, he left with the impression he had been fired, and that this called for good cause for the Appellant to have left his employment.

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[1] R. At 39.

[2] R. At 37.

On June 11, 2014, the UIAB heard the testimony from both parties. Sheridan testified that she disagreed with the Referee's finding of fact that the Appellant was fired. She testified that the only reason she threatened to call the police was that she felt threatened, and only made that statement after Appellant and said he quit. Ms. Sheridan testified that she did not ask the Appellant to come back to work, but never told him he was fired or that he should not appear for his next scheduled shift.

The Board found that the Appeals Referee made an error of law, stating that it was the Employer's burden to correct the Appellant's impression that he was fired. Instead, the Board states, that it is the Claimant who bears the burden of showing "good cause" for voluntarily terminating employment, and as such, it was the Appellant's burden, not the Appellee's, to verify Appellant was terminated. The Board stated that had the Appellant taken an affirmative step to ensure he was fired, then the Board's outcome would have been different. Accordingly, the Board reversed the decision of the Appeals Referee, and found that the Appellant left work voluntarily without good cause, and as such was not entitled to unemployment benefits. The Appellant timely filed this appeal.

STANDARD OF REVIEW

As with appeals from all administrative agencies, when a decision of the UIAB is appealed, this Court's scope of review is limited to "determining whether the Board's conclusions are supported by substantial evidence and free from legal error."[3] Substantial evidence means "such relevant evidence as a reasonable mind might

[3] *Nardi v. Lewis*, 2000 WL 303147, at *2 (Del. Super. Ct. Jan. 26, 2000) (citations omitted).

accept as adequate to support a conclusion."[4] This Court will not weigh the evidence, determine questions of credibility, or make its own factual findings.[5] Questions of law are reviewed *de novo* "to determine whether the Board erred in formulating or applying legal concepts."[6] If there is substantial evidence and no error of law, the Board's decision will be affirmed, unless the Board committed an abuse of discretion.[7] An abuse of discretion occurs when the Board "acts arbitrarily or capriciously, or exceeds the bounds of reason in view of the circumstances and has ignored recognized rules of law or practice so as to produce injustice."[8]

DISCUSSION

Pursuant to 19 *Del. C.* § 3314(1), an individual is disqualified from the receipt of unemployment benefits if "the individual left work voluntarily without good cause attributable to such work. . . ."[9] An employee voluntarily quits their employment

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

[5] *Hopkins Const., Inc. v. Unemployment Ins. App. Bd.*, 1998 WL 960713, at *2 (Del. Super. Ct. Dec. 17, 1998) (citing *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66-67 (Del. 1965)).

[6] *PAL of Wilmington v. Graham,* 2008 WL 2582986, at *4 (Del. Super. Ct. June 18, 2008) (citing *Nardi*, 2000 WL 303147, at *2).

[7] *See PAL of Wilmington,* 2008 WL 2582986, at *4 (citing *Funk v. Unemployment Ins. App. Bd.,* 591 A.2d 222, 225 (Del. 1991)); *Sikorski v. Boscov's Dept. Store,* 1995 WL 656831, at *1 (Del. Super. Ct. Sept. 22, 1995) (citations omitted).

[8] *PAL of Wilmington*, 2008 WL 2582986, at *1 (citations and internal quotations omitted).

[9] 19 *Del. C.* § 3314(1).

when they leave on their own accord as opposed to being discharged, and have "a conscious intention to leave or terminate the employment."[10] The burden is on the employee to establish good cause attributable to the employment that justifies voluntarily leaving work.[11] Good cause is defined as "such cause as would justify one in voluntarily leaving the ranks of the employed and joining the ranks of the unemployed."[12] Further, the employee "must first exhaust all reasonable alternatives to resolve the issues underlying [the] employment before voluntarily terminating employment."[13] This exhaustion requirement is satisfied when the employee at least notifies the employer of the problem and requests a solution, or otherwise brings the problem to the attention of someone with the authority resolve the problem.[14]

Appellant's opening brief first asserts that the determination that he voluntarily left his employment is not supported by the evidence. Appellant relies on *PAL of Wilmington v. Carol Graham*[15], and asserts that he left because he was induced under

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[10] *Gsell v. Unclaimed Freight*, 1995 WL 339026, at *2 (Del. Super. May 3, 1995) (citations omitted).

[11] *Hopkins Const., Inc.*, 1998 WL 960713, at *3 (citation omitted).

[12] *Sandefur*, 1993 WL 389217, at *4 (citing *O'Neal's Bus Serv., Inc. v. Employment Secur. Comm'n*, 269 A.2d 247, 249 (Del. Super. 1970)).

[13] *Thompson v. Christiana Care Health Sys.*, 25 A.3d 778, 784 (Del. 2011).

[14] *Id.* (citing *Calvert v. State, Dept. of Labor & Workforce Development*, 251 P.3d 990, 1001-1002 (Alaska 2011)).

[15] *PAL of Wilmington v. Graham*, 2008 WL 2582986 (Del. Super. June 18, 2008).

pressure to leave, and that such a resignation is tantamount to a discharge without just cause. Appellant contends that he was constructively discharged based on the fact that his superior threatened to call the police if he did not leave the premises. He further argued that because Sheridan called her son on the phone to escort Appellant off the premises, this also constituted as constructive discharge. However, this Court does not hold that the Appellant was induced to resign under pressure nor discharged without just cause pursuant to 19 *Del.C.* § 3314(2).

Neither Appellant nor Sheridan testified that Appellant was told he was fired, nor that he was not to report to work for his scheduled shifts, nor that was he told to never come back again. Sheridan's request for the Appellant to leave the premises addressed Appellant's visible and growing upset due to not receiving the pay expected, which made Sheridan feel uncomfortable because she was alone with him. The Court does not hold that the Appellant was fired because he was told to leave the premises during an argument.

Appellant secondly argues that The Board committed legal error because it did not apply the constructive discharge standard. In a voluntary quit scenario, the burden is on the employee to prove just cause existed to justify quitting.[16] The employee has good cause to leave where the cause "would justify one in voluntarily leaving the ranks of the employed and joining the ranks of the unemployed."[17] Good

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[16] *Ingleside Homes, Inc. v. Gladden*, 2003 WL 22048205, at *7 (Del. Super. Aug. 27, 2003).

[17] *O'Neal's Bus Serv., Inc. v. Employment Sec. Comm'n.*, 269 A.2d 247, 249 (Del.Super.Ct.1970).

cause does not exist, however, merely because the employer creates an undesirable situation.[18] Rather, the employee must first "do something akin to exhausting his administrative remedies" by, for example, notifying the employer of the undesirable situation.[19] "An employee may not quit under the pretext of good cause merely because he finds the employment situation personally untenable."[20]

The Appellant testified that he did not contact Sheridan or any other employee of Celtic after his argument with Sheridan. He also testified that he did not clarify with Sheridan whether or not he was fired at the time of the confrontation. Part of establishing whether an employee had "good cause" is whether the employee exhausted internal remedies available with the employer.[21] The Appellant stated that there were other employees of Celtic such as the Head Chef, someone to whom Appellant could have reached out, that he did not clarify his employment situation with. The Appellant's only contact with Celtic was to retrieve his last paycheck and attempt to retrieve personal effects. Because the Appellant failed to resolve problems with his employer prior to quitting, his termination of employment does not meet the

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[18] *Id.*

[19] *PAL of Wilmington v. Graham*, 2008 WL 2582986, at *6 (Del. Super. June 18, 2008) *citing O'Neal's Bus Serv., Inc.* 269 A.2d *at 269.

[20] *Ingleside Homes, Inc. v. Gladden,* 2003 WL 22048205, at *7 (Del. Super. Aug. 27, 2003) *Citing Hall v. Doyle Detective Agency,* 1994 WL 45361, *5 (Del. Super.)(*citing O'Neal's Bus. Service, Inc.,* 269 A.2d *at 249).

[21] *Ingleside Homes, Inc.*, at *7 (Del. Super. Aug. 27, 2003) (*citing* Harris v. Academy Heating & Air, 1994 WL 319231, *2 (Del.Super).

constructive discharge standard. Appellant had an affirmative duty to act and failed to do so, thus his quitting Celtic was voluntary and without cause.

Appellant failed to carry his burden to establish good cause for leaving his employment and failed to exhaust his reasonable alternatives to resolving the issues with Celtic. Thus, the Board's conclusion that Appellant is disqualified from receiving benefits under § 3314(1) is supported by substantial evidence and free from legal error.

CONCLUSION

In light of the substantial evidence in support of the UIAB's decision, as well as the absence of any error of law, the decision of the UIAB must be, and is, hereby **AFFIRMED.**

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

WLW/dmh