SUPERIOR COURT OF THE STATE OF DELAWARE

RICHARD F. STOKES

JUDGE

SUSSEX COUNTY COURTHOUSE 1 THE CIRCLE, SUITE 2 GEORGETOWN, DE 19947 TELEPHONE (302) 856-5264

June 19, 2013

Francis J. Barnes 19712 Prince Street Rehoboth Beach, DE 19971

Chris Quillen Quillen's Rent-All, Inc. 19897 Hebron Rd., Ste. G Rehoboth Beach, DE 19971

RE: Francis J. Barnes v. Quillen's Rent-All, Inc. and Unemployment Ins. Appeal Bd.
C.A. No. S13A-03-003 RFS

Dear Mr. Barnes and Mr. Quillen:

This is my decision affirming a decision of the Unemployment Insurance Appeal Board ("Board"). The Board found that Claimant Francis Barnes voluntarily quit his job without good cause and is therefore disqualified from receiving unemployment benefits.¹ 19 *Del.C.* § 3314(1). The Court affirms.

Facts. Claimant worked for Quillen's Rent-All as a marketer from June 9, 2008 through August 13, 2012. In July 2011, Claimant told Chris Quillen ("Quillen"), owner of Quillen's Rent-All, that Francis Walsh ("Walsh"), the head mechanic, had been verbally harassing him. Quillen spoke with Walsh about the incident. Over the course of the next year, Claimant informed Quillen of five or six more incidents of Walsh's verbal misconduct. Other employees were aware that Walsh could be difficult and confrontational. Employer's manager, Don Mitchell, and

¹The Board does not take a position as to the merits of its cases.

Bronson Burton saw altercations take place between Claimant and Walsh.

In August 2012, Claimant observed Walsh allow several employees steal company materials, and he reported his observations to Quillen. Because Quillen did not take immediate action, Claimant quit and submitted a resignation letter.

Quillen testified that all he knew about the harassment was what Claimant told him. Walsh was an excellent mechanic and was a valued employee. Quillen stated that he had talked to Walsh about his anger and was helping him overcome it. Quillen had received five or six previous complaints about Walsh from Claimant over the past year.

Posture. Claimant filed a petition for unemployment benefits with the Department of Labor, Division of Unemployment. When a claims deputy denied Claimant's petition, Claimant appealed. An appeals referee held an evidentiary hearing and affirmed. On appeal, the Board affirmed the appeals referee, finding that Claimant had not shown good cause for voluntarily quitting his job. Claimant filed a timely appeal to this Court.

Standard of review. On appeal from an administrative decision, this Court's role is to determine whether the agency's factual findings are supported by substantial evidence and the decision is free from legal error.² Substantial evidence is relevant evidence that a reasonable person might accept as adequate to support a conclusion.³

Board's decision supported by record evidence. The question which both the appeals referee and the Board answered in the negative is whether Claimant voluntarily left his work for good cause in relation to his work. That same question is posed here. In his brief, Claimant reargues the facts while the Employer rests on the agency decisions.

An employee who voluntarily terminates his employment will be disqualified from receipt of benefits unless he meets his burden of showing good cause for leaving

²Person-Gaines v. Pepco Holdings, Inc., 981 A.2d 1159, 1161 (Del.2009).

³Olney v. Cooch, 425 A.2d 610, 614 (Del.1981).

and that his reasons for leaving were directly related to his work or his employment.⁴ Further, an employee must inform his employer of the problem to make the necessary adjustments and "give the employer enough time to correct the problem."⁵

The record shows that Walsh was a difficult, sometimes angry employee who had confrontations with co-workers, his manager and Quillen. Claimant asserted that Walsh used profanity and threats against any and all, made the service employee cry, smoked marijuana on the premises and participated in the theft of company property.

Quillen was reluctant to let Walsh go because he had contributed to the success of the company and did his job well. The general consensus among the employees who testified was that Walsh could be difficult, but tensions among individuals are normal at the workplace. Don Mitchell and Bronson Burton witnessed confrontations between Claimant and Walsh.

Claimant argues that he was forced to quit his job because of a hostile work environment.⁶ As the Board noted, while some of Claimant's co-workers testified that Walsh was quarrelsome, none testified that Claimant was his particular target. There is substantial evidence to support the Board's finding that Claimant was unhappy with Walsh's conduct and with Quillen's delay in resolving it. The two altercations witnessed by Mitchell and Bronson do not constitute good cause to quit a job. Claimant chose to quit without waiting for Quillen to decide the best course of conduct, as required in *Thompson*, *supra*. Claimant justifies his haste by saying that Quillen had never done anything definitive about Claimant's prior complaints.

⁴Longobardi v. Unemployment Ins. Appeal Bd., 287 A.2d 690,692 (Del.Super.1971), aff'd, 293 A.2d 295 (Del.1972).

⁵Thompson v. Christiana Care Health System, 25 A.3d 778 (Del.2011).

⁶This is not a constructive discharge claim. Such a claim requires the employee to show working conditions so intolerable that a reasonable person would have felt compelled to resign. A showing of a mere hostile work environment, which Claimant alleges, is insufficient. *Smith v. Delaware State University*, 47 A.3d 472, 477 (Del.2013). A showing that the employee was pressured into resigning is required for a constructive discharge. *PAL of Wilmington v. Graham*, 2008 WL 2582986 (Del.Super.).

However, the final event of which Claimant complained was different from any that preceded it, an alleged theft rather than verbal intimidation. Quillen decided to think it over before taking action, not an unreasonable choice in regard to a valuable employee. The record shows that Claimant's hasty departure was related to his personal feelings of frustration, not his work. In his brief, Claimant reiterates his opinion that Quillen had had more than enough time to correct the situation. The Court concludes that the Board's finding that Claimant voluntarily quit without good cause related to his work is supported by substantial evidence.

No error of law. Claimant argues that he was denied a fair appeal because Chris Quillen did not appear at the Board hearing. However, Quillen testified at length before the appeals referee and his testimony was part of the record before the Board. Claimant received a full and fair hearing on his petition.

Conclusion. The decision of the Board finding that Claimant voluntarily left his work without good cause attributable to his work is **AFFIRMED**.

IT IS SO ORDERED.

Very truly yours,

/s/ Richard F. Stokes

Richard F. Stokes

Original to Prothonotary

xc: Unemployment Insurance Appeal Board