

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

1 The Circle, Suite 2
GEORGETOWN, DE 19947

April 24, 2013

Jacqueline Y. Gardner
19544 Pine Road
Lincoln, DE 19960

Thomas H. Ellis, Esquire
Department of Justice
State of Delaware
820 North French St., 6th Floor
Wilmington, DE 19801

***RE: Jacqueline Y. Gardner v. Delaware Division of Social Services, et al.
C.A. No. 12A-11-002***

Date Submitted: April 9, 2013

Dear Counsel and Ms. Gardner:

This is my decision on Jacqueline Gardner's appeal of the Unemployment Insurance Appeal Board's denial of her claim for unemployment benefits. The Board denied Gardner's claim because it found that she voluntarily quit her job without good cause. Gardner worked as a full-time social services technician with the Department of Economic Services for six years. Gardner felt that she was being harassed by her new supervisor, Jessica Clarkson. Clarkson became Gardner's supervisor in February 2011. In March 2011, Clarkson authored a positive pre-performance review of Gardner's work. However, in September 2011 Clarkson

disciplined Gardner for improper behavior. Gardner disagreed with Clarkson's assessment of her behavior and pursued her grievances through the workers' compensation process and union grievance process. The union claim concerned her one-day suspension based on Clarkson's September 2011 disciplinary action. Gardner believed that Clarkson was making up lies about her job performance and sending her numerous harassing e-mails. Gardner did not offer any of these e-mails that she alleged Clarkson sent to her as part of the record. Gardner testified that she ended up in therapy due to the e-mails and the perceived lies being told about her.

Prior to submitting her resignation, Gardner had been on a medical leave of absence. Once Gardner was released by her doctor to return to work, Clarkson phoned Gardner to discuss her return. Gardner chose not to return to work due to the stress of the work environment. Gardner gave her verbal resignation to Clarkson on May 11, 2012, and then subsequently submitted a letter making her resignation effective May 14, 2012. Gardner's letter of resignation did not mention that she felt harassed at work or had health problems. Sheila Davis, a human resource specialist for Gardner's employer, testified that Gardner did not tell her that she was feeling harassed at work prior to resigning.

Gardner filed for unemployment benefits on May 14, 2012. The Claims Deputy, Appeals Referee and Board all denied Gardner's claim for unemployment

benefits, reasoning that she voluntarily quit her job without good cause because she failed to exhaust her administrative remedies. Gardner then filed an appeal of the Board's decision with this Court. I have concluded the Board's decision is in accordance with the applicable law and supported by substantial evidence in the record.

STANDARD OF REVIEW

The Supreme Court and this Court repeatedly have emphasized the limited appellate review of the factual findings of an administrative agency. On appeal from a decision of the Board, this Court is limited to a determination of whether there is substantial evidence in the record sufficient to support the Board's findings, and that such findings are free from legal error.¹ Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.² The Board's findings are conclusive and will be affirmed if supported by "competent evidence having probative value."³ The appellate court does not weigh the evidence,

¹ *Unemployment Ins. Appeals Board of the Dept. of Labor v. Duncan*, 337 A.2d 308, 309 (Del. 1975).

² *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super. 1986), *app. disp.*, 515 A.2d 397 (Del. 1986).

³ *Geegan v. Unemployment Compensation Commission*, 76 A.2d 116, 117 (Del. Super. 1950).

determine questions of credibility, or make its own factual findings.⁴ It merely determines if the evidence is legally adequate to support the agency's factual findings.⁵ Absent an error of law, the Board's decision will not be disturbed where there is substantial evidence to support its conclusions.⁶

DISCUSSION

Delaware law provides that an individual is disqualified from receiving unemployment benefits if she “left work voluntarily without good cause attributable to such work.”⁷ “Good cause” may include such circumstances as a substantial reduction in wages or hours or a substantial deviation in working conditions from the original agreement of hire to the employee’s detriment.⁸ The claimant bears the burden of showing “good cause” for voluntarily terminating employment and the claimant must demonstrate that she exhausted all administrative remedies prior to voluntarily leaving her work.⁹

⁴ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

⁵ 29 *Del.C.* § 10142(d).

⁶ *Dallachiesa v. General Motors Corp.*, 140 A.2d 137 (Del. Super. 1958).

⁷ 19 *Del.C.* § 3314(1).

⁸ See *Hopkins Construction v. UIAB*, 1998 WL 960713, at *3 (Del. Super. Dec. 17, 1998).

⁹ *Longobardi v. Unemployment Insurance Appeals Board*, 287 A.2d 690, 692 (Del. Super. 1971).

The Board ruled that Gardner was not entitled to unemployment benefits because she did not have “good cause” to quit her job, reasoning that she provided no evidence that she explored her administrative remedies with her employer prior to resigning. Bringing a workplace problem to the attention of someone in a position of authority that can make the necessary adjustments requires an employee to describe the problem in sufficient detail to allow for resolution and giving their employer enough time to correct the problem. Gardner did neither. The testimony is clear that Gardner was not happy at work, but the record is devoid of any formal evidence that she attempted to resolve her workplace conflict. Gardner submitted e-mails to the Appeals Referee that suggest she discussed her work environment with someone prior to her resignation. Who those exchanges were with and their positions are unknown. The other parties to those e-mails were not present to testify concerning those exchanges. The text of the e-mails suggest that Gardner was speaking to a union representative and not someone from her employer. Gardner presented evidence of her union grievance, but that focused on her one day suspension, not harassment from a superior. Gardner did not utilize any of her administrative remedies with her employer prior to submitting her resignation. She did not file a formal complaint. By failing to bring the problem to the attention of her employer, her employer could not

make the necessary adjustments to remedy the problem.¹⁰ As such, Gardner failed to meet her burden that she quit her job for good cause.

CONCLUSION

The Unemployment Insurance Appeal Board's decision is **AFFIRMED**.

IT IS SO ORDERED.

Very truly yours,

/s/ E. Scott Bradley

E. Scott Bradley

ESB/sal

cc: Prothonotary

¹⁰ This assumes that there was a problem. The record indicates that Gardner's supervisor was merely critical of Gardner's work performance. This, without more, hardly forms the basis of a harassment claim. Gardner never provided more.