

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

GWEN J. PRITCHETT, :
 : C.A. No: K11A-09-008(RBY)
 Appellant, :
 :
 v. :
 :
 RESTAURANT 55, :
 :
 Appellee. :

Submitted: March 2, 2012
Decided: May 29, 2012

*Upon Consideration of Appellant's Appeal from
the Unemployment Insurance Appeal Board*
AFFIRMED

ORDER

Gwen Pritchett, *Pro Se*.

Constantine F. Malmberg, III, Esq., Young, Malmberg & Howard, P.A., Dover,
Delaware for Appellee.

Young, J.

SUMMARY

_____ Gwen Pritchett appeals the Unemployment Insurance Appeal Board's denial of unemployment benefits for the time period following the cessation of her employment with Restaurant 55. Applying the appropriate principles of law, the Board found that Pritchett left work voluntarily and without good cause. There is substantial evidence in the record to support that conclusion. The decision below is **AFFIRMED**.

FACTS

_____ On February 20, 2011, Gwen Pritchett, after the cessation of her employment with Restaurant 55, submitted a claim for unemployment insurance benefits. On March 16, 2011 the Claims Deputy denied her application upon finding that she left her job voluntarily and without good cause, as opposed to having been terminated.

Pritchett appealed that decision to the Appeals Referee. On April 28, 2011, a hearing was held at which Restaurant 55 failed to appear. The Appeals Referee heard Pritchett's testimony and reversed the decision of the Claims Deputy. Soon thereafter, the Unemployment Insurance Appeals Board (the Board), at Restaurant 55's request, instructed the Appeals Referee to conduct a second hearing. On June 14, 2011, a second hearing was held during which the Appeals Referee heard testimony from Pritchett and Restaurant 55. The Appeals Referee affirmed the decision of the Claims Deputy, disqualifying Pritchett from the receipt of benefits.

Pritchett appealed that decision to the Board. On August 31, 2011, a hearing was held after which the Board affirmed the decision of the Appeals Referee. The Board found that, pursuant to 19 *Del. C.* § 3314, Pritchett was disqualified from

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benefits, because she left work voluntarily and without good cause. That decision was based upon the following facts reflected by the record.

Pritchett was hired as a bartender at Restaurant 55 in November 2010. Desiree DiAntonio, her supervisor, testified that she was hired as a part-time employee. Pritchett contends that she was hired as a full-time employee, and promised a minimum of twenty hours per week. Before the end of the calendar year, however, Pritchett began working reduced hours. According to her testimony, she was scheduled for twenty hours or more per week on two occasions only. DiAntonio testified that Pritchett was scheduled for twenty hours per week regularly, but that Pritchett's reduced hours were a reflection of her frequent requests for time off.

To make matters worse, Pritchett's working relationships were strained. Although it was never brought to Pritchett's attention, customers complained to DiAntonio about her performance regularly. On the other hand, according to Pritchett and a witness she presented before the Board, Pritchett's coworkers were verbally abusive towards her.

On December 29, 2010, Pritchett approached DiAntonio to inform her that, due to her reduced hours, she would be seeking employment at a second job. Further, she informed DiAntonio that, although she intended to continue working at Restaurant 55, there would be some days on which she would have to be in attendance at her second job. In response, DiAntonio told Pritchett that she was no longer needed, and that she was free to resign from her position, because she did not have the personality for Restaurant 55. Pritchett asked if she could work the shifts for which she was currently scheduled to which DiAntonio said she could. By Pritchett's own

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admission, DiAntonio did not fire her expressly. In fact, both parties testified that the conversation was left open-ended.

Pritchett worked the remaining shifts for which she was scheduled, but was not scheduled for any shifts thereafter. Eventually, she went back to Restaurant 55 to pick up her last pay check. At that time, she checked to see if she had been placed on the schedule. She had not. She assumed that to mean that she had been discharged. According to DiAntonio, Pritchett was not placed on the schedule, because the organization was not aware of her availability. Pritchett declined to approach DiAntonio about working in the future.

STANDARD OF REVIEW

An appeal from an administrative Board's final order to this Court is restricted to a determination of whether the Board's decision is free from legal error and whether the Board's findings of fact and conclusions of law are supported by substantial evidence in the record.¹ Substantial evidence is that which “a reasonable mind might accept as adequate to support a conclusion.”² It is more than a scintilla, but less than a preponderance of the evidence.³ It is a low standard to affirm and a high standard to overturn. If the record contains substantial evidence, then the Court

¹ 29 Del. C. §10142(d); *Avon Prods. v. Lamparski*, 203 A.2d 559, 560 (Del. 1972).

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

³ *Breeding v. Contractors-One-Inc.*, 549 A.2d 1102, 1104 (Del. 1988) (citing *DiFilippo v. Beck*, 567 F. Supp. 110 (D. Del. 1983)).

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is prohibited from re-weighing the evidence or substituting its judgment for that of the agency.⁴ Questions of law are reviewed *de novo*.⁵

DISCUSSION

_____ 19 *Del. C.* § 3314 disqualifies claimants from unemployment insurance benefits where the claimant left work voluntarily and without good cause. “The burden is on the claimant to show good cause existed for voluntarily terminating employment.”⁶ “Good cause can include a substantial reduction in wages, work hours or a substantial deviation in the working conditions from the original agreement of hire to the detriment of the employee.”⁷ Moreover, to be entitled to benefits, “a claimant must ‘do something akin to exhausting his administrative remedies by, for example, seeking to have the situation corrected.’”⁸

_____ The Board’s decision is free from legal error. Considering the foregoing principles of law, the Board concluded that Pritchett left her job at Restaurant 55

⁴ *Janaman v. New Castle County Bd. of Adjustment*, 364 A.2d 1241, 42 (Del. Super. 1976).

⁵ *Anchor Motor Freight v. Ciabattoni*, 716 A.2d 154 (Del. 1998).

⁶ *Molinaro v. Unemployment Ins. Appeal Bd.*, 2004 WL 2828048, at *1 (Del. Super. May 14, 2004) (citing *Longobardi v. Unemployment Ins. Appeal Bd.*, 287 A.2d 690 (Del. Super. 1971)).

⁷ *Id.* (quoting *Weathersby v. Unemployment Ins. Appeal Bd.*, 1995 WL 465326, at *5 (Del. Super. June 29, 1995)).

⁸ *Wong v. SL Pharma Labs, Inc.*, 2009 WL 1143184, at *2 (Del. Super. Apr. 28, 2009) (quoting *Abbasi v. Oscar A. Fuller Co.*, 2008 WL 803055, at *2 (Del. Super. Mar. 26, 2008)).

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voluntarily and without good cause. Moreover, the Board concluded that Pritchett failed to attempt to resolve the problems with her employment with management.

Those conclusions are supported by substantial evidence in the record. DiAntonio and Pritchett testified that Pritchett was not fired expressly. The December conversation was left open ended. The fact that Pritchett checked the schedule when she retrieved her final pay check serves to corroborate the understanding that she may have still been employed at that time. The record contains evidence that Pritchett's hours were reduced only on the occasions upon which she requested to be off from work. That circumstance is corroborated by DiAntonio's testimony that she declined to schedule Pritchett for shifts in January, because she was unaware of Pritchett's availability. Finally, there is no evidence in the record to suggest that Pritchett attempted to resolve the problems attendant to her employment with Restaurant 55 prior to the conclusion of her time there.

CONCLUSION

The Board's denial of benefits is free from legal error and supported by substantial evidence. The decision below is **AFFIRMED**.

SO ORDERED.

/s/ Robert B. Young

J.

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