

**SUPERIOR COURT  
OF THE  
STATE OF DELAWARE**

**T. HENLEY GRAVES**  
*RESIDENT JUDGE*

**SUSSEX COUNTY COURTHOUSE**  
1 THE CIRCLE, SUITE 2  
GEORGETOWN, DE 19947  
(302) 856-5257

September 6, 2017

Clorice Adams  
21045 W. Mayhew Drive  
Lincoln, Delaware 19960

Victoria W. Counihan, Esquire  
Department of Justice  
Carvel State Building  
820 N. French Street, 5<sup>th</sup> Floor  
Wilmington, Delaware 19801

Donna Thompson, Esquire  
Department of Justice  
Carvel State Building  
820 N. French Street, 6<sup>th</sup> Floor  
Wilmington, Delaware 19801

**Re:   *Clorice Adams v. Department of Services for Children, Youth and Their  
Families, et al.;***  
**C.A. No. S16A-12-001**

Date Submitted:       July 7, 2017  
Date Decided:         September 5, 2017

Dear Ms. Adams and Counsel:

Clorice Adams appeals the decision of the Unemployment Insurance Appeal Board that concluded Ms. Adams had voluntarily left her employment without good cause connected to her work. The Board's decision is affirmed for the reasons stated below.

**Nature and Stage of the Proceedings**

Ms. Adams was employed by the Department of Services for Children, Youth and Their Families ("DSCYF") as a laundry attendant at Stevenson House in Milford, Delaware, from May or

June of 2005<sup>1</sup> until May 31, 2016. A claims deputy reviewed Ms. Adams' claim for unemployment benefits and determined Ms. Adams had left her employment with DSCYF for personal reasons. Ms. Adams appealed this determination and a hearing was set for August 31, 2016, before an Appeals Referee. Ms. Adams failed to appear at the scheduled time and place for the hearing and the Appeals Referee dismissed her appeal. Ms. Adams appealed that decision and the Unemployment Insurance Appeals Board ("the Board") accepted Ms. Adams' reason for failing to attend the August 31<sup>st</sup> hearing and remanded the matter to the Appeals Referee.

The Appeals Referee held a hearing on October 3, 2016, and subsequently affirmed the claims deputy's determination by way of written decision mailed October 5, 2016. Ms. Adams appealed and the Board held a hearing on November 15, 2016. By way of written decision mailed December 5, 2016, the Board affirmed the Appeals Referee's decision that Ms. Adams is not entitled to unemployment benefits. Ms. Adams filed a timely appeal with this Court and the case is ripe for decision.

### **Discussion**

When reviewing a decision of the Board, this Court must determine whether the Board's findings of fact and conclusions of law are free from legal error and are supported by substantial evidence in the record.<sup>2</sup> "Substantial evidence" is "such relevant evidence as a reasonable mind

---

<sup>1</sup> There appears to be some dispute as to whether Ms. Adams began working for DSCYF in May or June of 2005. However, her start date is irrelevant to the matter before the Court.

<sup>2</sup> *Unemployment Ins. Appeal Bd. v. Martin*, 431 A.2d 1265 (Del. 1981); *Pochvatilla v. U.S. Postal Serv.*, 1997 WL 524062 (Del. Super. June 9, 1997); 19 *Del. C.* § 3323(a) ("In any judicial proceeding under this section, the findings of the [Board] as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the Court shall be confined to questions of law.").

might accept as adequate to support a conclusion.”<sup>3</sup> The Court’s review is limited: “It is not the appellate court’s role to weigh the evidence, determine credibility questions or make its own factual findings, but merely to decide if the evidence is legally adequate to support the agency’s factual findings.”<sup>4</sup>

Delaware law provides that an individual will be disqualified from receiving unemployment benefits if that individual left work “voluntarily without good cause attributable to such work.”<sup>5</sup> Claimant bears the burden for demonstrating good cause existed for voluntarily terminating the employment relationship.<sup>6</sup> An undesirable or unsafe situation does not constitute good cause.<sup>7</sup> However, “[g]ood 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.”<sup>8</sup> In order to qualify for benefits, an employee must do something akin to exhausting administrative remedies by, for example, giving notice to the employer and seeking to have the situation remedied.<sup>9</sup>

Leaving a job due to medical problems can constitute good cause if a three part test is

---

<sup>3</sup> *Gorrell v. Division of Vocational Rehab.*, 1996 WL 453356, at \*2 (Del. Super. July 31, 1996).

<sup>4</sup> *McManus v. Christiana Serv. Co.*, 1997 WL 127953, at \*1 (Del. Super. Jan. 31, 1997).

<sup>5</sup> 19 *Del. C.* § 3314(1).

<sup>6</sup> *Longobardi v. Unemployment Ins. App. Bd.*, 287 A.2d 690, 692 (Del. Super. 1971).

<sup>7</sup> *O’Neal’s Bus Serv., Inc. v. Employment Sec. Comm’n*, 269 A.2d 247, 249 (Del. Super. 1970).

<sup>8</sup> *Weathersby v. Unemployment Ins. App. Bd.*, 1995 WL 465326, at \*5 (Del. Super. June 29, 1995).

<sup>9</sup> *O’Neals Bus. Serv.*, 269 A.2d at 249.

satisfied. The claimant must prove: 1) she had an illness at the time she left her job; 2) she left her job involuntarily due to the illness; and 3) that she is generally available to work.<sup>10</sup>

Before the Appeals Referee, Ms. Adams testified that she had been sick for over a year with various ailments. Her medical treatment providers were unable to determine the underlying cause of her illness. Ms. Adams noticed that she was not sick when she was not at work and concluded that conditions in the laundry room must be the root cause of her symptoms. Ms. Adams testified she told the gentleman who filled in for her at work when she was absent about her symptoms. She stated that there were two other employees to whom she “always complained.” Mr. Ward was Ms. Adams’ direct supervisor. Mr. Ward was not in attendance at the hearing before the Appeals Referee but Ms. Adams testified she had submitted medical paperwork to Mr. Ward and also told him about her symptoms. Mr. Wicks is the superintendent of the facility. Phalishia Stacy Kincer, Esquire, represented DSCYF at the hearing. She admitted a letter written by Ms. Adams to Mr. Wicks and dated May 31, 2016. In that letter, Ms. Adams refers to a *previous* letter wherein she gave two weeks’ notice. Ms. Adams’ May 31<sup>st</sup> letter also references a doctor’s note she submitted to Mr. Wicks two weeks prior.<sup>11</sup> Ms. Adams herself testified she submitted medical documentation to Mr. Wicks two weeks prior to the May 31<sup>st</sup> letter. However, DSCYF denied that Ms. Adams had either given two weeks’ notice or turned in any medical documentation to support her resignation. Ms. Adams admitted she did not submit any medical documentation to the human resources department.

After Ms. Adams filed her claim for unemployment benefits, her physician completed the

---

<sup>10</sup> *Davis v. Best Western Delaware*, 1996 WL 944858, at \* 2 (Del. Super. Apr. 22, 1996).

<sup>11</sup> The first sentence of the letter reads, “About two (2) weeks ago you received a letter from my doctor along with a two (2) weeks[’] notice from me.”

Department of Labor's Doctor's Certificate. Ms. Adams' physician did not prohibit Ms. Adams from working but listed her work restrictions as, "no heavy lifting/pushing/pulling > 25 lbs. due to hx [history] of hernia repair."

The Board made the following findings of fact and conclusions of law:

In order to establish an illness as good cause, the Claimant bears the burden of showing: (i) that she had an illness at the time she left her job; (ii) that she left involuntarily because of her illness; and (iii) that she is generally able to work.

Although the ultimate reason for [Ms. Adams'] quitting her job is somewhat unclear, she appears to argue that she had two health issues that qualify as illnesses. The first health issue according to [Ms. Adams'] Notice of Appeal is "headaches, stomach pains, nausea, extreme tiredness and lack of oxygen" as a result of her work environment. The second health issue according to [Ms. Adams'] doctor's certification is abdominal pain and nausea due to a hernia repair. The Board declines to find the first health issue to be an illness because [Ms. Adams] failed to present any evidence of this illness other than her testimony that it existed. The Board finds the second health issue, abdominal pain and nausea due to hernia repair, to be an illness for the purposes of the above-referenced test because [Ms. Adams] presented evidence of its existence in the form of her doctor's certification.

Since [Ms. Adams] proved the first condition of the above-referenced test, that she had an illness at the time she left her job, she must now prove that she left her job involuntarily because of that illness. [Ms. Adams] fails to meet this condition. The doctor's certification [Ms. Adams] presented into evidence states that [Ms. Adams] was not advised to quit her job and that she could perform her work with certain restrictions in place. There is no evidence in the record showing that [DSCYF] was informed of [Ms. Adams'] restrictions or given an opportunity to accommodate them. Therefore, [Ms. Adams] cannot prove that she left her job involuntarily because of her illness.

The above-referenced test is conjunctive. Once a condition is not satisfied, further analysis by the Board is not required. Because [Ms. Adams] failed to prove the second condition of the test, she was unable to establish that she had good cause to leave her job. Therefore, the Board affirms the decision of the [Appeals] Referee.<sup>12</sup>

On appeal, Ms. Adams attempts to reargue the facts of the case. Unfortunately for Ms.

---

<sup>12</sup> Board Decision, mailed December 5, 2016, at pp. 2-3 (footnote omitted).

Adams and as stated above, this Court must review the case on the record and may not make factual findings. Moreover, this Court may not weigh questions of witness credibility.<sup>13</sup>

Ms. Adams testified she notified her direct supervisor of restrictions; however, neither Ms. Adams nor DSCYF introduced any such documentation into evidence. The Court is satisfied that substantial evidence in the record supports the Board's finding that Ms. Adams failed to notify DSCYF of any work restrictions imposed by her treating physician or give DSCYF the opportunity to accommodate them. Therefore, the Board did not err in concluding Ms. Adams is not eligible for unemployment benefits.

The Court finds the Board's decision is supported by substantial evidence and is free from legal error.

### **Conclusion**

For the reasons stated herein, the Board's decision disqualifying Ms. Adams from receiving unemployment benefits is AFFIRMED.

IT IS SO ORDERED.

Very truly yours,

*/s/ T. Henley Graves*

T. Henley Graves

oc: Prothonotary

cc: Unemployment Insurance Appeal Board

---

<sup>13</sup> *McCoy v. Occidental Chem. Corp.*, 1996 WL 111126, at \*3 (Del. Super. Feb. 7, 1996) (“It is within the discretion of the Board, not the court[,] to weigh the credibility of witnesses and to resolve conflicting testimony.”).