

THIRD DIVISION
May 4, 2011

No. 1-10-1280

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CARROLL HINTSON,)	APPEAL FROM THE
Plaintiff-Appellant,)	CIRCUIT COURT OF
)	COOK COUNTY
v.)	
)	
THE DEPARTMENT OF EMPLOYMENT)	
SECURITY; DIRECTOR OF THE DEPARTMENT)	No. 10 L 50243
OF EMPLOYMENT SECURITY; and BOARD)	
OF REVIEW OF THE DEPARTMENT OF)	
EMPLOYMENT SECURITY,)	
Defendants-Appellees)	
)	HONORABLE
(Yoshama, Inc., d/b/a McDonald's,)	JAMES C. MURRAY, JR.
Defendant).)	JUDGE PRESIDING.

JUSTICE STEELE delivered the judgment of the court.

Presiding Justice Quinn and Justice Neville concurred in the judgment.

ORDER

HELD: In an appeal from the denial of unemployment benefits, the referee from the Illinois Department of Employment Security (Department) did not deny the applicant a fair hearing. The factual findings of the Department's Board of Review were not against the manifest weight of the evidence and its ruling denying benefits was not clearly erroneous.

Plaintiff Carroll Hintson appeals from the order of the circuit court affirming the decision of defendant, Board of Review (Board) of the Illinois Department of Employment Security (Department), denying Hintson unemployment benefits following her separation from defendant Yoshama, Inc., doing business as McDonald's (McDonald's).¹ For the following reasons, we affirm the order of the circuit court.

BACKGROUND

The record on appeal discloses the following facts. Hintson worked for McDonald's until her separation on August 15, 2009. Hintson applied for unemployment benefits, but McDonald's objected, claiming that Hintson resigned by leaving work without permission. Hintson denied McDonald's claim. On September 23, 2009, a local claims adjudicator for the Department concluded that McDonald's failed to support its objection and awarded Hintson unemployment benefits. McDonald's appealed.

On November 16, 2009, a Department referee held a telephonic hearing with Hintson and two witnesses for McDonald's, store manager Eugene Howard and human resources manager Deborah Henderson. Howard testified that on August 15, 2009, Hintson was training an employee in the drive-through window. A few hours into her shift, Hintson asked to leave, saying that she did not feel well. Howard told Hintson he could not let her go. According to

¹ The Solicitor General and the Attorney General of Illinois submitted an appellate brief on behalf of the governmental defendants-appellees. Yoshama, Inc. filed an appearance, but not an appellate brief.

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Howard, Hinton said it was "crazy" that he had her working with young people and clocked out without permission minutes later. Howard stated that he did not hear from Hinton again.

Howard also stated that when a manager told him the next day that Hinton had not reported to work, he telephoned her but received no answer. Howard further stated that Hinton was a "no-show" for the rest of the week, although she was scheduled to work.

On cross-examination, Hinton disputed Howard's testimony, but did not ask Howard questions. The referee told Hinton that she was not asking questions and that he would hear her testimony when it was her turn.

Henderson testified that on August 15, 2009, Hinton requested a transfer because she did not like working at her current location. Henderson denied the request. Henderson stated that she had no other contact with Hinton until Hinton came in to pick up her final paycheck. According to Henderson, Hinton again requested a transfer at that time, which Henderson denied.

Hinton testified on her own behalf. Hinton denied resigning and stated that she was laid off. Hinton stated that on August 15, 2009, Howard gave her permission to leave work. Hinton added that when she called McDonald's to ask about her schedule for the rest of the week, an unnamed coworker told her she was no longer on the schedule.

Hinton further stated that she did not try to contact Howard to discuss the matter, but did speak with Henderson to explain what occurred on the day in question. According to Hinton, Henderson said the store owner told Henderson to "stay out of it." Hinton asked Henderson

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what she should do, to which Henderson responded that she could go to the unemployment office.

The referee asked Hinton who told her she was laid off. Hinton responded that she believed she was laid off, because Henderson had not given her any options when she picked up her paycheck. Hinton added that she had no problem working with young people because she was raising young people. Hinton further listed a number of reasons that the work environment at her restaurant was "not comfortable," including being promoted without pay.

On November 17, 2009, the referee issued a decision reversing the claims adjudicator and concluding that Hinton constructively resigned from her employment by leaving and failing to return to the work premises. The referee reasoned that Hinton had been training employees for six months and that difficulties in training an employee was not good cause for leaving. Accordingly, the referee concluded that Hinton was disqualified from receiving unemployment benefits under section 601(A) of the Illinois Unemployment Insurance Act (Act) (820 ILCS 405/601(A) (West 2008)).

On November 19, 2009, Hinton appealed the referee's decision to the Board. On January 27, 2010, the Board affirmed the referee's decision. The Board also declined to consider additional materials from Hinton that were not submitted to the referee or served upon McDonald's.

On February 19, 2010, Hinton filed a complaint for administrative review in the circuit court of Cook County. On May 6, 2010, following a hearing, the circuit court entered an order affirming the Board's decision. Hinton filed a timely notice of appeal to this court the same day.

DISCUSSION

Hintson argues the Board erred in denying her unemployment benefits. Under the Act, a person may receive unemployment benefits provided that he or she meets the eligibility requirements of section 500 of the Act (820 ILCS 405/500 (West 2008)) and is not subject to the exemptions or disqualifications set out in the statute. *Acevedo v. Department of Employment Security*, 324 Ill. App. 3d 768, 771 (2001). The burden of proving eligibility rests with the claimant. *Id.* The Board is the trier of fact in cases involving claims for unemployment compensation. We review the findings of the Board rather than the referee or the circuit court. *Village Discount Outlet v. Department of Employment Security*, 384 Ill. App. 3d 522, 524-25 (2008). On appeal, a reviewing court must determine whether the Board's findings of fact are sustained by the evidence. *Id.* at 525. The Board's findings of fact are deemed *prima facie* true and correct and will be reversed only where they are against the manifest weight of the evidence. *Id.* For a finding of fact to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64 (2006). Administrative agency decisions involving mixed questions of law and fact are reviewed under a "clearly erroneous" standard of review. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 211 (2008). The "clearly erroneous" standard is only met where the reviewing court is left with the definite and firm conviction that a mistake has been committed. *Id.* (and cases cited therein). An administrative agency's decision regarding the conduct of its hearing and the admission of evidence is governed by an abuse of discretion

standard and is subject to reversal only if there is demonstrable prejudice to the complaining party. *Matos v. Cook County Sheriff's Merit Board*, 401 Ill. App. 3d 536, 541 (2010).

Hintson has proceeded *pro se* and her arguments on appeal are limited to a single paragraph. This court will address the points she appears to raise. Hintson states that she was not allowed to state facts at the November 16, 2009, hearing, and thus, was unable to challenge the testimony by Howard and Henderson. "A fair hearing before an administrative agency includes the opportunity to be heard, the right to cross-examine adverse witnesses, and impartiality in ruling upon the evidence." *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 95 (1992). However, a review of the hearing transcript shows that the referee in this case merely sought to have Hintson cross-examine Howard and Henderson with questions, rather than make statements. Moreover, the record shows that the referee later gave Hintson the opportunity to present her version of events. Given the record before us, we conclude that Hintson was not denied a fair hearing by the referee's procedure.

Hintson also appears to challenge the findings of fact and the ruling that McDonald's had cause to discharge her, claiming that she never sought a transfer and had no intention of resigning her job. However, it is the responsibility of the administrative agency to weigh the evidence, determine the credibility of witnesses, and resolve conflicts in testimony. *Hurst v. Department of Employment Security*, 393 Ill. App. 3d 323, 329 (2009); *Nichols v. Department of Employment Security*, 218 Ill. App. 3d 803, 809 (1991). Here, Hintson has made no showing that the Board's findings of fact (which incorporated those of the referee) are against the manifest weight of the evidence.

As for the Board's ultimate ruling, the denial of benefits was based on section 601(A) of the Act, which provides in part that a claimant "shall be ineligible for benefits for the week in which he has left work voluntarily without good cause attributable to the employing unit." 820 ILCS 405/601(A) (West 2008). "Good cause" for leaving has, in turn, been interpreted as that which justifies an employee to leave the ranks of the employed and join those of the unemployed. *Acevedo*, 324 Ill. App. 3d at 772; *Grant v. Board of Review of the Illinois Department of Employment Security*, 200 Ill. App. 3d 732, 734 (1990).

In this case, Hintson maintained that she left work due to illness. The Board adopted the factual finding of the referee that Hintson left work following difficulty training a new employee. A substantial and unilateral change in employment may render employment unsuitable so that good cause for voluntary termination is established. Generally, however, a claimant's dissatisfaction with his or her hours or wages does not constitute good cause to leave for purposes of entitlement to unemployment compensation. *Acevedo*, 324 Ill. App. 3d at 772. The Board found that Hintson had been training youths for six months. Thus, there was no substantial and unilateral change in Hintson's job duties. Her general complaints about hours and wages do not constitute good cause for leaving her job.

Moreover, we note that Hintson's claim based on illness would not have entitled her to benefits based on the record before us. Section 601(A) of the Act does not apply to an individual who has left work voluntarily because he or she is deemed physically unable to perform his or her work by a licensed and practicing physician. 820 ILCS 405/601(B) (West 2008). Hintson provided no evidence from a physician during the November 16, 2009, telephonic hearing.

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During her appeal following the referee's decision, Hinton attempted to submit materials regarding alleged medical problems from July 2009, to the Board. The Board declined to consider the materials because they had not been submitted to the referee or served upon McDonald's. The Board has discretion to consider additional materials when hearing appeals. 820 ILCS 405/803 (West 2008). However, the Department's rules provide that a request to submit such evidence must explain why the "the requesting party, for reasons not its fault and beyond its control, was unable to introduce the evidence at the hearing before the Referee." 56 Ill. Admin. Code 2720.315(b)(1)(B), amended at 32 Ill. Reg. 13177 (eff. July 24, 2008). No such explanation appears in the record on appeal. The Board followed its established rules in declining to consider material outside the original record.

CONCLUSION

In sum, we conclude the referee did not deny Hinton a fair hearing on her claim. The Board's factual findings are not against the manifest weight of the evidence. Moreover, the Board's denial of benefits to Hinton was not clearly erroneous. For all of the aforementioned reasons, the order of the circuit court of Cook County is affirmed.

Affirmed.