

No. 1-10-2560

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

PAMELA N. WAITS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	
)	No. 10 L 50448
ILLINOIS DEPARTMENT OF EMPLOYMENT)	
SECURITY; DIRECTOR OF ILLINOIS DEPARTMENT)	
OF EMPLOYMENT SECURITY; BOARD OF REVIEW;)	
and NEW AGE CHILDRENS PREPARATORY,)	Honorable
)	Sanjay T. Tailor,
Defendants-Appellees.)	Judge Presiding.

PRESIDING JUSTICE EPSTEIN delivered the judgment of the court.
Justices McBride and Howse concurred in the judgment.

ORDER

¶ 1 *Held:* Board of Review's determination that plaintiff voluntarily quit her job as day care teacher was not clearly erroneous and therefore was affirmed.

¶ 2 Plaintiff Pamela Waits appeals *pro se* from an order of the circuit court of Cook County affirming the denial of unemployment insurance benefits by the Board of Review of the Illinois Department of Employment Security (the Board).

¶ 3 Plaintiff was employed as a day care teacher at New Age Childrens Preparatory from February 19, 2008 until August 28, 2009. She applied for unemployment benefits, alleging that

1-10-2560

she was discharged because "without warning" the owner of the school, Tanya Furlow, changed her schedule from four hours a day to eight hours per day. Plaintiff asserted that she informed Furlow that she could not accept that schedule because she was caring for her grandchildren and looking for other work. According to Furlow, plaintiff was not fired. She refused to work the hours assigned to her and there was no option to continue at reduced summer hours. Furlow stated that plaintiff was aware that the hours she was working were for the summer. Furlow did admit signing a document which plaintiff needed to receive rental assistance when her work hours were cut. The document specified that plaintiff would be working 25 hours per week for the next year, but Furlow stated that this was a standard form and she did not realize that it applied for a full year. The claims adjudicator denied plaintiff's claim, finding that summer reduced hours and a return to full time scheduling in the fall was a customary condition of the teaching profession.

¶ 4 Plaintiff appealed. At the ensuing hearing before a referee, plaintiff testified as follows. She worked for the employer, New Age Childrens Preparatory, from February 19, 2008 until August 28, 2009 as a "toddler teacher." The owner, Tanya Furlow, informed her at that time that she would have to work additional hours. She had originally worked from 8:30 to 5 and then from 8 to 5. When her hours were cut back to 8:30 to 12:30 in the early part of June, she informed Furlow that she would have to find something else to do to replace the subtracted hours. She then began to watch her grandchildren in the afternoon, although she did not inform Furlow that this was what she was doing. The week of August 28, 2009, Furlow told her that she would have to begin working from 8:30 to 4:30, but plaintiff told her she could not accept those hours. Accordingly, Furlow told plaintiff that she would be replaced. The record contains a document signed by plaintiff and Furlow, dated August 28, 2009, stating:

"Ms. Pamela Waits has been working summer hours of 8:30 am - 12:30 pm. She has been asked to go back to her original schedule of 8:30 am-4:30 pm starting in the fall, but she refuses. Her hours of 8:30 am-12:30 pm were given due to low census of children during the summer months. Now that the census is picking [*sic*] for the fall her schedule has to change because of her teaching position, but she refuses to change her schedule."

¶ 5 Plaintiff asserted that she had no notice of this change and therefore no time to decide how to adjust to it. She also claimed that the previous summer she had worked eight hours every day and at previous day care centers where she worked the hours were never cut down for teachers. However she did admit that Furlow had told her she would have to combine her class with another one.

¶ 6 Tanya Furlow testified that every summer the enrollment would drop. In June 2009 she had advised all the teachers, including plaintiff, that she would have to cut their hours for the summer but that when the enrollment increased again in the fall they would be returned to their normal hours. Furlow admitted that in the summer of 2008 plaintiff's hours were not cut back as much as they were in the summer of 2009. But in the summer of 2009, the enrollment for plaintiff's class dropped to three, which was why her class had to be combined with another class. Furlow testified that on August 28, 2009, when she gave plaintiff her work schedule, plaintiff told her she could not work those hours. She said she had other things to do but did not specify what those things were. She did say that this would be her last day as a teacher there and she requested and received her final check.

¶ 7 Based upon this hearing, the referee determined that plaintiff was not believable when she claimed that she had no notice of the change in hours for the fall. The referee found that, as

Furlow testified, plaintiff had been notified that her normal hours would resume in the fall. The referee also found, as Furlow testified, that the standard in the "industry" was that teaching hours were often reduced in the summer when the schools had fewer students and then were increased again in the fall. The referee determined that plaintiff had left work voluntarily, without good cause attributable to the school, and therefore did not qualify for unemployment benefits.

¶ 8 Plaintiff appealed this decision to the Board of Review of the Illinois Department of Security (the Board). The decision of the Board was that plaintiff's application for benefits and the transcript of the hearing before the referee were adequate and required no additional submission of evidence. The Board found that the referee's decision was supported by the facts and the law. Plaintiff filed a complaint for administrative review and the circuit court of Cook County affirmed. Plaintiff has now brought this appeal.

¶ 9 Plaintiff admits that she signed a statement refusing to work the hours assigned to her for the fall of 2009, but she asserts that she would have had to formally submit a letter of resignation in order to be deemed to have quit her job. Plaintiff is mistaken. She was denied benefits pursuant to section 601(A) of the Illinois Unemployment Insurance Act (Act) which provides:

"An individual shall be ineligible for benefits ***[if] he has left work voluntarily without good cause attributable to the employing unit ***." 820 ILCS 405/601(A) (West 2008)."

Our review is of the decision of the Board, as the trier of fact. *Caterpillar, Inc. v. Department of Employment Security*, 313 Ill. App. 3d 645, 653 (2000). In this instance, the Board adopted the referee's determination that plaintiff was not believable when she claimed that she had no advance notice that her hours would revert to full time in the fall of 2009. Clearly the Board accepted the testimony of Furlow that she had given advance notice at the commencement of the summer session that reduced hours were attributable to a lower number of students, and that it

was anticipated that in the fall the regular full-time schedule of hours would be reinstated. Plaintiff's claim that the change of hours in the fall was imposed upon her without any prior notice was not found to be credible. This was not a unilateral change in the terms of plaintiff's work which rendered her job unsuitable for her. See *Collier v. Department of Employment Security*, 157 Ill. App. 3d 988, 994 (1987). In adopting the referee's decision, the Board found that, as Furlow testified, this change in hours was customary for day care teachers who also taught in the summer. We will not overturn the Board's determination unless it is clearly erroneous. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 395 (2001). We find no such basis here for reversing the Board's determination.

¶ 10 Accordingly, the decision of the circuit court of Cook County upholding the decision of the Board is affirmed.

¶ 11 Affirmed.