

No. 1-12-0849

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

ROSA L. MORSE,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	
)	
ILLINOIS DEPARTMENT OF EMPLOYMENT)	No. 11 L 51234
SECURITY; DIRECTOR OF ILLINOIS DEPARTMENT)	
OF EMPLOYMENT SECURITY; BOARD OF REVIEW;)	
and COMMUNITY ECONOMIC DEVELOPMENT)	
ASSOCIATION OF COOK COUNTY, INC.,)	Honorable
)	Daniel T. Gillespie,
Defendants-Appellees.)	Judge Presiding.

PRESIDING JUSTICE NEVILLE delivered the judgment of the court.
Justices Hyman and Pierce concurred in the judgment.

ORDER

¶ 1 *Held:* Board of Review decision that plaintiff was ineligible for unemployment benefits because she voluntarily left her employment was not clearly erroneous. While plaintiff testified to harassment by her supervisor based on her medical condition and resulting limitations, and that she reported the harassment to management, a human resources employee testified that plaintiff neither reported the harassment nor formally sought accommodation of a disability.

¶ 2 Rosa Morse, the plaintiff, appeals *pro se* from an order of the circuit court affirming a decision by the Board of Review (Board) of the Department of Employment Security (Department) finding her ineligible to receive benefits under the Unemployment Insurance Act (Act). 820 ILCS 405/100 *et seq.* (West 2010). The Board affirmed a Department referee's decision finding plaintiff ineligible because she voluntarily left her employment as a pre-school teacher with defendant Community and Economic Development Association of Cook County, Inc. (CEDA). On appeal, plaintiff contends that the Board's decision was against the manifest weight of the evidence.

¶ 3 Plaintiff filed a claim for benefits under the Act in August 2010, to which CEDA filed a protest. A Department claims adjudicator investigated and ruled upon plaintiff's claim in September 2010. Plaintiff stated in an interview that she left her employment with CEDA as a pre-school teacher at the Joseph Freelon Child and Family Development Center (the Center) due to harassment by Babette Jackson, the director of the Center. Plaintiff was unable due to cancer and subsequent treatment to stand or drive a vehicle for long periods but professed that this "did not impact my job performance." Nonetheless, plaintiff stated, Jackson harassed and degraded her because Jackson did not want a teacher at the Center who "can't perform." Plaintiff spoke with a Mrs. Burton and sent a letter to Robert Wheaton, "Pres." (presumably president of CEDA) "about a year ago" and they "said they would look into it but things just got worse." The adjudicator noted that plaintiff submitted seven letters she either sent or received from 2008 to 2010 regarding harassment by Jackson. A representative of CEDA was interviewed the same month, admitting that plaintiff sent Jackson a resignation letter on August 19, 2010, effective immediately, asserting that she was doing so due to "continued harassment and degradation of my character [due] to my physical disability while working at [the Center] under your direction." The adjudicator found plaintiff eligible for benefits because she left work voluntarily for good cause shown, in that she was harassed due to her physical disability and CEDA was aware of the harassment and had the ability to control it. The

adjudicator noted that plaintiff "walked with a cane and had medical reasons not to stand for long periods of time [or] drive long distance."

¶ 4 CEDA appealed the eligibility ruling, maintaining that plaintiff quit while work was available. In advance of the April 2011 appeal hearing by a Department referee, plaintiff submitted to a referee¹ various documents regarding her health and her complaints to CEDA regarding Jackson. At the hearing, when CEDA's representative objected that CEDA had not been sent the documents in advance of the hearing, plaintiff noted that it should have the original documents in its records. The referee overruled the objection on the basis that CEDA had reasonable notice of plaintiff's theory of the case, and proceeded in consideration of the documents. The day after the hearing, the referee affirmed the decision of the adjudicator finding plaintiff eligible for benefits.

¶ 5 CEDA appealed the eligibility ruling, maintaining that plaintiff "did not bring any problems to their [*sic*] attention prior to her resignation," thus depriving CEDA of the opportunity "to address the issue(s) and attempt to resolve." CEDA also claimed that "none of the documents accepted into evidence by the [referee] had been given to [CEDA] nor their representative prior to the hearing as required and confirmed by" plaintiff, and that CEDA preserved this objection, so that "no weight should have been given to these documents."

¶ 6 In July 2011, the Board remanded the case for a *de novo* hearing by a new referee, noting that CEDA objected to plaintiff's documents and that plaintiff admitted at the referee hearing that she did not send the documents to CEDA in advance of the hearing. The referee hearing was held in August 2011, and the referee reminded the parties and witnesses at its commencement that this was a *de novo* hearing.

¹The referee hearing had been rescheduled, and the referee presiding at the April 29 hearing was not the referee in the original hearing notice, to whom the documents were sent.

¶ 7 Plaintiff testified that she worked full-time for CEDA as a teacher from September 1996 until May 27, 2010, the end of the school year, and was told to return in August 2010 for the next school year. She intended through the summer to return to work, had a physical examination in anticipation of returning, and submitted to CEDA the medical report from that examination documenting her limitations. However, when her return was imminent, she had anxiety attacks due to her previous harassment by Center director Jackson, and thus she resigned.

¶ 8 The harassment by Jackson had been verbal, when Jackson and plaintiff discussed plaintiff's disability in September and October of 2009. Specifically, plaintiff mentioned her disability in a September meeting but Jackson refused to read plaintiff's medical documentation. However, plaintiff admitted that her disability did not affect her ability to perform her job duties. In October 2009, plaintiff discussed with Margaret Burton, a CEDA supervisor, her medical conditions and issues with Jackson.

¶ 9 Jackson also harassed plaintiff in April 2010, complaining in front of other persons that plaintiff was supposed to walk in a parade and should not sit down on the playground, despite plaintiff's objection that she could not stand that long. Jackson submitted a report to Burton in April 2010 citing plaintiff for sitting on the playground. Plaintiff maintained Jackson should not have reported her in light of her medical limitations but Jackson refused to look at her personnel file where these limitations were recorded. Plaintiff sent a letter to Regina Salazar at CEDA human resources complaining of Jackson's April harassment; she received no response. However, she did not speak with Salazar; on cross-examination, she specifically denied telling Salazar that she intended to retire at the end of the school year. Before the end of the school year, plaintiff discussed accommodation of her medical condition with Jackson: she requested benches in the shade so that she and other teachers could sit while supervising the students outdoors, but Jackson refused on the basis that the students had no place to sit.

¶ 10 When plaintiff tried to introduce various documents in support of her testimony, CEDA's representatives stated that they did not receive copies of the documents. The referee ruled the documents inadmissible.

¶ 11 Regina Salazar testified that plaintiff was hired by CEDA in September 1996 as a full-time teacher. Her job responsibilities, work hours, or working conditions did not change during her employment by CEDA. She was laid off for the summer at the end of May 2010 but was scheduled to return to work in fall 2010. However, plaintiff told Salazar in January 2010 that she intended to retire at the end of the school year, and plaintiff resigned in an August 2010 letter. Salazar denied that she or CEDA's human resources office received any correspondence from plaintiff mentioning harassment before the resignation letter, and she testified that she would have investigated the claims in such a letter had she received one. Salazar described CEDA's process for addressing employee disabilities, of which employees are informed in their handbook: the employee discusses the matter with her immediate supervisor and is then directed to human resources, and the employee must provide medical documentation of her disability and required accommodations. However, Salazar testified, "that [did not] occur in this case."

¶ 12 The referee issued his decision in August 2011. He found that plaintiff maintained that she was harassed and complained unsuccessfully about the harassment to her employer, while the employer denied that any such complaints were made. The referee found that plaintiff "was planning to return to work for the employer in the fall of 2010, but at the last moment decided to resign because of harassment and continued degradation of her character as to her physical disability." The referee also found that plaintiff "made no efforts to resolve the conflict with her supervisor" and "did not discuss the situation with human resources nor *** submit any documentation for an accommodation due to her disabilities." The referee concluded that there was "no evidence that [plaintiff's] working conditions were so difficult that they rendered the work unsuitable." Thus,

plaintiff voluntarily left her job without good cause attributable to CEDA, and was not eligible for benefits.

¶ 13 Plaintiff appealed to the Board, arguing that the referee had ignored her explanation of how she reported the harassment to CEDA management. Also "I did not realize for my second hearing that I needed to send another copy of my evidence to" CEDA. The Board affirmed the referee's decision in October 2011, in an order incorporating the referee's findings.

¶ 14 Plaintiff filed an administrative review action in the circuit court. The court affirmed the Board's decision on March 14, 2012, and this appeal timely followed.

¶ 15 Before proceeding, we note the request by the Department and Board in their brief that we strike plaintiff's brief. We agree that plaintiff's brief does not comply with Supreme Court Rule 341(h) (eff. July 1, 2008) governing the organization of appellate briefs. However, we have discretion in whether to strike a brief, or disregard its contentions, for failure to comply with Rule 341. *In re Marriage of Debra N. and Michael S.*, 2013 IL App (1st) 122145, ¶ 44. Because plaintiff's brief states a clear contention of error, and the issues can be ascertained from the record and briefs, we decline to strike plaintiff's brief and shall consider this appeal on the merits.

¶ 16 On appeal, plaintiff contends that the Board's ineligibility finding was against the manifest weight of the evidence.

¶ 17 Section 601 of the Act provides that a person is ineligible for unemployment insurance benefits when "he or she has left work voluntarily without good cause attributable to the employing unit." 820 ILCS 405/601(A) (West 2010). Good cause exists when circumstances create substantial pressure to leave employment that would compel a reasonable person under the same circumstances to do so. *Lojek v. Department of Employment Security*, 2013 IL App (1st) 120679, ¶ 36. A substantial and unilateral change in employment may constitute good cause. *Id.* Voluntary leaving of employment is not attributable to the employer unless the employee's cause for leaving is within

the employer's control, which includes but is not limited to a substantial change in employment conditions. *Id.* Similarly, an employee must, when possible, make a reasonable effort to resolve the cause of her leaving. *Id.*

¶ 18 We review the decision of the Board, not the circuit court. *Id.*, ¶ 31. The Board is the trier of fact in cases regarding unemployment insurance claims, and its findings of fact are considered *prima facie* true and correct. *Id.* We shall not reweigh the evidence or substitute our judgment for that of the Board. *Id.* The Board's decision as to whether an employee left work voluntarily without good cause under the Act presents a mixed question of law and fact reviewed for clear error. *Id.*, ¶32. The Board's decision is clearly erroneous only if, after reviewing the entire record, the reviewing court definitely and firmly believes that a mistake has occurred. *Id.*

¶ 19 Here, it is undisputed that plaintiff worked for CEDA as a teacher and then resigned that employment. The issue presented at the referee's hearing was whether she did so without good cause attributable to CEDA. However, while plaintiff testified to her medical condition and resulting limitations, she also testified that it would not affect her performance of her duties. Moreover, Salazar of CEDA human resources testified that plaintiff did not avail herself of CEDA's procedure regarding the accommodation of disabilities. Similarly, while plaintiff testified to disability-related harassment by supervisor Jackson and reports of that harassment to CEDA management, Salazar testified that plaintiff did not report or mention harassment before her resignation. While plaintiff contends that the Board's denial of benefits was against the manifest weight of the evidence including her documentation, that documentation was excluded by the Board and the referee for plaintiff's admitted and repeated failure to serve a copy of her documents on CEDA. *See 735 ILCS 5/3-110 (West 2010)(evidence not admitted in the administrative proceeding cannot be considered by the court on administrative review).* On this record, we cannot conclude that the Board clearly

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erred in finding plaintiff ineligible for benefits under the Act because she left CEDA's employ voluntarily without good cause attributable to CEDA.

¶ 20 Accordingly, we affirm the judgment of the circuit court.

¶ 21 Affirmed.