

2013 IL App (1st) 121367-U

FIFTH DIVISION  
June 21, 2013

No. 1-12-1367

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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MARGEAX J. McBRIDE,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	
	)	
ILLINOIS DEPARTMENT OF EMPLOYMENT	)	
SECURITY; DIRECTOR, ILLINOIS DEPARTMENT	)	No. 11 L 51405
OF EMPLOYMENT SECURITY; and BOARD	)	
OF REVIEW,	)	
	)	
Defendants-Appellants,	)	
	)	
CHIRO ONE WELLNESS CENTERS, LLC,	)	Honorable
	)	Robert Lopez Cepero,
Defendant.	)	Judge Presiding.

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JUSTICE TAYLOR delivered the judgment of the court.  
Justices Howse and Palmer concurred in the judgment.

**ORDER**

¶ 1 *Held:* Circuit court correctly reversed determination of Board of Review that plaintiff was ineligible for unemployment benefits. Evidence established that plaintiff left her work for good cause because of severe stress and anxiety caused by greatly increased job duties and her employer's inability or unwillingness to aid in resolving conflicts that plaintiff was having with a new supervisor.

¶ 2 State defendants-appellants, the Department of Employment Security (Department), the Director of the Department (Director), and the Board of Review of the Department (Board), appeal from an order of the circuit court of Cook County reversing the ruling of the Board that plaintiff-appellee, Margeaux J. McBride (McBride), left her employment without good cause attributable to her employer, defendant Chiro One Wellness Centers, LLC, (Chiro). The State defendants contend that the circuit court should have affirmed the ruling of the Board because that ruling was not clearly erroneous.

¶ 3 Although McBride has failed to file a responsive brief in this case, we find that we may still consider the appeal based on the brief submitted by the State defendants. *People v. Cosby*, 231 Ill. 2d 262, 285 (2008); *First Capitol Mortgage Corporation v. Talandis Construction Corporation*, 63 Ill. 2d 128, 133 (1976).

¶ 4 McBride was employed by Chiro as a chiropractic technician from October 2007 until June 30, 2011. When she left her employment she applied for unemployment insurance benefits (benefits), alleging that she left for medical reasons. Chiro stated in a form it submitted that McBride left voluntarily, although it agreed she had left for medical reasons. The file also quotes from a letter from Dr. Yvonne T. Murphy, stating that McBride was under her medical care and that on April 15, 2011, the doctor found that McBride suffered from stress and anxiety related to her job.

¶ 5 An interview form relates additional information given by McBride. She reported that she was under very high levels of stress, which was causing her anxiety. McBride's mother suffered from bipolar disorder, and McBride feared that she could develop the same disorder. The stress began when McBride was transferred to another clinic. After six months at that clinic, McBride asked for a transfer, which was denied. It was McBride's belief that Chiro was trying to get her to resign, although she was not directly told to resign. McBride received a job review

score of 70 from a new supervisor, when her previous scores were always above 95. According to McBride, the supervisor never worked with her. McBride tried to get a transfer for eight months, but was unable to do so.

¶ 6 Based upon this information, the claims adjudicator found that McBride left work voluntarily "because she considered the working conditions hazardous or unsatisfactory." The adjudicator found that because Chiro was aware of McBride's work conditions and had the ability to control them, the leave was attributable to Chiro. However, the adjudicator also found that McBride's working conditions were not "serious violations" of McBride's original hiring agreement or did not create a substantially less favorable work situation. McBride was found to have left work voluntarily, without good cause attributable to Chiro. Accordingly, McBride was denied benefits.

¶ 7 McBride then appealed to a Department referee, who conducted a hearing by telephone. At the hearing, McBride testified that she had worked for Chiro from 2007 until June 30, 2011, when she was "forced" to quit. McBride testified that her health had deteriorated because of stress and anxiety, which her physician had diagnosed. The cause of the stress and anxiety was her supervisor and the work environment of the clinic she was working in. McBride's health issues began when she was transferred to a new clinic branch in September 2010. Until that transfer, she loved her job and had no "complications" with it. She informed her supervisor of her deteriorating health and her work concerns in September, October, and December 2010, but the supervisor made no work adjustments. It was McBride's belief that her doctor could not recommend that she leave work, but her doctor did recommend a treatment regimen and medication. In February 2011 McBride spoke to her human resources manager, Monica Punch, who, according to McBride, did not resolve anything. McBride also attempted to speak with Chiro's director and its chief operation officer, but they referred her back to her supervisor.

McBride stated at the hearing that she did not voluntarily leave Chiro, but did so because of her health. She also stated that her doctor and her psychologist agreed about her levels of stress and anxiety.

¶ 8 Monica Punch testified that McBride had informed Chiro that she was leaving her employment because of her health. Punch conceded that McBride had spoken to her about the problems she was having with her supervisor, but Punch thought things were "resolved." She could not recall when McBride had spoken to her, but she did testify that McBride never told her directly about her health issues. Chiro's chief operation advisor, Sam Wang, was also available to testify, but he did not do so.

¶ 9 Based upon this evidence, the referee found that McBride had not left her work for good cause attributable to Chiro, and therefore denied her benefits. On appeal to the Board, McBride submitted a letter which added additional details about her case. The State defendants assert that McBride has waived consideration of this letter because she failed to follow administrative procedures requiring that she explain why she could not have presented this evidence before the referee. See 56 Ill. Adm. Code 2720.315(b) (2009). But we may relax requirements relating to waiver where principles of justice support the matter's consideration. *American Federation of State, County, and Municipal Employees v. County of Cook*, 145 Ill. 2d 475, 480 (1991). The doctrine of waiver limits the parties, not the court. *Id.* Here, there is no evidence that the State defendants ever objected to the admission of this letter. Such an objection would have afforded McBride the opportunity to demonstrate a basis for the letter's admission. Furthermore, in the brief they have submitted to us, the State defendants refer to allegations contained in this letter in their statement of the facts of this case. Based upon all of these factors, we find no basis for excluding the letter from our consideration.

¶ 10 In the letter, McBride stated that in September 2010 she was transferred to another clinic for what was supposed to be four to six weeks. But after eight months she remained at this clinic. Her commute to work changed from two miles to thirty miles. Her work load tripled, as she was the only chiropractic technician at that facility. As a result, every day consisted of "extremely high pressure." Starting in November 2010 McBride repeatedly emailed her supervisor about the work and stress levels she was experiencing. She had begun having anxiety attacks. By January 2011 McBride had developed a sleeping disorder and had lost a "significant" amount of weight. McBride also requested help from Monica Punch, but did not receive any support. She did meet her supervisor's superior but nothing was resolved in that meeting. McBride was denied a meeting with Chiro's chief operating officer. McBride also stated in the letter to the Board that in April 2011 her physician, Dr. Murphy, diagnosed her as having stress and anxiety related to her current job. The doctor recommended medication and psychological therapy because McBride's job was causing the onset of a nervous breakdown. McBride then began therapy with a psychologist, who also confirmed that her stress and anxiety were work related. In conclusion, McBride stated that leaving her employment with Chiro was not voluntary, but was necessary because of the job's effect on her health.

¶ 11 The Board concluded, based upon all the evidence before it, that the referee's decision denying benefits to McBride was supported by the record and the law. McBride then appealed to the circuit court of Cook County, which reversed the decision of the Board. The State defendants now appeal.

¶ 12 Our review is of the decision of the Board, not the circuit court. *Sudzus v. Department of Employment Security*, 393 Ill. App. 3d 814, 819 (2009). Section 601(A) of the Illinois Unemployment Insurance Act (820 ILCS 405/601(A) (West 2010)) provides that a former employee is ineligible for unemployment benefits if she left work voluntarily but without good

cause attributable to her employer. This issue is a mixed question of law and fact to which the "clearly erroneous" standard of review is applicable. *Childress v. Department of Employment Security*, 405 Ill. App. 3d 939, 942 (2010). We will find the Board's resolution of this issue to be clearly erroneous only if, upon review of the record, we are left with a definite and firm conviction that the Board erred. *Childress*, 405 Ill. App. 3d at 942-43.

¶ 13 The State defendants contend that McBride's letter from her doctor did not establish that her health required her to leave her employment. We find that the doctor's letter did corroborate McBride's claim that her health was deteriorating as early as April 2011 and that this deterioration was related to her job. Even without reference to a doctor's opinion, good cause for leaving one's employment may be based on deteriorating health conditions, where the claimant demonstrates a reasonable subjective fear that her health is in danger. *Nichols v. Department of Employment Security*, 218 Ill. App. 3d 803, 812 (1991). The claimant may establish this good cause by evidence: (1) that she had adequate health reasons to leave her employment; (2) that she told her employer of the health problem or problems; and (3) that she was available for work which did not harm her health when and if her employer made a reasonable accommodation in her work. *Id.* In this cause, there was un rebutted evidence that the tripling of McBride's work load had affected her physical and emotional health. McBride reported that she was experiencing high levels of stress and anxiety and was also experiencing physical symptoms in the form of a sleeping disorder and weight loss. Her doctor confirmed that this deterioration in McBride's health was attributable to her work. There was also un rebutted evidence that McBride repeatedly sought help from Chiro's management, to no avail. McBride's human resources manager, Monica Punch, admitted that she met with McBride, but could not recall whether that occurred in 2010 or 2011. She also testified only to a belief that McBride's concerns had been "resolved," without any elaboration. As we have noted, in one of Chiro's written responses to the

Department's investigation, it admitted that McBride had left her work for health reasons. McBride repeatedly told Chiro of her health problems in order to obtain a reasonable accommodation. But although she remained at work and thus was prepared to continue employment under accommodating circumstances, there is no evidence that Chiro attempted to accommodate her, perhaps by transferring her to a less stressful branch clinic.

¶ 14 Our review of the record and the law leaves us with the definite and firm conviction that the Board erred in its finding that McBride was not entitled to unemployment benefits.

*Childress*, 405 Ill. App. 3d at 942-43. Accordingly, we affirm the judgment of the circuit court reversing the Board's determination that McBride is not entitled to unemployment benefits.

¶ 15 Affirmed.