

No. 1-14-1398

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

| | | |
|------------------------------------|---|----------------------|
| PATRICIA A. RIDGE, |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff-Appellant, |) | Cook County. |
| |) | |
| v. |) | No. 14 L 50051 |
| |) | |
| ILLINOIS DEPARTMENT OF EMPLOYMENT |) | |
| SECURITY; DIRECTOR OF THE ILLINOIS |) | |
| DEPARTMENT OF EMPLOYMENT SECURITY; |) | |
| BOARD OF REVIEW OF THE ILLINOIS |) | |
| DEPARTMENT OF EMPLOYMENT SECURITY; |) | |
| and ILLINOIS HOMELAND SECURITY |) | |
| c/o BERNITA A. DARLING, |) | Honorable |
| |) | Carl Anthony Walker, |
| Defendants-Appellees. |) | Judge Presiding. |

JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hall and Lampkin concurred in the judgment.

O R D E R

- ¶ 1 **Held:** Denial of unemployment benefits affirmed over plaintiff's contention that the evidence was insufficient to show that she left her employment voluntarily.
- ¶ 2 Plaintiff-appellant, Patricia A. Ridge, *pro se*, appeals from an order of the circuit court which affirmed the decision of the Illinois Department of Employment Security (IDES) Board of Review (Board) which found her ineligible for unemployment benefits under the Illinois

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Unemployment Insurance Act (Act). 820 ILCS 405/100 *et seq.* (West 2012). On appeal, plaintiff contends the Board's decision was erroneous because she did not voluntarily leave her employment but, instead, was laid off due to lack of work. We affirm.

¶ 3 Plaintiff worked as a security guard for Illinois Homeland Security (IHS) from October 28, 2009, through January 8, 2013. However, on January 6, 2013, plaintiff filed a claim for unemployment benefits with IDES stating she had been laid off from work. IHS protested the claim on the ground that plaintiff had voluntarily left her job without good cause attributable to IHS. IHS supported its protest with exhibits including a January 16, 2013, letter written by Narvell Darling, director of operations for IHS. The letter set forth plaintiff's employment history as follows.

¶ 4 On July 7, 2011, Doctor Ravi Kalhan, plaintiff's physician, faxed a "certification of health care provider for employee's serious health condition," form which showed that plaintiff suffered from chronic lung disease and was physically unable to perform some of her current duties due to that health issue. Plaintiff then forwarded the form to IHS on July 8, 2011. In response, IHS assigned plaintiff a security guard position at an apartment building, Monday through Friday, six hours per day, for a total of 30 hours per week.

¶ 5 On December 10, 2012, plaintiff gave IHS a letter from Dr. Kalhan which stated that she should be limited to work 24 hours per week, or less, because of her chronic lung disease. To further accommodate her, IHS assigned plaintiff to the same security guard position at the same apartment building Friday through Sunday, six hours per day, for a total of 18 hours per week, however, plaintiff refused to work that schedule. IHS then assigned plaintiff to a 12-hour schedule where she worked only on Saturday and Sunday, for 6 hours each day. Plaintiff stated

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she was unable to work on the weekend because she is her mother's caregiver during that time. IHS told plaintiff that she would be removed from the work schedule until she could accept a reasonable assignment. Mr. Darling asserted that IHS "had acted in good faith" to maintain the employment of [plaintiff]" and that her "claim of being laid off due to lack of work is inaccurate."

¶ 6 An IDES claims adjudicator conducted a telephone interview on February 28, 2013, to determine plaintiff's eligibility for unemployment benefits. During the interview, plaintiff stated that on January 6, 2013, she reported for work at IHS. When she arrived there, no schedule had been posted for her for that day, nor for the following day. Plaintiff contacted a dispatcher for IHS who told her the matter would be looked into, but the dispatcher did not return her call. On January 7, 2013, when plaintiff reported for work, she saw that no schedule had been posted for her for that day. Plaintiff again called the dispatcher who told plaintiff to call Mr. Darling, plaintiff's immediate supervisor. Plaintiff called Mr. Darling who told her to go home and that he would call her the next day. On January 8, 2013, Mr. Darling called plaintiff and told her to turn in her badge, which another IHS employee had collected from her. Plaintiff said that Mr. Darling did not give a reason for her termination. The claims adjudicator attempted an interview with Mr. Darling, but was unable to reach him.

¶ 7 On March 11, 2013, the claims adjudicator determined that because plaintiff was terminated for lack of work, she was eligible for unemployment benefits under Section 601(A) of the Act. 820 ILCS 405/601(A) (West 2012)).

¶ 8 On April 5, 2013, IHS sought reconsideration of that decision which the claims adjudicator denied on July 31, 2013.

¶ 9 On that same date, IHS filed an administrative appeal. A telephone hearing with an IDES referee was conducted on August 30, 2013. Mr. Darling testified as to the different alternative work schedules he had offered plaintiff to meet her doctor's recommendations, but that she had rejected those options. Mr. Darling testified to the events set forth in his letter attached to the IHS's protest. Mr. Darling further stated that he had sent plaintiff a copy of her schedule for the week of January 6, 2013, before her shift began that week. A copy of that week's schedule was sent to the IDES referee prior to the administrative hearing; however, the document was not allowed to be admitted into evidence because Mr. Darling had not sent a copy to plaintiff.

¶ 10 At the administrative hearing, plaintiff testified that she had never received a schedule from Mr. Darling for the week of January 6, 2013; that she reported for work on that date without a schedule; and that she was terminated later that week. She also stated that Mr. Darling would not have offered her weekend hours because that shift was already taken by a coworker and, further, that she never received or refused a schedule from IHS. Plaintiff stated that she had become sick "because of the smoking of marijuana and cigarettes" in the building where she worked. Plaintiff asserted that the schedule for the week of January 6, 2013, which IHS sought to submit as evidence, was falsified.

¶ 11 On September 5, 2013, the referee's decision was mailed to plaintiff finding her ineligible for unemployment benefits under section 601(A) of the Act. The referee found plaintiff had voluntarily left her employment without good cause attributable to her employer; that there was work available for plaintiff; and that she initiated the separation of employment due to personal reasons. The decision was based on the findings of fact that IHS had accommodated plaintiff's requests for scheduling changes, but plaintiff "was unable to work weekends because she cared

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for her mother." In issuing its ruling, the referee stated that it did not consider the January 6, 2013, schedule Mr. Darling provided to the referee because Mr. Darling did not provide plaintiff a copy prior to the administrative hearing. However, the referee noted that the schedule had been submitted in support of the protest by IHS to plaintiff's claim and was in the administrative file.

¶ 12 On September 9, 2013, plaintiff filed an administrative appeal to the Board and provided additional documents in an effort to support her claim for unemployment benefits. On January 8, 2014, the Board upheld the referee's decision. The Board found Mr. Darling to be credible and that IHS had made efforts to accommodate plaintiff's scheduling restrictions. The Board further stated it had not considered the additional documents plaintiff had provided because she did not explain why she was unable to provide them to the referee prior to the administrative hearing. The Board further noted that the referee should have allowed into evidence the schedule Mr. Darling had introduced at the hearing, however, given plaintiff's assertion that the schedule was falsified, the Board stated that it gave the schedule little weight in making its decision.

¶ 13 On January 15, 2014, plaintiff *pro se* filed a complaint in the circuit court for administrative review of the Board's decision. On May 8, 2014, the circuit court affirmed the Board's decision. This appeal follows.

¶ 14 On appeal, plaintiff contends that the Board's decision was erroneous because the evidence supports her position that she was terminated from her job and did not leave voluntarily. She maintains that the inconsistencies in Mr. Darling's testimony indicate that IHS terminated her employment without good cause, and she is, therefore, entitled to unemployment benefits. We disagree.

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¶ 15 Our review of the administrative proceeding is limited to the propriety of the Board's decision. *Odie v. Department of Employment Sec.*, 377 Ill. App. 3d 710, 713 (2007). We defer to the Board's factual findings unless they are against the manifest weight of the evidence (*Manning v. Department of Employment Sec.*, 365 Ill. App. 3d 553, 556 (2006)), *i.e.*, where the opposite conclusion is clearly evident. *City of Belvidere v. Illinois State Labor Regulations Bd.*, 181 Ill. 2d 191, 205 (1998). However, the question of whether an individual left her employment without good cause is a mixed question of fact and law, which we examine under a "clearly erroneous" standard of review. *Childress v. Department of Employment Sec.*, 405 Ill. App. 3d 939, 942 (2010). An agency's decision will be deemed clearly erroneous only if, based on the entirety of the record, the reviewing court is left with the " 'definite and firm conviction that a mistake has been committed.' " *Sudzus v. Department of Employment Sec.*, 393 Ill. App. 3d 814, 820 (2009) (quoting *AFM Messenger Service, Inc. v. Department of Employment Sec.*, 198 Ill. 2d 380, 393 (2001)).

¶ 16 The Act provides that "[a]n individual shall be ineligible for benefits for the week in which he or she has left work voluntarily without good cause attributable to the employing unit." 820 ILCS 405/601(A) (West 2012). In this case, the Board found that plaintiff voluntarily left her employment without good cause attributable to the employer and was, therefore, ineligible for unemployment benefits. *Id.* Good cause for leaving work exists "when there is a real and substantial reason that would compel a reasonable person who was genuinely desirous of remaining employed to leave work and the individual has made a reasonable effort to resolve the cause of his/her leaving, when such effort is possible." 56 Ill. Admin. Code § 2840.101(b) (eff. June 16, 2010). However, an employee's dissatisfaction with work hours and wages does not

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constitute good cause for leaving employment. *Lojek v. Department of Employment Sec.*, 2013 IL App (1st) 120679, ¶ 37. A claimant must show that the change in her working condition was unilateral and substantial. *Id.*; *Childress* 405 Ill. App. 3d at 943 (Good cause exists where there is a unilateral and meaningful change in the terms and conditions of employment such that a reasonable person would feel compelled to end his employment.).

¶ 17 In finding plaintiff ineligible for benefits, the Board recounted Mr. Darling's testimony that he attempted to accommodate plaintiff by adjusting her schedule after he was presented with doctor's notes which conveyed plaintiff's need to reduce her work hours because of her health problems. Plaintiff refused each scheduling adjustment offered to her by IHS. Mr. Darling told her that she would be removed from the work schedule until she could accept a reasonable schedule. The Board found this testimony was credible. The change in plaintiff's work schedules was not unilateral, but done in response to plaintiff's medical condition and at her request. Instead of attempting to work out an acceptable schedule with IHS, plaintiff filed for unemployment benefits. She left her employment for personal reasons in that the suggested weekend schedule prevented her from taking care of her mother.

¶ 18 Plaintiff challenges Mr. Darling's version of events, contending that the Board should have granted her the benefit of the doubt and found her narrative to be more credible. However, credibility determinations are within the province of the Board and, on administrative review, this court will not reassess a witness's credibility nor reweigh the evidence. *Woods v. Illinois Dept. of Employment Sec.*, 2012 IL App (1st) 101639, ¶ 16.

¶ 19 Plaintiff also challenges the legitimacy of the work schedule submitted into evidence by Mr. Darling. The Board recognized plaintiff's opposition to this document, however, and granted

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it little weight in making its decision. Ultimately, the Board decided that plaintiff voluntarily left her employment with IHS without good cause attributable to her employer when she failed to accept a reasonable schedule and was, therefore, ineligible for unemployment benefits under Section 601(A) of the Act. 820 ILCS 405/601(A) (West 2012). Based on the record, we find that the Board's decision was not clearly erroneous and we affirm its decision.

¶ 20 Finally, plaintiff contends she should be granted a rehearing before the Board because she was unable to locate certain documents and witnesses prior to her administrative hearing. Plaintiff, however, has failed to present this argument at the administrative level, and we may not consider it here. *Carpetland U.S.A., Inc. v. Illinois Dept. of Employment Sec.*, 201 Ill. 2d 351, 396-97 (2002).

¶ 21 For the foregoing reasons, we affirm the order of the circuit court of Cook County as the Board's decision was not clearly erroneous.

¶ 22 Circuit court affirmed; Board's decision confirmed.