

FOURTH DIVISION
September 17, 2015

No. 1-14-3458

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

ALTERNATIVE STAFFING, INC.,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	
)	
ILLINOIS DEPARTMENT OF EMPLOYMENT)	
SECURITY; DIRECTOR OF ILLINOIS)	
DEPARTMENT OF EMPLOYMENT SECURITY;)	
and BOARD OF REVIEW,)	No. 14 L 50313
)	
Defendants-Appellants,)	
)	
and)	
)	
IRMA GOMEZ,)	Honorable
)	Robert Lopez Cepero,
Defendant.)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice McBride and Justice Ellis concurred in the judgment.

O R D E R

¶ 1 *Held:* Board of Review decision that claimant was eligible for unemployment benefits was not clearly erroneous.

¶ 2 Defendants Department of Employment Security (Department) and its Director and Board of Review (Board) – collectively, the State Parties – appeal from an order of the circuit court reversing a decision by the Board finding defendant Irma Gomez eligible to receive benefits under the Unemployment Insurance Act (Act). 820 ILCS 405/100 *et seq.* (West 2012) for the period from March 31 to April 13, 2013 (the claim period). The Board affirmed the decision of a Department administrative law judge (ALJ) finding Gomez eligible following her employment as a general laborer by plaintiff Alternative Staffing, Inc. On appeal, the State Parties contend that the Board's decision was not clearly erroneous.

¶ 3 Gomez filed a claim for benefits under the Act on March 31, 2013, based on her employment by plaintiff until August 13, 2012; she stated that she resides in Seattle, Washington. Plaintiff filed a protest under section 500(c) of the Act (820 ILCS 405/500(c) (West 2012)) that Gomez was not available for or actively seeking work as the Act requires. Plaintiff alleged that Gomez had not returned to plaintiff for a work assignment from August 13, 2012, onwards though plaintiff had work available for her, nor had she provided plaintiff an explanation for not returning. Plaintiff argued that, because Gomez now resides in Washington, she is not available for or actively seeking work in Illinois.

¶ 4 The Department's local office (Office) investigated plaintiff's challenge in April 2013. Gomez provided the Office with a work search record stating that she sought positions with eight named potential employers and "a couple more" whose names she could not recall; a copy of this form is in the record. Gomez told the Office that she was available to work any day and preferred

full-time work, tried to apply for two positions daily, and ascertained that plaintiff does not have an office in Washington. The Office ruled upon Gomez's claim in May 2013, finding that she rebutted the presumption that an applicant was not actively seeking work if last employed by a "temporary help firm" such as plaintiff that submits a notice alleging that the applicant did not contact the firm for an assignment during the week for which benefits are sought. The presumption is rebutted when the applicant shows that she either contacted the firm or had good cause for failing to do so, and the Office found that Gomez's move to Washington constituted the latter. The Office thus found Gomez eligible for benefits for the claim period.

¶ 5 Plaintiff appealed the Office's determination, and the ALJ held a hearing in September 2013. Gomez testified that, during the claim period, she was physically able to work, willing to work any shift on any day, and seeking employment in Seattle but did not contact plaintiff. Gomez moved to Seattle in January 2013, learned that plaintiff had no offices in Washington, attended school or work training after mid-April, and was employed at the time of the ALJ hearing. When asked why she had not filed a work search record, Gomez replied that she had a pending workers' compensation claim and was seeking work in Washington rather than Illinois. She did submit to the Department a work search record of her search in Washington, but plaintiff's attorney said that he did not have a copy. Plaintiff's representative testified that Gomez last worked for plaintiff on August 13, 2012, and that a person must come to plaintiff's office in person to receive an assignment but Gomez had not done so in the preceding year.

¶ 6 The ALJ issued his decision in September 2013, finding Gomez eligible for benefits under the Act. He found that plaintiff is a temporary help firm, noted the rebuttable presumption

mentioned above, and found that Gomez "lives in another State and there is no reason to contact" plaintiff so that the presumption was rebutted.

¶ 7 Plaintiff appealed to the Board, which affirmed the ALJ's decision in March 2014 in an order finding that decision to be supported by the record and law with no additional evidence necessary. The Board found that Gomez "moved out of state before the time period under review, and has established good cause for not contacting the employer, a temporary agency."

¶ 8 Plaintiff timely filed an administrative review action in the circuit court, which reversed the Board's decision in October 2014 following briefing by plaintiff and the State Parties. The State Parties timely filed a notice of appeal.

¶ 9 On appeal, the State Parties contend that the Board's decision that Gomez was eligible for benefits under the Act was not clearly erroneous.

¶ 10 Section 500(c) of the Act provides that an applicant is eligible for benefits for a week when "[h]e is able to work, and is available for work; provided that during the period in question he was actively seeking work and he has certified such. Whenever requested to do so by the Director, the individual shall, in the manner the Director prescribes by regulation, inform the Department of the places at which he has sought work during the period in question." 820 ILCS 405/500(c) (West 2012). An applicant is unavailable when his "principal occupation" is as a student, or "if, after his separation from his most recent employing unit, he has removed himself to and remains in a locality where opportunities for work are substantially less favorable than those in the locality he has left." 820 ILCS 405/500(c)(3), (4) (West 2012). The Department's regulations create:

"a rebuttable presumption that an individual is not actively seeking work if he was last employed by a 'temporary help firm,' [citation] and the temporary help firm submits a

notice of possible ineligibility [citation] alleging that, during the week for which he claimed benefits, the individual did not contact the temporary help firm for an assignment. The presumption is rebutted if the individual shows that he did contact the temporary help firm or that he had good cause for his failure to contact the temporary help firm for an assignment." 56 Ill. Adm. Code 2865.115(h) (1993).

¶ 11 The purpose of the Act is to provide compensation benefits to unemployed persons to alleviate their economic distress caused by involuntary unemployment, not to benefit those who are unemployed because of their own misdeeds, so that a claimant bears the burden of proving his or her eligibility for benefits under the Act. *Moss v. Department of Employment Security*, 357 Ill. App. 3d 980, 985 (2005). A claimant is "available for work" under the Act when he or she stands ready and willing to accept suitable work. *Id.* In an appeal from a decision under the Act, this court reviews the decision of the Board rather than the circuit court. *Weinberg v. Department of Employment Security*, 2015 IL App (1st) 140490, ¶ 20. The Board's decision on whether an applicant was available for work under the Act presents a mixed question of law and fact, involving an examination of the legal effect of a given set of facts, and is reviewed for clear error. *Moss*, 357 Ill. App. 3d at 984-85. The Board's decision is clearly erroneous only if, after reviewing the entire record, we definitely and firmly believe that a mistake has occurred. *Weinberg*, 2015 IL App (1st) 140490, ¶ 21.

¶ 12 Here, Gomez testified that she was living in Washington – where plaintiff did not have an office – and was available, and actively searching for, work during the claim period. She submitted a work search report to the Department in April 2013, and the record received from the Department includes that report. She testified that she attended school or work training after mid-April; that is,

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after the claim period. The Board's conclusions that Gomez was available for and actively seeking work during the claim period, and had rebutted the presumption regarding not keeping in contact with a temporary help firm because she resided in Washington and thus did not need to contact plaintiff, were not clearly erroneous. Accordingly, we reverse the judgment of the circuit court and confirm the decision of the Board.

¶ 13 Circuit court reversed; Board of Review confirmed.