No. 1-10-0879

SIXTH DIVISION
June 10, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

LATOYA D. LUCAS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09 L5 1258
	)	
ILLINOIS DEPARTMENT OF	)	
EMPLOYMENT SECURITY;	)	
DIRECTOR OF THE ILLINOIS	)	
DEPARTMENT OF EMPLOYMENT	)	
SECURITY; and BOARD OF REVIEW	)	Honorable
	)	Elmer James Tolmaire, III
Defendants-Appellants.	)	Judge Presiding.

PRESIDING JUSTICE GARCIA delivered the judgment of the court.
Justices Cahill and R. E. Gordon concurred in the judgment.

O R D E R

Held: Where plaintiff voluntarily resigned without good cause attributable to the employer and was disqualified from receiving unemployment benefits, the circuit court's judgment was reversed.

The Board of Review of the Illinois Department of Employment Security (Board) found plaintiff, Latoya Lucas, ineligible to receive unemployment benefits under section 601A of the Illinois Unemployment Insurance Act (Act). 820 ILCS 405/601A (West 2008). The circuit court

reversed the Board's decision. On appeal, defendants (the Board and the Illinois Department of Employment Security (Department)) contend that the Board's finding that Lucas voluntarily resigned was not against the manifest weight of the evidence. We agree with defendants and confirm the Board's decision.

Although Lucas has not filed a brief, we will proceed under the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Co.*, 63 Ill. 2d 128, 133 (1976).

The record shows that Lucas worked part-time for the City of Chicago (City) as a traffic control aid from April 7, 2008, until October 14, 2008. On October 14, Lucas submitted a letter of resignation, which was accepted by the City. Lucas applied for unemployment benefits with the Department, and the employer objected claiming that she voluntarily quit. On February 17, 2009, a claims adjudicator found Lucas eligible for benefits from January 18, 2009, through January 31, 2009, because her reason for leaving was attributable to the employer, *i.e.*, the City changed and reduced her hours causing a hardship.

The Department appealed, and on April 17, 2009, a telephone hearing was conducted by a Department referee. At this hearing, John Botica, the director of traffic management authority, testified that Lucas was a part-time traffic control aid from April 7, 2008, until she voluntarily resigned by submitting a resignation letter on October 14, 2008. Lucas did not state a reason for her resignation, and, had she remained employed, work was available to her and she was not under any threat of discharge. Although Botica did not prepare Lucas' work schedule, he explained that the City tried to accommodate its employees' availability when creating work schedules. Lucas' schedules varied while she was employed with the City, working morning, afternoon, and evening shifts.

Lucas testified that the last time she worked at the City was August 20, 2008, but she officially resigned on October 14, 2008. Lucas left because she received a schedule for the

month of September that was contrary to what she had requested. Lucas requested a morning schedule because she was attending school at night, but she received a night schedule. She attempted to fix the problem, but was unable to receive different hours because the work schedule was already set a month in advance. Her employer did not care that her schedule was made in error, and "left [her] out of work for a whole month and then more." Lucas left her job with the City and did not put in a request for a schedule in October because "[she] didn't want to actually do it anymore." Lucas reiterated that her employer made the error, acted like it did not care about the mistake, and she was afraid the City would make a similar scheduling error in October. For those reasons, Lucas stated that she "voluntarily left."

The referee found that Lucas voluntarily resigned from her employer because the City reduced her work hours causing a financial hardship. Lucas did not have any work hours from August 20 through September 30, 2008. The referee further found that the employer not scheduling Lucas for work constituted good cause attributable to the employer, and thus concluded that she was not disqualified from unemployment benefits.

The Department appealed the referee's decision to the Board, which found that Lucas' conduct and intent indicated that she chose to discontinue the employment relationship. Specifically, the Board held that Lucas left her employment with the City in haste after believing that the employer "mixed up" her September 2008 schedule. She did not put in a schedule for October 2008, and ultimately decided to quit because she did not want to do the job anymore, the City erred in constructing her September schedule, and she feared that it would happen again in October. The Board further found that Lucas failed to attempt reasonable means of redressing her situation while she remained employed as an alternative to voluntarily leaving. The Board thus concluded that Lucas voluntarily left work without good cause attributable to the employer, and

was subject to a disqualification of benefits from January 18, 2009. The Board thus reversed the referee's decision.

Lucas filed a complaint for administrative review of the Board's decision in the circuit court, which reversed the Board's decision, finding that its decision was clearly erroneous. This appeal follows.

Under the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2008), 820 ILCS 405/1100 (West 2008)), we review the final decision of the administrative agency and not the decision of the circuit court. *Village Discount Outlet v. Department of Employment Security*, 384 Ill. App. 3d 522, 524-25 (2008). The applicable standard of review, which determines the deference that will be given to the agency's decision, depends upon whether the question presented is one of fact, law, or a mixed question of both fact and law. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 390 (2001).

In this case, the Board was called upon to determine whether the circumstances surrounding Lucas' departure, as set forth in the record, supported the referee's conclusion that she was eligible for unemployment benefits pursuant to section 601A of the Act. The Board found that the record did not support such a finding. Defendants correctly assert that we should review the Board's decision to determine if it was against the manifest weight of the evidence because whether an employee leaves a job voluntarily is a question of fact. See *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 210 (2008) (stating that the Board's findings of fact are governed by the manifest weight of the evidence standard). An agency's decision may be deemed against the manifest weight of the evidence only when an opposite conclusion is clearly evident from a review of the record. *Cinkus*, 228 Ill. 2d at 210. For the reasons which follow, we find that the Board's decision in this case was not against the manifest weight of the evidence.

Section 601A of the Act provides in relevant part:

> "An 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 405/601A (West 2008).

Whether good cause is attributable to the employer focuses on the conduct of the employer (*Grant v. Board of Review*, 200 Ill. App. 3d 732, 734 (1990)), and a cause is attributable to the employer if it is produced or created by the employer's actions or inactions (*Jaime v. Director, Department of Employment Security*, 301 Ill. App. 3d 930, 936 (1998)).

At the hearing, the evidence showed that Lucas failed to submit her available work hours to the City for October 2008, and, instead submitted a letter of resignation to the City on October 14, 2008. Furthermore, she admitted at the hearing that she did not want the job anymore and left voluntarily. At the time Lucas submitted her letter of resignation, work was available to her and she was not under any threat of discharge.

We acknowledge that a problem arose because the hours Lucas was assigned to work in September 2008 conflicted with her school schedule, and the City was unable to remedy this problem. However, individuals must make reasonable efforts to resolve employment conflicts before voluntarily leaving and seeking unemployment benefits. *Henderson v. Department of Employment Security*, 230 Ill. App. 3d 536, 539 (1992). Here, Lucas simply had to submit her available hours for October 2008 in order to discover whether the City would have given her the schedule she desired. Instead, she decided to submit her letter of resignation. Based on the record before us, we cannot say that the Board's decision to deny Lucas unemployment benefits was against the manifest weight of the evidence.

For the foregoing reasons, we reverse the circuit court's judgment and confirm the Board's decision disqualifying Lucas from receiving unemployment benefits.

Judgment reversed; Board confirmed.