

2013 IL App (1st) 120194-U

SIXTH DIVISION  
March 8, 2013

No. 1-12-0194

**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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EDZANI A. ASIMA,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	
	)	
ILLINOIS DEPARTMENT OF EMPLOYMENT	)	
SECURITY, DIRECTOR OF ILLINOIS DEPARTMENT	)	
OF EMPLOYMENT SECURITY, and ILLINOIS	)	
DEPARTMENT OF EMPLOYMENT SECURITY	)	No. 11 L 51028
BOARD OF REVIEW,	)	
	)	
Defendants-Appellants,	)	
	)	
and	)	
	)	
DJ'S SPORTS BAR & GRILL, INC.,	)	Honorable
	)	Robert Lopez Cepero,
Defendant.	)	Judge Presiding.

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PRESIDING JUSTICE LAMPKIN delivered the judgment of the court.  
Justices Hall and Reyes concurred in the judgment.

**ORDER**

¶ 1 *Held:* Board of Review found credible employer's testimony that plaintiff's changing schedule and her failure to return calls about work assignments for three weeks were the cause of her difficulties in getting work hours before she voluntarily left

her employment. This determination was not clearly erroneous and therefore circuit court order granting plaintiff unemployment benefits was reversed.

¶ 2 Defendants, 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 decision of the Board that plaintiff, Edzani A. Asima, left her employment without good cause attributable to her employer, DJ's Sports Bar & Grill, Inc. (DJ's). Defendants contend the circuit court should have affirmed the ruling of the Board because the ruling was not clearly erroneous.

¶ 3 Plaintiff was employed as a part-time bartender with DJ's until March 2011 when she made a claim for unemployment benefits. A Department claims adjudicator denied her claim. Plaintiff appealed that decision and an evidentiary hearing was held before a Department referee on June 3, 2012. At the hearing, plaintiff testified that she had been working at DJ's and its predecessor (Elegant) for approximately five years. She started as a waitress but was promoted to a bartender. In late February or early March of 2011, DJ's assistant manager, Devanna Bolden, notified plaintiff that she would be on call, which meant that Bolden would call her every week to inform her what her work shifts would be. Plaintiff testified that she waited for three weeks but Bolden never called her. Bolden also did not return plaintiff's telephone calls. At the end of that three-week period, plaintiff applied for unemployment.

¶ 4 Bolden testified that when she began to work at DJ's in April 2010, plaintiff was a part-time waitress but Bolden promoted her to a part-time bartender. The hours plaintiff could work kept changing because plaintiff began to attend school and also because she obtained a part-time job at another bar. Bolden denied having removed plaintiff from work shifts at times when plaintiff was available to work. The last time Bolden spoke to plaintiff was when plaintiff asked to be taken off the Sunday day shift because she wanted to go to church. Plaintiff had also told Bolden that she could no longer work on Fridays or Saturdays because that was when she was

working at the other bar. Bolden granted plaintiff's request to be off during the day on Sundays. She also asked plaintiff to let her know when she would be able to work so Bolden could place her on the work schedule. Bolden testified that plaintiff never called her after that in the three weeks before plaintiff left her employment with DJ's. Plaintiff also did not return Bolden's telephone calls and text messages in that time.

¶ 5 The referee found that plaintiff was ineligible to receive unemployment benefits because plaintiff's actions in attending school and obtaining a part-time job at another bar were the reasons that plaintiff was unavailable to work at DJ's. For these reasons, the referee found that plaintiff voluntarily left work without good cause attributable to her employer, DJ's. Plaintiff appealed this decision to the Board, which also found that plaintiff had left her employment without good cause attributable to DJ's. The Board found that Bolden had testified credibly and that plaintiff's testimony "consisted of little more than denials of [Bolden's] testimony." Accordingly, the Board also denied an award of unemployment benefits. Plaintiff appealed to the circuit court, which reversed the Board's decision. The State now appeals.

¶ 6 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 Department'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 Department erred. *Childress*, 405 Ill. App. 3d at 942-43.

¶ 7 The State contends there is ample evidence to support a finding that plaintiff was responsible for her inability to obtain work hours at DJ's. Bolden testified that plaintiff's availability for work was limited by her other bartending job and by her school hours. Bolden also testified that plaintiff did not call Bolden about work assignments as Bolden had instructed her to do before plaintiff left her employment with DJ's. Nor did plaintiff return Bolden's telephone calls or text messages in that time period. Plaintiff contends that she was still available for the hours she had been working, but Bolden hired two full-time bartenders who made it impossible for plaintiff to get those same hours. Bolden denied having hired two new full-time bartenders and testified that it was plaintiff's changing schedule which made it difficult to give her work hours. Plaintiff also asserts, as she did in her testimony, that it was Bolden who did not return her calls about work in the final three weeks before she left her employment. But Bolden contradicted this assertion in her testimony, and the Board found Bolden's testimony credible.

¶ 8 Bolden's testimony established that plaintiff's own actions, choosing to attend school and finding a second bartending job, were the reasons for her difficulty in finding hours to work at DJ's. She compounded this problem by failing for three weeks to call Bolden to ascertain what hours were available to her and by failing to return Bolden's telephone and text messages in that same time period. Based upon this testimony, the Board found that plaintiff did not leave her employment for good cause attributable to DJ's. Our review of the record and the law does not leave us with the definite and firm conviction that the Board erred in this finding. *Childress*, 405 Ill. App. 3d at 942-43. Accordingly, we reverse the judgment of the circuit court and reinstate the Board's determination that plaintiff is not entitled to unemployment benefits.

¶ 9 Reversed.