FIRST DIVISION
April 27, 2015

No. 1-14-0951

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

BRENDA J. PARKER, Plaintiff-Appellant, v. ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY; DIRECTOR OF ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY; BOARD OF REVIEW; and ACHIEVEMENT UNLIMITED, INC., Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 13 L 50900 Honorable Edward S. Harmening, Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justice Connors concurred in the judgment.
Presiding Justice Delort specially concurred.

O R D E R

¶ 1 *Held*: Circuit court's administrative review judgment affirmed where the Board's decision that plaintiff voluntarily resigned without good cause attributable to her employer, thereby disqualifying her from receiving unemployment benefits, was not clearly erroneous.

¶ 2 Plaintiff, Brenda Parker, filed a complaint for administrative review seeking to reverse a decision by the Board of Review (Board) of the Illinois Department of Employment Security (Department) that she voluntarily left work without good cause attributable to her employer and was ineligible for benefits under section 601A of the Illinois Unemployment Insurance Act (Act) (820 ILCS 405/601A (West 2012)). The circuit court affirmed the Board's decision and plaintiff, *pro se*, now challenges the propriety of that order on appeal.

¶ 3 The record shows that plaintiff was a full-time employee for Achievement Unlimited, serving as a support worker assisting developmentally delayed adults in a residential facility. Plaintiff worked for Achievement Unlimited from September 6, 2012, through December 6, 2012, and, after she left that employment, plaintiff filed a claim for unemployment benefits.[1]

¶ 4 Achievement Unlimited protested the claim, stating that plaintiff voluntarily left her employment without good cause attributable to it. In support, Achievement Unlimited stated that plaintiff failed to show up for her next scheduled shift after December 6, 2012, refused to speak to either her supervisor or administrator, and made no further contact with Achievement Unlimited.

¶ 5 On February 11, 2013, a Department claims adjudicator denied plaintiff's claim, finding that she voluntarily left employment because she considered the working conditions hazardous or unsatisfactory. The adjudicator further found that "since the employer did not have the ability to control the conditions or acts the claimant left work voluntarily without good cause attributable to the employer" and that plaintiff was thus ineligible for benefits under section 601(A) of the Act. Plaintiff filed a request for reconsideration, which the claims adjudicator denied. Plaintiff

[1] We note that the record does not contain a copy of plaintiff's claim for unemployment benefits.

appealed, and, on March 27, 2013, a Department referee conducted a telephone hearing in which plaintiff and Tara Wright, an Achievement Unlimited employee, participated.

¶ 6 In that hearing, plaintiff testified that in the three months she worked for Achievement Unlimited, she was assigned to the "third shift," which consisted of working from 11:30 pm. to 9:30 a.m. at a particular residential facility. On the morning of December 5, 2012, she received a text from the house manager, informing her for the first time that she was required to attend a six-hour-long training session the following morning after her scheduled shift ended. Plaintiff testified that this was the "last straw," and that she told the house manager that she would not be able to attend the training session after having completed her 10-hour shift because she would not be able to stay awake. The house manager told her that if she did not attend the training, she would be fired and "you do what you want to do." Plaintiff testified that because she was being mandated to attend the training or be fired for failing to attend, she "left employment."

¶ 7 Plaintiff further testified that Achievement Unlimited did not allow her to take any breaks or eat lunch during the entirety of her shift. On one occasion the house manager saw her reading a bible, and told plaintiff that if she was caught reading or sitting she would be fired. This was how plaintiff "found out" that she was not allowed to take any breaks. Plaintiff subsequently realized that she was not being paid for all of the hours she worked, and when she complained about it her hours were reduced from 40 to 30 hours per week. Plaintiff felt that she was being subjected to discrimination at work because she was a Christian, and when she tried to "explain to them my needs it fell on deaf ears." Plaintiff called the main office to complain, but was told that she had to resolve any issues by speaking with her administrator and house manager. Thereafter, she "went through their [] protocol and nothing happened." Achievement Unlimited did not "fix" her hours or pay her the money she was due, so plaintiff "left employment because

another person under the same circumstances would have left too." Plaintiff testified that she filed a complaint against Achievement Unlimited with the "Labor Department," alleging wage violations and failure to allow her to take mandatory breaks during her shifts.

¶ 8 Wright, the administrator for Achievement Unlimited, testified that a notice regarding the mandatory training session at issue was posted in the time clock area of the facility in which plaintiff worked over one month in advance of the date it was held. The notice provided details about the training session, as well as informed employees that they should advise Achievement Unlimited if they would be unable to attend the training on the scheduled date. In addition, if plaintiff had arrived at the training session, she would have been able to decide at that time whether to stay for the training or to choose another date. However, plaintiff did not show up to the training session, nor did she provide notice that she was leaving her employment. Although Wright and the house manager attempted to call plaintiff after she failed to attend the training session, plaintiff did not accept their calls or return their messages. Plaintiff also failed to show up for her next scheduled shift.

¶ 9 Wright further testified that plaintiff was hired as a full-time employee; which at Achievement Unlimited is an employee who works 30 hours or more per week. Records reflect that plaintiff worked at least 30 hours every week of her employment. At her orientation, plaintiff was provided with Wright's contact number and was given information regarding how to handle concerns or grievances. Plaintiff was specifically told that if she had a concern that was not being met by her house manager, she should contact Wright, the administrator. However, plaintiff never contacted Wright regarding any work-related concerns. Wright had no knowledge regarding an investigation on the part of the Department of Labor.

¶ 10 On March 28, 2013, the referee affirmed the claims adjudicator's denial of plaintiff's claim for unemployment benefits, finding that plaintiff voluntarily left work without good cause attributable to her employer, and was thus disqualified from receiving benefits under section 601(A) of the Act. In doing so, the referee found that plaintiff did not exhaust all reasonable means of remaining employed before leaving, and did not request an alternate training date or give notice to management of her concerns. Plaintiff appealed to the Board, and sought to submit additional evidence in the form of training class records, sign in sheets, and text messages, but did not explain why she failed to introduce this information at the hearing.

¶ 11 On August 28, 2013, the Board affirmed the referee's decision. In doing so, the Board indicated that it had reviewed the record, including the transcript of the telephone hearing, and found it to be adequate and that further taking of evidence was unnecessary. The Board stated that it had not considered plaintiff's request to submit additional evidence because she had failed to set forth an explanation showing that for reasons not her fault and outside her control she was unable to introduce the evidence at the hearing before the referee, as required by section 2720.315(b) of the Benefit Rules.

¶ 12 The Board summarized the facts of the case and noted that plaintiff gave several reasons for quitting, with the final straw being the mandatory training session that followed her overnight work shift. The Board found that an employee should make reasonable efforts to resolve conflicts arising from her employment before voluntarily terminating employment and seeking unemployment benefits, and that in this case plaintiff left work voluntarily because she did not want to attend a mandatory meeting after working all night. The Board found that plaintiff had notice of the training session at least one month in advance and could have arranged to attend an alternate training but chose not to do so, and made no attempt to resolve any issues she had by

following policy and contacting the administrator as she was instructed. The Board thus found that because plaintiff did not exhaust all reasonable means of remaining employed before leaving, and continuing work was available to her, plaintiff had voluntarily left work without good cause attributable to her employer, and, accordingly that she was disqualified from receiving benefits under section 601(A) of the Act. Thereafter, plaintiff filed a complaint for administrative review and the circuit court affirmed the Board's decision.

¶ 13 Plaintiff now appeals, and our review of her challenge is limited to the propriety of the Board's decision; we do not review the decision of the circuit court or the referee. *Phistry v. Department of Employment Security*, 405 Ill. App. 3d 604, 607 (2010). Plaintiff raises numerous issues, and we first address her argument that the Board's decision was clearly erroneous.

¶ 14 The question of whether plaintiff voluntarily left work without good cause attributable to her employer involves a mixed question of law and fact, to which we apply the clearly erroneous standard of review. *Childress v. Department of Employment Security*, 405 Ill. App. 3d 939, 942 (2010), citing *AMF Messenger Service Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 395 (2001). An agency decision is clearly erroneous where a review of the entire record leaves the court with the definite and firm conviction that a mistake has been committed. *Id.*

¶ 15 An individual claiming unemployment insurance benefits has the burden of establishing her eligibility. *Grigoleit Co. v. Department of Employment Security*, 282 Ill. App. 3d 64, 68 (1996); *Collier v. Illinois Department of Employment Security*, 157 Ill. App. 3d 988, 991 (1987). Pursuant to the Act, a former employee is ineligible for benefits if she left work voluntarily without good cause attributable to her employer. 820 ILCS 405/601(A) (West 2012); *Childress*, 405 Ill. App. 3d at 943.

¶ 16 Good cause results from circumstances that produce real and substantial pressure to terminate employment and that would compel a reasonable person working under the same circumstances to act in the same manner. *Childress*, 405 Ill. App. 3d at 943. In determining whether an employee had good cause for leaving employment, the focus is on the conduct of the employer (*Grant v. Board of Review of Illinois Department of Employment Security*, 200 Ill. App. 3d 732, 734 (1990)), and 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)). That said, an individual must make a reasonable effort to resolve the cause of her leaving prior to quitting, when such effort is possible, and the focus in this regard rests on the employee's actions. *Walls v. Department of Employment Security*, 2013 IL App (5th) 130069, ¶¶ 15, 17.

¶ 17 Focusing on the employer's actions in this case, the record shows that Achievement Unlimited asked plaintiff to attend a mandatory training session that was being held immediately after her 10-hour overnight shift ended on December 6, 2012, and which would last for six hours. Wright testified that plaintiff was provided with notice of this training session at least one month in advance of its scheduled date and that Achievement Unlimited would have arranged an alternate date for employees, such as plaintiff, who could not attend on the scheduled date. The record also shows that Achievement Unlimited instructed plaintiff on the proper protocol to follow pertaining to reporting work-related issues and specified that she should raise any unresolved issues with the administrator. Plaintiff acknowledged that this was her understanding of the applicable protocol.

¶ 18 Turning to plaintiff's actions, plaintiff testified that she had numerous work-related concerns, including being subjected to discrimination, not being allowed to eat lunch or take

breaks during her shifts, and not being paid for all of the hours she worked, but that when she followed company protocol regarding reporting complaints, her complaints fell on deaf ears. Wright, however, testified that plaintiff never contacted her regarding any work-related issues. Plaintiff further testified that the "last straw" came when she was asked to attend a training session that was being held immediately following her overnight shift, that she did not receive notice of that session until the day before its scheduled date, and that due to this incident, she "left employment." Wright testified that plaintiff did not request to reschedule the training session at issue, that plaintiff failed to show up for that training session, and also failed to show up for her next scheduled shift. According to Wright, plaintiff also refused to answer calls from Wright and the house administrator, as well as failed to respond to their messages.[2]

¶ 19 The Board, as trier of fact, found that plaintiff received notice of the training session at least one month in advance of its scheduled date, that she failed to request an alternate date, and that she did not attempt to resolve any of her other work-related concerns by contacting Wright as she had been instructed to do. We must defer to the Board's factual findings unless they are against the manifest weight of the evidence. *Manning v. Department of Employment Security*, 365 Ill. App. 3d 553, 556 (2006). An agency's findings of fact are against the manifest weight of the evidence where the opposite conclusion is clearly evident. *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 204 (1998). Here, we do not find that to be the case.

¶ 20 We find that the record supports the Board's conclusion that plaintiff left her employment due to the requirement that she attend a training session which would take place right after she had completed a 10-hour-long overnight shift on December 6, 2012. Plaintiff described this

[2] Although plaintiff contends that Wright's testimony was perjured, we find no evidence in the record of perjury on the part of Wright.

incident as the "last straw" and testified that she left employment immediately thereafter. Further, the record shows that plaintiff had reasonable options, other than quitting, to resolve this issue. Plaintiff could have reached out to Wright to reschedule the date she would attend the training, but she did not to do so. Further, the record shows that although continuing work was available to plaintiff, she chose not to show up for her next scheduled shift or to respond to calls from Wright or the house manager. We thus find that the Board's conclusion that plaintiff voluntarily left her employment without good cause attributable to Achievement Unlimited, and was thus ineligible for unemployment benefits, was not clearly erroneous. *Walls*, 2013 IL App (5th) 130069, ¶¶ 15-17; *Phistry*, 405 Ill. App. 3d at 607.

¶ 21 Plaintiff, however, contends that in reaching its decision, the Board ignored evidence that was in the record, willfully ignored laws and facts, and deliberately ruled against her with malice. However, nothing in the record shows that the Board failed to consider any evidence or that it did not adhere to applicable law. To the contrary, the record shows that the Board considered all of the evidence in the record, and applied applicable law to that evidence, in rendering its decision. Although the Board did not consider evidence which plaintiff sought to introduce for the first time on appeal to the Board, pursuant to applicable regulations, that evidence could not properly be considered by the Board due to plaintiff's failure to provide an explanation showing that for reasons not her fault and outside her control she was unable to introduce that evidence at the hearing before the referee. *White v. Department of Employment Security*, 376 Ill. App. 3d 668, 672-73 (2007); 56 Ill. Adm. Code §2720.315(b)(1)(B). For this same reason, plaintiff's argument that she was denied due process as a result of the Board's failure to consider this evidence fails. A claim of due process violation will be sustained only upon a showing of prejudice in the proceeding (*Sudzus v. Department of Employment Security*,

393 Ill. App. 3d 814, 825 (2009)), and here we find that there was none where the Board could not properly consider the evidence at issue.

¶ 22 Plaintiff also contends that the trial court's order is void because it was issued by a judge who was not the initial judge assigned to this case. However, as previously noted, we review the Board's decision, and not that of the trial court. *Phistry*, 405 Ill. App. 3d at 607. Further, although plaintiff maintains that Circuit Court of Cook County General Order 3.1, 1.1(b) requires the written approval by the chief judge before a judge other that the one assigned to a case can sit as trier of a case, we note that this order pertains to cases in the chancery division and the case at bar proceeded in the law division. Moreover, jurisdiction is vested in courts and not in individual judges (*People v. Gray*, 363 Ill. App. 3d 897, 900 (2006)), and a case can be assigned to a judge and reassigned from one judge to another, without a formal written order (*Charleston National Bank v. Muller*, 16 Ill. App. 3d 380, 384 (1974)). Accordingly, this argument fails.

¶ 23 Plaintiff also argues, without citation to authority, that the Board's order is not binding because it does not contain "mandated contents for Reviewing of Facts and Conclusion of Law and/or not utilizing evidence and facts within the record." However, the record shows that the Board's order contains a recitation of the evidence and hearing testimony, findings of fact, citation to legal authority, and legal analysis and conclusion. Accordingly, plaintiff's argument is without merit.

¶ 24 Finally, plaintiff also contends, that Wright, as administrator for Achievement Unlimited, could not legally represent Achievement Unlimited at the telephone hearing without a written consent to do so. However, there is no evidence in the record that Achievement Unlimited did not consent to have Wright represent it at the hearing. Further, this court has held that a non-attorney witness may submit information on behalf of its employer during administrative

hearings. *Sudzus*, 393 Ill. App. 3d at 822-23. Accordingly, this argument also fails. Our colleague has written a special concurrence on this issue advancing his determination that plaintiff has forfeited the issue. We have no argument with that opinion. However, we do not join with our colleague in the dicta and statements as to what he would no longer be inclined to follow. See *infra*, ¶¶ 29-30.

¶ 25 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 26 Affirmed.

¶ 27 PRESIDING JUSTICE DELORT, specially concurring:

¶ 28 I fully concur in the panel's order, with the exception of ¶ 24. That paragraph addresses the plaintiff's contention that the employer's administrator, Tara Wright, could not participate in the hearing because she did not have the "written consent" of the employer, Achievement Unlimited, to do so. The record is bereft of any evidence that Wright somehow appeared at the hearing by accident and did so without permission, explicit or implicit, of Achievement Unlimited. The plaintiff's entire argument on this point consists of a single sentence: "Parker/Appellant do [sic] not believe that the Administrator of a corporation can legally represent the Corporation without a written consent from the Corporation." The plaintiff provides no legal authority to support her written consent argument, and accordingly she forfeited the issue. Even so, the point is utterly without merit. This court rejected a similar argument in *Parkway Bank v. Korzen*, 2013 IL App (1st) 130380, ¶ 60, stating: "[a]ttorneys who file lawsuits or appear for parties in litigation have no burden to tender their oaths of office on request or to provide written proof to an opposing party that they actually were hired by their clients." The issue here involves an employee-witness appearing for a corporation, rather than

an attorney, but there is no principled distinction between the two relating to the need to proffer some sort of written consent.

¶ 29 However, one other aspect of Wright's appearance gives me some concern. The employer's sole presence at the hearing was through Wright, a non-attorney. The State's response brief candidly recognizes that the issue, reframed from one of "written consent" to one of the unauthorized practice of law, arguably falls within the purview of *Stone Street Partners, LLC v. City of Chicago*, 2014 IL App (1st) 123654, ¶ 16, *pet. for leave to appeal granted*, No. 117720 (Sept. 24, 2014). In that case, which is now on further appeal before our supreme court, this court held that a corporation cannot appear at an administrative hearing other than by a licensed attorney at law. The *Stone Street* court distinguished two similar cases involving unemployment hearings in which this court had rejected challenges to non-attorney representation of corporations, essentially because those cases involved an individual from the corporation appearing as a witness rather than as an advocate. See *id.* (distinguishing *Sudzus v. Department of Employment Security*, 393 Ill. App. 3d 814 (2009), and *Grafner v. Department of Employment Security*, 393 Ill. App. 3d 791 (2009)). Our supreme court may soon clarify whether non-attorneys can represent corporations at administrative hearings at all, only in certain circumstances (such as if the non-attorney appears only to testify), or in all circumstances.

¶ 30 Upon further consideration of the issue, I would be inclined to no longer follow *Sudzus* and *Grafner*, and instead would hold there should be a bright-line rule barring non-attorney representation even at unemployment hearings. However, because: (1) the plaintiff framed the issue solely in terms of the need for a written consent; (2) she preserved no argument falling within the non-attorney representation doctrine of *Stone Street*; and (3) our supreme court will soon grant clarification on the issue, I concur in the panel's resolution of the case.