FIFTH DIVISION
January 20, 2017
Modified Upon Denial of Rehearing June 16, 2017

No. 1-15-2906

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ELITE LABOR SERVICES ON 18th ST., LTD., an Illinois Corporation, Plaintiff-Appellant, v. THE BOARD OF REVIEW OF THE ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY; THE ILLINOIS DEPARMENT OF EMPLOYMENT SECURITY; DIRECTOR OF ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY; and VALENCIA WILLIAMS, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 15 L 50121 Honorable Robert Lopez Cepero, Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Gordon and Justice Hall concurred in the judgment.

O R D E R

¶ 1 *HELD*: The Board of Review's determination that an employee was eligible for unemployment benefits was clearly erroneous.

¶ 2 Plaintiff, Elite Labor Services on 18th St., Ltd. (Elite), appeals from an order of the circuit court affirming a decision of defendant, the Board of Review of the Illinois Department of Employment Security (the Board), that defendant Valencia Williams was eligible to receive unemployment benefits. Elite contends that because Williams admitted that she left work voluntarily, without good cause attributable to Elite, she was ineligible to receive unemployment benefits. We reverse.

¶ 3 The record reveals that Williams was employed by Elite from March 19, 2014 until June 24, 2014. She then sought unemployment benefits. Elite protested the claim, alleging that Williams quit.

¶ 4 On October 15, 2014, a Department claims adjustor issued a "Determination" of benefits concluding that Williams voluntarily left her employment at Elite because she did not have transportation, that is, she did not have a car and could no longer walk to work. Therefore, because Williams left work voluntarily without good cause attributable to the employer, she was ineligible for unemployment benefits pursuant to section 601(A) of the Unemployment Insurance Act (Act) (see 820 ILCS 405/601(A) (West 2014) ("[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")).

¶ 5 Williams filed a request for reconsideration and appeal stating:

> "Elite is a wonderful employer, but getting up so early has been a concern of family members, for a lady to have to walk or ride her bike at 1:30 a.m. in the morning is not lady like. I could still work for Elite it [is] a wonderful company. Been seeking employment at more reasonable time of day."

¶ 6 A telephone hearing was held on November 10, 2014. Williams appeared *pro se*. Elite appeared through Joseph McDonnell, an employer representative with Personnel Planners, and Joseph Garcia, the on-site manager at the Joliet Office.

¶ 7 Williams testified that she began working for Elite in March 2014, and her last assignment ended in August or September of 2014. She "went looking for other employment" because her family did not want her walking to Elite at 1:45 a.m. She thought that Elite was "wonderful" but that it was "not good for a lady to be walking [outside] at a quarter to 2:00 in the morning." Because her family members were upset, she "started looking for employment [at] more of a reasonable time." Williams explained that Elite was "first come/first served" so if she wanted to work, she had to leave early in order to be at the front of the line in case only a few workers were needed. She concluded that it was "nice" to work for Elite but that it was "too dangerous" to get up that early to go to work, and that it was not Elite's fault that she did not have "the proper transportation." Williams stated that she was not lazy, that she was "just trying to get unemployment to get money to go look for jobs," and that she might be hired by Sears "sometime this week."

¶ 8 Garcia testified that Williams started on March 19, 2014, and that her last assignment was on June 24, 2014. Garcia explained that the jobs were "first come/first served" and were temporary. Williams was "pretty much a regular," that is, she would be at Elite every morning and she would "normally" be sent out. Williams then stopped coming and there was "no indication why." Williams never submitted a resignation; rather, she stopped presenting herself for work.

¶ 9 On November 17, 2014, the administrative law judge (ALJ) issued a decision regarding whether Williams was eligible for benefits under section 601(A) of the Act. The ALJ found that

Williams worked for a staffing agency, that she would arrive early at the agency in order to be considered for a job and that she stopped presenting herself in line because her family was concerned about her safety. Therefore, because Williams worked for a staffing agency, she did not quit; rather, she was effectively laid off at the end of every shift and would come in the next day seeking a new assignment. Accordingly, she was not disqualified from benefits under Section 601(A) of the Act. Elite appealed this decision to the Board.

¶ 10 The Board first determined that section 601(A) of the Act did not apply to the case at bar. Next, the Board determined that Williams was eligible for benefits under section 602(A) of the Act (820 ILCS 405/602(A) (West 2014)), because as a day laborer Williams was effectively discharged at the end of each day when her assignment ended. Therefore, Williams could not separate from a job that did not exist. The Board concluded that "[w]hatever reasons [Williams] had for choosing not to continue to take day laborer assignments from the employer are irrelevant," and that she was discharged for reasons other than misconduct. Therefore, the disqualifying provisions of Section 602(A) of the Act did not apply and Williams was eligible for unemployment benefits.

¶ 11 In February 2015, Elite Labor Services filed a complaint for administrative review in the circuit court. The circuit court subsequently affirmed the Board.

¶ 12 On appeal, Elite contends that because it was undisputed that Williams left work voluntarily, she was therefore ineligible for benefits under section 601(A) of the Act. Pursuant to section 601(A) of the Act, an employee is ineligible for unemployment benefits if she left work voluntarily without good cause attributable to her employer. 820 ILCS 405/601(A) (West 2014).

¶ 13 The Board responds that Williams was eligible for benefits under section 602(A) of the Act because she was effectively discharged at the end of each work day when her assignment

ended, and this discharge was not related to any misconduct on her part. Under section 602(A) of the Act (820 ILCS 405/602(A) (West 2014)), an employee discharged for her misconduct in connection with her work is ineligible to receive unemployment benefits.

¶ 14 For the following reasons, we conclude that the Board's determination that section 601(A) does not apply to the instant case is clearly erroneous because it is undisputed that Williams chose to stop presenting herself to Elite voluntarily without good cause attributable to her employer, that is, her family felt it was unsafe. We further conclude that pursuant to section 601(A), Williams is disqualified from receiving unemployment benefits.

¶ 15 Section 500(c) of the Act provides that an applicant is eligible for benefits for a week when she "is able to work, and is available for work; provided that during the period in question [s]he was actively seeking work and [s]he has certified such." 820 ILCS 405/500(c) (West 2014). The Department of Employment Security'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).

¶ 16 The record reveals that Elite is a temporary labor service agency that places day or temporary laborers at a third-party client. See 820 ILCS 175/5 (West 2014); see also 56 Ill. Adm. Code § 2865.1 (1993) (a "Temporary help firm" is "an employing unit that hires its own

employees and assigns them to clients to support or supplement the client's workforce in work situations such as employee absences, temporary skill shortages, seasonal workloads, and special assignments and projects").

¶ 17 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 her eligibility for unemployment 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 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, this court definitely and firmly believes that a mistake has occurred. *Weinberg*, 2015 IL App (1st) 140490, ¶ 21.

¶ 18 We note that although the Board determined that Williams was eligible for benefits, the record does not reflect if the Board considered whether Williams had rebutted the presumption that because she did not contact Elite for assignments, she was not actively seeking work. Here, Williams testified that she stopped going to Elite because her family thought it was unsafe for her to be out at such an early hour, and Garcia testified that Williams was a "regular" and then stopped presenting herself for work. Thus, a rebuttable presumption exists that Williams was not

actively seeking work and she must show "good cause" for her failure to contact Elite for assignments in order to overcome this presumption. See 56 Ill. Adm. Code § 2865.115(h).

¶ 19 "[G]ood cause for leaving work [exists] when there is a real and substantial reason that would compel a reasonable person *** to leave work" and the person "has made a reasonable effort to resolve the cause of his/her leaving, when such an effort is possible." 56 Ill. Adm. Code § 2840.101(b) (2010). One example is a unilateral change in the terms and conditions of employment that renders the job unsuitable. *Childress v. Department of Employment Security*, 405 Ill. App. 3d 939, 943 (2010). However, an employee's dissatisfaction with work hours and wages generally does not constitute good cause for leaving employment. *Lojek v. Department of Employment Security*, 2013 IL App (1st) 120679, ¶ 36. Moreover, the employee must make a reasonable effort to resolve the cause for leaving when possible. *Id*.

¶ 20 The record reveals that Williams stopped presenting herself for work because of her acquiescence to her family's concerns about her safety and early morning commute. Garcia, Elite's on-site manager, testified that Williams stopped coming and there was "no indication why." Thus, because the record reveals that the only change in the circumstances of Williams work was her willingness to walk or ride her bike to Elite at 1:45 a.m., good cause did not exist for Williams' failure to contact Elite for assignments.

¶ 21 Accordingly, the Board's decision that section 601(A) did not apply to this case was clearly erroneous because the record reveals that Williams left her employment voluntarily without good cause attributable to her employer. Because Williams voluntarily left her job without good cause attributable to Elite, she is ineligible to receive unemployment benefits. 820 ILCS 405/601(A) (West 2014). Because we find that Williams is ineligible to receive benefit under section 601(A) of the Act, we need not address the Board's argument that Williams is

eligible for benefits pursuant to section 602(A) of the Act. See *Arroyo v. Doherty*, 296 Ill. App. 3d 839, 845 (1998) ("Section 601(A) and section 602(A) in effect create two groups of claimants ineligible for benefits: those who left work voluntarily without good cause (section 601(A)), and those who were fired for misconduct (section 602(A)).").

¶ 22 Accordingly, we reverse the Board's determination that Williams was eligible for unemployment benefits.

¶ 23 Reversed.