2012 IL App (2d) 110883-U
No. 2-11-0883
Order filed September 4, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

BARBARA J. WELLS, Plaintiff-Appellant, v. ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY, BOARD OF REVIEW, DIRECTOR, ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY, and THE COUNTY OF WINNEBAGO, Defendants-Appellees.	)	Appeal from the Circuit Court of Winnebago County. No. 10-MR-867 Honorable Kathleen O. Kauffmann, Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Hutchinson concurred in the judgment.

ORDER

Held: The Board of Review's decision denying the plaintiff's request for unemployment benefits was not clearly erroneous.

¶ 1 The plaintiff, Barbara Wells, worked as a "navigator" for the County of Winnebago (the County) from December 19, 2007, to May 21, 2010. A navigator is someone who assists the public in using the self-help legal resource center located in the courthouse library. The plaintiff resigned

in order to pursue flight attendant training. After the plaintiff did not receive a job offer as a flight attendant, she applied for benefits under the Unemployment Insurance Act (the Act) (820 ILCS 405/100 *et seq.* (West 2010)). However, the Illinois Department of Employment Security (IDES) denied her claim, agreeing with the County that the plaintiff was not entitled to benefits because she had voluntarily resigned her position. The plaintiff continued to pursue benefits and requested a hearing before a referee. The referee affirmed IDES' denial of benefits. The plaintiff appealed the referee's decision to IDES's Board of Review (the Board). The Board adopted the factual findings and legal reasoning of the referee and sustained his decision. The plaintiff then filed a complaint for administrative review of the Board's decision in the circuit court of Winnebago County. The circuit court affirmed the Board's decision and the plaintiff then appealed to this court. The plaintiff contends that she is entitled to unemployment benefits because she left her employment for good cause. We affirm.

¶ 2 On May 10, 2010, the plaintiff gave a resignation letter to her supervisor at the Self-Help Center (the Center), Attorney Brian Buzard, the Director of the Law Library. The letter stated:

> " Dear Mr. Buzard:
>
> The purpose of this letter is to announce my resignation as Legal Self-Help Center Navigator, effective May 21, 2010.
>
> This afternoon, I was offered an opportunity with benefits, and I accepted the position. In the past 2 years, I've learned much in managing a productive Legal Self-Help Center. I have enjoyed working with you over the past 7 months, and wish you and the Legal Self-Help Center the best.
>
> Sincerely,

Barbara J. Wells."

¶ 3 On June 14, 2010, after the plaintiff was unable to obtain a job as a flight attendant, she filed a claim for unemployment benefits with the IDES. The County timely filed a protest contesting her eligibility for benefits, noting that the plaintiff had voluntarily quit her job. In seeking benefits, the plaintiff claimed that she had sought other employment "due to circumstances of a hostile work environment and constructive discharge." The plaintiff asserted that her work environment was hostile because (1) the Center maintained an "open office environment;" (2) the number of patrons had increased: (3) and the patrons could be aggressive or disruptive upon learning that she could not practice law or for other reasons.

¶ 4 On June 30, 2010, a claims adjudicator for the IDES denied the plaintiff's claim, finding that she was ineligible for benefits because she had left voluntarily without good cause attributable to her employer. The plaintiff appealed, and the matter was scheduled for a hearing before an IDES referee.

¶ 5 On August 4, 2010, an IDES referee conducted an evidentiary hearing. The plaintiff was the only witness to testify. She testified that she quit her job because it "began posing a risk to [her] health" and because she was "offered an opportunity to go into unpaid training as a flight attendant." However, the plaintiff was ultimately not able to obtain a job as a flight attendant. The plaintiff testified that her job as a navigator adversely affected her health because it caused her stress. In October 2009, her doctor had placed her on medical leave for two weeks due to chronic anxiety. The plaintiff stated that she was under stress because someone in the circuit court clerk's office was giving forms to *pro se* litigants and telling them that the plaintiff could help them complete the forms. The plaintiff would then have to tell the litigants that she could not fill out the forms for them

because that would constitute practicing law, something that she could not do. Some of the litigants would then act abusively towards her, such as spitting at her. The plaintiff reported this problem to her supervisor, Attorney Thomas Jakeway, who was the deputy court administrator. He told her there was nothing he could do about the clerks.

¶ 6 The plaintiff also attributed her job stress to an increased volume of people using the Self-Help Center (the Center) (beginning around April 2009), and to its "open office environment." Originally, the Center had been located on the first floor of the courthouse. However, in September 2009, it had moved to a larger office within the law library. The plaintiff then began assisting people in the law library after the Center moved into that area. Because of where her desk was located, people needing assistance would see her. She would tell Buzard what they wanted, and he would tell her what books to provide. She also helped lawyers and *pro se* litigants use Westlaw. When the Center moved, no one said anything to her about assisting in the law library. She did not believe that moving the Center into the library was appropriate because issues were created by "members of the public *** coming into an office with unfettered, unsupervised access." She stated that she had to perform "housekeeping duties," take time to replace stolen materials and supplies, and "control disruptive and abusive behavior."

¶ 7 The plaintiff stated that her work situation did not improve. On April 21, 2010, she sent an e-mail to her current supervisor, Buzard, and her former supervisor, Jakeway, saying that her work environment was hostile and time-consuming due to the actions of the deputy clerks. On April 22, 2010, Jakeway instructed the plaintiff to assist people with fill-in-the-blank order of protections. The plaintiff told Jakeway that only someone in the Clerk's office or the Sate's Attorney's office could

provide litigants with such clerical assistance. Jakeway responded that if she were to "push" the issue, the Center would be closed.

¶ 8 In May 2010, Buzard informed her that he would be away for three consecutive days. The plaintiff asked Buzard for permission to lock the Center while he was away during her lunch and after her working hours. Buzard denied her request, stating that the Center needed to stay unlocked in case someone brought patrons there. She then asked the Director of Court Administration, who also said that the Center should remain unlocked. The plaintiff thought that her supervisors wanted the door kept unlocked for mistaken reasons, but she "didn't go into a lot of detail" about the issue with Buzard after he returned. On May 10, 2010, she sent her letter of resignation to Buzard, indicating that she intended to resign on May 21.

¶ 9 On July 12, 2010, the referee issued its decision, determining that the plaintiff was ineligible for benefits under section 601(A) of the Act. The referee found that the plaintiff "quit [her] job due to the stress caused by an increased case load and staff shortages." The referee noted that "[w]hen an opportunity for a new job appeared," the plaintiff tendered her notice, but "unfortunately, the new job did not materialize." The referee further found that "[a]ll jobs are stressful," and concluded that the plaintiff "left work voluntarily without a good cause attributable to [her] employer."

¶ 10 The plaintiff appealed the referee's determination to the Board. On November 23, 2010, the Board issued its decision, finding that section 601(A) of the Act disqualified the plaintiff from receiving benefits. The Board explained that the record did not establish that the plaintiff left her employment for good cause attributable to her employer. The Board rejected the plaintiff's contention that her employer "compelled or pressured [her] to practice law without a license." The plaintiff's main job stress, the Board concluded, "was the increasing press of requests from an

increasingly large and demanding clientele." The Board found that any pressure on the plaintiff to provide "legal advice" came from the patrons, not her employer, and some patrons' dissatisfaction "did not make her job unsuitable as that term is used in Illinois unemployment insurance law." The Board further found that there had not been a substantial change in the nature of the plaintiff's employment, such that her voluntarily leaving her job would entitle her to benefits.

¶ 11 The Board also determined that the October 2009 physician's approval of a two-week leave (followed by an unrestricted return) did not establish the plaintiff's entitlement to benefits. The Board decided that the evidence fell short because the physician had not recommended any changes in the plaintiff's job or that she quit, and "[t]here was no evidence that [she] had any ongoing disability which would warrant her quitting her job in May 2010."

¶ 12 On December 28, 2010, the plaintiff filed a complaint in the circuit court seeking administrative review of the Board's decision. On August 17, 2011, the circuit court affirmed the Board's decision. The circuit court found that the County had not done anything which would have made a reasonable person in the plaintiff's circumstances feel compelled to voluntarily resign her position. Rather, the plaintiff had voluntarily left her employment in order to pursue a new career. Following the circuit court's ruling, the plaintiff filed a timely notice of appeal to this court.

¶ 13 At the outset, we note that the plaintiff has filed a motion to strike portions of the defendants' brief. The plaintiff contends that the defendants "argue[] findings and conclusions outside of [the] final decision that is on appeal." The plaintiff insists that this is unfair and unjust because it puts her at a disadvantage of having to defend against findings and conclusions that are beyond the Board's final decision. However, all of the "findings and conclusions" that the plaintiff complains about are based on evidence in the record or reasonable inferences therefrom. As it is well settled that this

court may affirm on any basis appearing in the record *(Raintree Homes v. Village of Long Grove*, 209 Ill. 2d 248, 261 (2004)), the plaintiff's argument is without merit. We therefore deny her motion.

¶ 14 Turning to the merits of the plaintiff's appeal, the plaintiff's "core issue" is that her employer held her out to the public as an attorney, or as a substitute for an attorney, in violation of section 205/1 of the Attorney Act (705 ILCS 205/1 (West 2010)). The plaintiff insists that because her employer wanted her to do something illegal, her only recourse was to quit. Because this constituted a "good cause" for resigning, the plaintiff maintains that she is entitled to unemployment benefits.

¶ 15 On administrative review, this Court reviews the Board's decision, not that of the circuit court or the referee. *Abbott Industries v. Department of Employment Security*, 2011 IL App (2d) 100610, ¶ 15. The Board's factual findings will not be disturbed unless they are against the manifest weight of the evidence. *Id.* As such, a reviewing court will not reweigh the evidence, determine the credibility of witnesses nor resolve conflicts in testimony. *Hurst v. Department of Employment Security*, 393 Ill. App. 3d 323, 329 (2009).

¶ 16 The Board's ultimate determination on whether an employee voluntarily left her employment without good cause attributable to her employer (thus disqualifying her from receiving unemployment benefits under section 601(A) of the Act) is a mixed question of law and fact reviewed for clear error. *Childress v. Department of Employment Security*, 405 Ill. App. 3d 939, 942 (2010). A mixed question of law and fact is one in which the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard; or to put it another way, whether the rule of law as applied to the established facts is violated. *Cinkus v. Village of Stickney Municipal Officers Electoral Bd.*, 228 Ill. 2d 200, 210 (2008).

The Board's determination will not be found to be clearly erroneous unless this court, upon review of the entire evidence, is left with the definite and firm conviction that a mistake has been committed. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 393 (2001).

¶ 17 It is well settled that only attorneys are entitled to practice law. 705 ILCS 205/1 (West 2010). What constitutes the "practice of law" defies mechanistic formulation. *In re Discipio*, 163 Ill. 2d 515, 523 (1994). As our supreme court has noted, "it is the character of the acts themselves that determines the issue." *Chicago Bar Ass'n v. Quinlan & Tyson, Inc.*, 34 Ill. 2d 116, 120 (1966). The focus of the inquiry must be on whether the activity in question required legal knowledge and skill in order to apply legal principles and precedent. *Discipio*, 163 Ill. 2d at 523.

¶ 18 We do not believe that the Board's decision to deny the plaintiff unemployment benefits was clearly erroneous. The record does not support the plaintiff's contention that she quit her job because her employer wanted her to practice law. The plaintiff complained that the employees in the clerk's office informed *pro se* litigants that she could complete legal forms on their behalf, or in other terms, practice law. There are two problems with the plaintiff's argument. First, a reasonable person in the plaintiff's position should have realized that the deputy clerks did not have the power to dictate how she was to do her job. Moreover, the *pro se* litigants did not have the right to tell the plaintiff how to do her job either. Second, the type of forms that the plaintiff was being asked to complete–such as order of protection forms–were simple forms that were designed so that non-lawyers could complete them. The plaintiff insists that only an attorney can ascertain if a form is "simple." See *Chicago Bar Ass'n*, 34 Ill. 2d at 123. Here, however, one of the plaintiff's supervisors, Jakeway, an attorney, essentially found that the form was "simple" when he instructed

the plaintiff to help the *pro se* litigants complete that form. Thus, had the plaintiff helped the *pro se* litigants complete the simple fill-in-the- blank forms at issue in this case, she would not have been practicing law.

¶ 19 We also reject the plaintiff's argument that the Board erred in changing her argument from being that her employer improperly asked her to "practice law" to that her employer improperly asked her to give "legal advice." The plaintiff contends that the Board's misstatement of her argument resulted in its erroneous decision. Our review of the record indicates that Board was using the terms "practice law" and "legal advice" synonymously and not in an attempt to misconstrue the plaintiff's argument. Further, as explained above, the plaintiff's employer was not asking her to "practice law." Thus, even if the Board should have used the term "practice law" rather than "legal advice" in entering its decision, its decision was not clearly erroneous.

¶ 20 The plaintiff's second contention on appeal is that the Board erroneously found that there was not a substantial change in the nature of her employment when the Center was moved to the law library. After that occurred, the plaintiff contends that she was required to do the work of law library assistant, which included maintaining books, helping people in the law library, and helping lawyers and litigants with Westlaw. As these additional duties were substantial and unilaterally imposed upon her, the plaintiff insists that she had good cause to leave her job and is therefore entitled to unemployment benefits.

¶ 21 As stated above, under the Act, a worker is ineligible for unemployment benefits if she leaves work "voluntarily without good cause attributable to the employing unit." *Davis v. Board of Review*, 125 Ill. App. 3d 67, 72 (1984). The Act does not define good cause. However, it is well settled that an employee, who voluntarily leaves her job, may be entitled to unemployment benefits if the

employer made a substantial, unilateral change that makes the employee's job unsuitable for her. See *id.* Nonetheless, not every change to an employee's job constitutes a substantial change. As the Appellate Court, First District stated in *Davis*:

> " 'Normally, when any person is employed, he is employed to do a particular task at an assigned time, and at an assigned place. It does not follow that the employer agrees never to modify or change the task, the time or the place. If the employer should decide to modify or change any of these and the change is reasonable, the employee must abide by the employer's decision at the risk of being ineligible for unemployment compensation if he refuses.' " *Id.*, quoting *Tucker v. Commonwealth Unemployment Compensation Board,* 319 A. 2d 195, 196 (1974).

¶ 22 The Board's determination that there had not been a substantial change in the nature of the plaintiff's employment so as to entitle her to benefits after voluntarily leaving her job was not clearly erroneous. The type of additional work that the plaintiff was being asked to do—provide books to the patrons after the law librarian told her which books to provide or help lawyers and litigants with Westlaw—was neither onerous nor that different from the type of work that she was hired to do as a navigator for the Center. Cf *id.* at 69-73 (there was a substantial change in the nature of the claimant's employment when she was hired to do administrative duties in setting up a preschool but then was required to work with emotionally disturbed teenagers, something she had neither training nor qualifications to do).

¶ 23 Further, we reject the plaintiff's argument that the Board's decision was wrong because it was based on a misstatement of the facts, that being she was hired to work in the law library. Even though she was hired to work in the Center, not the law library, the fact remains that her job did not

substantially change from the time that she started her job to the time that she voluntarily quit her position. Thus, the Board's decision that she was not entitled to unemployment benefits for voluntarily leaving her job was not clearly erroneous.

¶ 24 For the foregoing reasons, the judgment of the circuit court upholding the decision of the Board is affirmed.

¶ 25 Affirmed.