

No. 1-12-1274

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

DARSHARLETTE Y. BARRON,)	
)	
Plaintiff-Appellee,)	Appeal from the
v.)	Circuit Court of
)	Cook County.
)	
THE DEPARTMENT OF EMPLOYMENT)	
SECURITY; DIRECTOR, EMPLOYMENT)	No. 12 L 50007
SECURITY; and BOARD OF REVIEW,)	
THE DEPARTMENT OF EMPLOYMENT)	
SECURITY,)	
)	
Defendants-Appellants,)	Honorable
)	Robert Lopez Cepero,
)	Judge Presiding.
(Western and Southern Life Insurance Company,)	
c/o UC Express,)	
)	
Defendant).)	
)	

JUSTICE TAYLOR delivered the judgment of the court.
Presiding Justice McBride and Justice Palmer concurred in the judgment.

ORDER

¶ 1 *Held:* Where claimant left her employment voluntarily under the belief that her employer was involved in fraudulent behavior, but shows no firsthand evidence of such behavior, and claims to have a large decrease in her pay caused by the change from salary to

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commission, she did not have good cause for leaving attributable to her employer.

¶ 2 Defendants, the Illinois Department of Employment Security, the Director of the Illinois Department of Employment Security, and the Board of Review of the Illinois Department of Employment Security (Board) appeal from an order of the circuit court of Cook County reversing the decision of the Board of Review. The Board ruled that plaintiff, Darsharlette Barron, was ineligible for unemployment compensation benefits because she voluntarily left her employment without good cause attributable to her employer, Western & Southern Life Insurance Company (Western & Southern).

¶ 3 BACKGROUND

¶ 4 Plaintiff was employed as a sales representative by Western & Southern from January 12, 2010, until December 16, 2010. According to plaintiff's employment contract, she started with a salary and was transitioned to commission in September 2010, at which time she experienced a sharp decline in her income. Her duties included taking applications for insurance policies. After a client's application was approved and a policy issued, a sales representative had a limited amount of time to get a signed receipt of policy acknowledgment in order to get paid.

¶ 5 In November 2010, plaintiff came to believe that her sales manager, Ralph Prapp, had forged a client's signature on a receipt of policy acknowledgment. Unable to get the client's signature herself, she noticed someone else had procured a signature. She brought the matter to the attention of the district manager, Tunde Fashola, who conducted an investigation and concluded that the client's signature was genuine. Still believing the signature was forged, plaintiff submitted her letter of resignation on December 9, 2010.

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¶ 6 On December 12, 2010, plaintiff applied for unemployment benefits with the Illinois Department of Employment Security. Western & Southern protested the claim, contending she left work voluntarily for personal reasons. They submitted a copy of plaintiff's resignation letter, which stated that she had been extremely satisfied but was leaving to better accommodate her current situation and advance her career. Plaintiff told the claims adjudicator that she left due to a drastic change in income and a belief that a client's signature had been forged. She also admitted to the contents of her resignation letter, but claimed her manager had asked her not to write anything derogatory. Plaintiff also submitted records documenting her decline in income. On January 14, 2011, the claims adjudicator found that matters within Western & Southern's control, specifically, the pay reduction and unethical conduct, had rendered plaintiff's work unsuitable. Accordingly, plaintiff voluntarily left her job with good cause attributable to her employer. Thus, she was eligible to receive unemployment benefits under section 601(A) of the Illinois Unemployment Insurance Act, which provides that an employee who voluntarily leaves her job is only eligible for benefits where she leaves with good cause attributable to her employer. 820 ILCS 405/601(A) (West 2010).

¶ 7 On February 3, 2011, Western & Southern filed an administrative appeal with the Board of Review. The company asserted that plaintiff did not leave for good cause, as she was paid consistent with her employment agreement. On February 28, 2011, plaintiff submitted a copy of the receipt of policy agreement with the allegedly forged signature.

¶ 8 On March 1, 2011, a department referee conducted a telephone hearing with plaintiff, Fashola and Prapp. Plaintiff testified that she quit because she believed a signature on one of her

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policy receipts was forged. She had turned in the policy without a signature because she could not contact the client. Prapp subsequently reached the client and purportedly obtained the client's signature. However, plaintiff believed this signature was not genuine based on her recollection of the client's signature on the insurance application.

¶ 9 Prapp and Fashola testified for Western & Southern. Prapp testified that he contacted the client, delivered the policy himself and observed the client signing the policy. He further testified that the policy is in force and the client is paying on it. Fashola testified he called the client in the presence of the plaintiff and confirmed that the client, in fact, had taken out a policy and signed the policy receipt.

¶ 10 On March 2, 2011, the referee issued a decision in which she found plaintiff could have remained employed but resigned for personal reasons. The referee found plaintiff voluntarily left without good cause attributable to the employer. The referee, therefore, set aside the claims adjudicator's determination and held plaintiff was disqualified for benefits.

¶ 11 On March 11, 2011, plaintiff filed an administrative appeal to the Board of Review requesting a reversal of the referee's decision. She argued that the information submitted by her employer was untrue. On review, in June 2011, the Board determined the record was insufficient as to the timeliness of Western & Southern's protest below. On its own initiative, the Board asked the referee to ascertain whether a timely protest was filed and if not, to dismiss the defendant's appeal to the referee. Otherwise, the Board instructed the referee to incorporate evidence from any prior hearing in the matter into the record and issue a decision based upon all the evidence of record. On remand, the referee held a hearing on July 5, 2011, and issued a

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second decision finding the protest timely and again determining plaintiff to be ineligible for benefits.

¶ 12 On August 3, 2011, plaintiff again appealed the decision of the referee. She argued that she left her job for good cause because her employer was involved in illegal activity which threatened her "directly."

¶ 13 On December 7, 2011, the Board found that plaintiff left her employment due to her belief that Western & Southern's sales manager forged a signature on the receipt of policy. Plaintiff did not present the testimony of the client whose signature plaintiff believed was forged or any other witness with firsthand knowledge that the client's signature was forged. Western & Southern's sales manager, Pratt, testified that he did not forge the client's signature on the receipt of policy and that he had observed the client sign the receipt of policy.

¶ 14 The Board found that the testimony of the sales manager was more credible and competent than the testimony of plaintiff in light of the lack of firsthand knowledge by plaintiff. The Board further found that evidence upon which a decision is based must be competent, credible, and of such a nature that a reasonable person would rely upon it. Moreover, the Board determined that the evidence presented showed that plaintiff voluntarily left work for personal reasons which were not attributable to the employer, and pursuant to section 601 of the Illinois Unemployment Insurance Act (Act) (820 ILCS 405/601(A) (West 2010)), plaintiff was not eligible for benefits.

¶ 15 On January 4, 2012, plaintiff filed a *pro se* complaint for administrative review in the circuit court and subsequently obtained counsel. On March 28, 2013, following a hearing in

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which plaintiff and defendants were represented by counsel, the circuit court reversed the Board's decision. The transcript of the hearing is not in the record, and the order did not state the grounds for reversal.

¶ 16 ANALYSIS

¶ 17 On appeal from that order, defendants contend that the Board's decision that plaintiff left work voluntarily without good cause attributable to her employer was supported by the manifest weight of the evidence, and therefore, the decision of the circuit court should be reversed.

Plaintiff contends she left her job for two reasons, both of which were good cause attributable to her employer. First, she states that she left because of her belief that her employer was engaging in illegal activity, namely, forging a client's signature, and second, because of a drastic pay cut she received in September 2010.

¶ 18 "It is well settled that in an appeal from a decision denying unemployment compensation benefits, it is the duty of this court to review the decision of the Board rather than the circuit court." *Sudzus v. Department of Employment Security*, 393 Ill. App. 3d 814, 819 (2009); *Czajka v. Department of Employment Security*, 387 Ill. App. 3d 168, 172 (2008). "Our review of the administrative law proceeding is limited to the propriety of the Board's decision." *Childress v. Department of Employment Security*, 405 Ill. App. 3d 939, 942 (2010); *Oleszczuk v. Department of Employment Security*, 336 Ill. App. 3d 46, 50 (2002). The standard of review depends upon the issues raised. *Sudzus*, 393 Ill. App. 3d at 819.

¶ 19 "In an appeal involving a claim for unemployment benefits, we defer to the Board's factual findings unless they are against the manifest weight of the evidence." *Woods v. Illinois*

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Department of Employment Security, 2012 IL App (1st) 101639, ¶ 16; (citing *Manning v. Department of Employment Security*, 365 Ill. App. 3d 553, 556 (2006)). "An administrative agency's findings of fact are against the manifest weight of the evidences only if the opposite conclusion is clearly evident." *Id.* (citing *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 205 (1998)). "In our role as a reviewing court, we may not judge the credibility of the witnesses, resolve conflicts in testimony or reweigh the evidence." *Id.* (citing *White v. Department of Employment Security*, 376 Ill. App. 3d 668, 671 (2007)). "If there is any evidence in the record to support the Board's decision, that decision is not contrary to the manifest weight of the evidence and must be sustained on review." *Id.* (citing *James L. Hafele & Associates v. Department of Employment Security*, 308 Ill. App. 3d 983, 986 (1999)).

¶ 20 The purpose of the Illinois Unemployment Insurance Act is to benefit individuals who are not at fault for their unemployment. *White*, 376 Ill. App. 3d at 672; *Jenkins v. Department of Employment Security*, 346 Ill. App. 3d 408, 411 (2004). The burden of establishing eligibility for unemployment insurance benefits is on the claimant. *Id.* Section 601(A) of the Act disqualifies a former employee from receiving unemployment benefits if she left work voluntarily without good cause attributable to the employer. 820 ILCS 405/601(A) (West 2008). *Childress*, 405 Ill. App. 3d at 943; *Collier v. Department of Employment Security*, 157 Ill. App. 3d 988, 991 (1987).

¶ 21 "The question of whether an employee 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*, 405 Ill. App. 3d at 942; *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 395 (2002). A clearly erroneous standard

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" 'is significantly deferential to an agency's experience in construing and applying the statutes that it administers.' " *Grafner v. Department of Employment Security*, 393 Ill. App. 3d 791, 796 (2009); (quoting *Elementary School District 159 v. Schiller*, 221 Ill. 2d 130, 143 (2006)). An agency's decision is considered to be clearly erroneous where the entire record leaves the reviewing court with the definite and firm conviction that a mistake has been made. *AFM Messinger*, 198 Ill. 2d at 395.

¶ 22 Initially we respond to plaintiff's contention that Western & Southern was untimely in its notice of protest to the Board. Only a timely and sufficient protest will confer party status and appeal rights upon an employer. 56 Ill. Admn. Code 2720.130(a) (1994). If Western & Southern did not file a timely protest, it had no right to appeal the award of benefits. The Board *sua sponte* raised the issue and the referee devoted an entire administrative hearing to that question and found the protest was timely. The referee interviewed an employee of UC Express, a third-party service representing Western & Southern. The employee testified to the date of receipt of the claim and the date of filing of the response on the due date, and the referee found on this testimony along with a copy of the protest dated on the due date established a timely protest. In light of such evidence in the record to support the board's decision, that decision is not contrary to the manifest weight of the evidence and must be sustained on review. See *Woods*, 2012 IL App (1st) 101629, ¶ 16.

¶ 23 Turning to plaintiff's argument that the Board erred in finding that she left voluntarily, defendants assert plaintiff left for personal reasons not attributable to her employer, while plaintiff maintains she left her job because of her employer's alleged illegal activity, a forged

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signature. The Board rejected her claim that the signature was forged, citing the testimony of two of Western & Southern's employees. One testified that he personally delivered the policy to the client at her home and observed her sign the document. The other employee testified that in a phone conversation, the client confirmed she had signed the document. The Board's decision finds support in the evidence that plaintiff voluntarily left her job without good cause attributable to Western & Southern. In addition, we observe that no evidence was presented to show that the signature was forged. Thus, the record supports the Board's findings.

¶ 24 The circuit court, upon administrative review, held otherwise. The record does not contain a transcript of the administrative hearing before the trial court or an acceptable substitute Ill. S. Ct. R. 323 (aff. Dec. 13, 2005). However, we find the record adequate for review (see *Skrypek v. Mazzocchi*, 227 Ill. App. 3d 1, 5 (1992)), since a court on administrative review is limited to a consideration of the evidence submitted in the administrative hearing and may not hear additional evidence (735 ILCS 5/3-110 (West 1998)) or conduct a hearing *de novo*. *Jackson v. Department of Labor*, 168 Ill. App. 3d 494, 499-500 (1988).

¶ 25 Further, we defer to the Board's finding that plaintiff left voluntarily without good cause due to the alleged illegal activity of Western & Southern. While some evidence exists that economic factors played a part in plaintiff's decision, evidence also exists that the compensation changes were based on the employment contract and not a unilateral decision on the part of Western & Southern. Under these facts and circumstances, it is clear that plaintiff failed to establish good cause for her voluntary leaving to entitle her to the relief requested, and the findings and decision of the Board to that effect cannot be deemed contrary to the manifest

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weight of the evidence. *Collier*, 157 Ill. App. 3d at 994-95.

¶ 26 Plaintiff contends the drastic change in her salary in September 2010 was good cause attributable to her employer. A substantial change in employment may render the job unsuitable and entitle the worker to benefits even if she leaves voluntarily. *Davis v. Board of Review of the Department of Labor*, 125 Ill. App. 3d 67, 72 (1984); *Lojek v. Illinois Department of Employment Security*, 2013 IL App (1st) 120679, ¶ 36. A claimant's dissatisfaction with her wages, however, generally will not constitute good cause for leaving under this rule. *Id.* "[G]ood cause for leaving may result from a substantial, unilateral change in the employment which renders the job unsuitable." (internal quotation marks omitted). *Henderson v. Department of Employment Security*, 230 Ill. App. 3d 536, 538 (1992). "A substantial reduction in pay may constitute 'good cause' for leaving work depending on the attendant circumstances." *Eddings v. Department of Labor*, 146 Ill. App. 3d 62, 67 (1986).

¶ 27 Plaintiff asserts that the drastic change in her income was caused by Western & Southern's transitioning her from salary to straight commission. However, this change in pay was made according to a mutually agreed-upon compensation plan established at plaintiff's time of hire. Therefore, her reduction in pay was neither a change in employment nor unilateral.

¶ 28 Plaintiff's reliance on *Eddings*, as analogous to the case at bar, is misplaced. In *Eddings*, the plaintiffs were teachers who received letters terminating their full-time employment. At the time, there was a pool of 5,000 substitute teachers available on a daily basis for employment, of which usually 2,000 found day-to-day employment. *Id.* The Chicago Board of Education required laid off teachers to contact the teaching substitute center each day to be one of the possible 2,000

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out of the 5,000 substitute teachers hired on a day-to-day basis without benefits. *Id.* The issue in *Eddings* was whether the two involuntarily laid off teachers failed to apply for available suitable work or to accept suitable work under section 603 of the Act, (Ill. Rev. Stat. 1983, ch. 48, ¶ 433). *Id.* The court found that the plaintiffs should not be denied employment benefits because the school system would commit them to the uncertain status of a day-to-day substitute at an approximately 40% reduction in salary with no fringe benefits. *Id.* Thus, *Eddings* does not speak to whether a claimant who voluntarily leaves work may receive benefits under section 601 of the Act.

¶ 29 In sum, the Board's determination that plaintiff left work for a reason not attributable to Western & Southern Life Insurance, her employer, was not clearly erroneous. Plaintiff left due to her mistaken belief that her employer was tolerating illegal activity, namely, forgery of a client's signature. The Board found that the uncontradicted evidence about the client's signature established that plaintiff's claims had no support. Further, plaintiff's letter of resignation indicated she was leaving to better accommodate her current situation and advance her career. Plaintiff also stated how she appreciated the opportunities she had been given at Western & Southern. Here, the record supports the Board's finding that plaintiff voluntarily left work without good cause attributable to Western & Southern.

¶ 30 Therefore, the reasons plaintiff cites for leaving her employment do not constitute good cause attributable to her employer, and thus, plaintiff failed to meet her burden of proving eligibility under the Act. See *White*, 376 Ill. App. 3d at 672; *Collier*, 157 Ill. App. 3d at 994.

¶ 31 CONCLUSION

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¶ 32 In light of the above and our review of the administrative record, we cannot say the decision of the Board was against the manifest weight of the evidence. The judgment of the circuit court of Cook County is reversed and the case is remanded with directions to reinstate the order of the Board.

¶ 33 Reversed and remanded with directions.