

No. 1-15-1830

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

EDINA GRADJAN,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 15 L 50208
)	
ILLINOIS DEPARTMENT OF EMPLOYMENT)	
SECURITY; DIRECTOR OF ILLINOIS)	
DEPARTMENT OF EMPLOYMENT)	
SECURITY; BOARD OF REVIEW; and SHS)	
DEVELOPMENT COMPANY, INC.,)	Honorable
)	James M. McGing,
Defendant-Appellee.)	Judge Presiding.

PRESIDING JUSTICE PIERCE delivered the judgment of the court.
Justices Neville and Hyman concurred in the judgment.

O R D E R

- ¶ 1 *Held:* Board of Review decision that plaintiff was ineligible for unemployment benefits because she voluntarily left her employment was not clearly erroneous.
- ¶ 2 Plaintiff Edina Gradjan appeals *pro se* from an order of the circuit court affirming a decision by the Board of Review (Board) of the Department of Employment Security

(Department) finding her ineligible to receive benefits under the Unemployment Insurance Act (Insurance Act). 820 ILCS 405/100 et seq. (West 2012). The Board affirmed a Department referee's decision finding plaintiff ineligible because she voluntarily left her employment as an accountant with defendant SHS Development Company (SHS). On appeal, plaintiff contends that the Board's decision was erroneous. For the reasons stated below, we affirm.

¶ 3 Plaintiff filed a claim for benefits under the Insurance Act in August 2014, stating that she worked for SHS from October 2011 to July 18, 2014. Also in August 2014, SHS filed a protest signed by Bess Hoaglund. Hoaglund claimed that on June 9, 2014, plaintiff requested leave for a family vacation from July 21 through August 11. Hoaglund and supervisor Tom Silver met with her to ask her to postpone her trip to Bosnia, noting that it was "a very busy time for us" and plaintiff was requesting 16 days' leave but was entitled to only 10 days of paid vacation per year and had already taken a week off. "We agreed that we would approve a one week vacation; however we could not approve a 16 day leave." Plaintiff confirmed to Silver on June 23 that she was still planning to travel to Bosnia, and Silver encouraged her to travel at a time that was less hectic in the office. Plaintiff responded the next day "thank you for the notice." She left the office at about 2:30 p.m. on July 18 without further notice, and Hoaglund presumed she was leaving for her planned trip. Attached to the protest was a copy of plaintiff's leave request, seeking "V" or vacation time from "7/21 – 8/11" and stating the reason for the request as "visiting family in Europe." Also attached was an exchange of e-mails: Silver denied her vacation request on June 23, encouraging her to choose another time for her trip and advising that taking the trip would be considered insubordination resulting in termination; plaintiff replied the next day "Thank you for the notice."

¶ 4 A Department claims adjudicator investigated and ruled upon plaintiff's claim in October 2014. Plaintiff submitted to the adjudicator copies of prescriptions for her father, born in 1937, and her mother, born in 1949. Plaintiff stated in an interview that she requested vacation in June as she "found out [her] father was ill in Bosnia" but her request was not approved because it was an inopportune time. Plaintiff then spoke with "the owners" of SHS, who "said they would see what they could do to accommodate" her, but she did not hear back until July 16, when they responded to her e-mail with a denial of her request. Plaintiff left "at the end of the day" on July 18 and did not return to work because "she had already bought the tickets for Bosnia." She did not inform her employer that she was leaving. The adjudicator found plaintiff ineligible for benefits because she left work voluntarily without good cause attributable to her employer; that is, "she abandoned her job after she was denied a vacation request."

¶ 5 Plaintiff appealed the eligibility ruling, arguing that she did not quit but requested 5.5 paid vacation days and 10.5 unpaid days, Silver told her that she would be terminated if she took such a vacation, she had not seen her parents in five years, and her 2013 request for two weeks of vacation had been denied. She claimed that other SHS employees had received vacation in excess of the leave policy, including a man who received three weeks of vacation.

¶ 6 Plaintiff submitted various exhibits. A June 2014 email from plaintiff to SHS's owners generally concerned a salary increase but also stated that she requested a vacation from July 21 to August 11, "1 week paid vacation and 2 unpaid weeks" so she could "spend my religious holiday with my parents, whom I did not see for 5 years and I do not know how much longer they may be alive," and had unsuccessfully requested three weeks of vacation in April 2013. A July 17 email from plaintiff to the owners stated that "I am confused if I will be returning to work on August 12 or not", and a July 18 reply stated that the owners would "rather keep your trip within the allotted

time parameters" and "cannot break company vacation policy, as doing so would create disorder and a negative precedent." Plaintiff's reply email "apologize[d] that I had to leave early," argued that "Vic downstairs" received three weeks' vacation against SHS policy, and thanked the owners "for the time that I worked for you." Lastly, plaintiff's pay-stub of August 1, 2014, indicated \$291.16 of vacation pay before deductions, which plaintiff calculated to be 1.5 days of pay.

¶ 7 The referee hearing was held in November 2014. Plaintiff testified that she worked for SHS as an accountant from October 2011 through July 18, 2014. She did not voluntarily leave the job but gave notice over a month before that she wanted leave "to go and visit my sick parents" though she did not so state in her request. "I should have put family medical leave, it was a big mistake on my end," she conceded, but "they all know that I had problems with my parents being sick" as that was her stated reason for prior unsuccessful leave requests. When asked why she still took the trip knowing her request was denied, she replied that she went to the owners of SHS after the initial denial to "try to see if we can come up with [a] solution that I can still keep my job and have work done while I'm away." While the owners initially stated that they would try to seek a resolution, she did not hear from them until July 18 that they would not overrule the original decision. When asked how she knew she qualified for family medical leave, plaintiff replied that her father had a stroke and her mother had heart failure, and SHS was "aware of their issues." When asked why she did not apply for family medical leave, she replied that she requested time-off, but the referee noted that she did not make a medical leave request. Plaintiff conceded that her June 9 request "just put vacation" and was denied on June 13. Plaintiff denied that Hoaglund had told her that she could take a week or ten days but not two weeks, though plaintiff maintained she had 5.5 days of vacation available. When asked why she was applying in June for a trip in July if her parents were ill, she replied that her father's "health issues going up and down." When asked why she booked

the trip before requesting time-off, she replied that her previous requests had been denied because work was busy, and she had an "opportunity to have my whole family with me at the time" she chose, but she was willing to work unpaid days or work while on her trip. Silver removed plaintiff from her office at about 1 p.m. on July 18, and she received the e-mail from the owners denying reconsideration of her leave request about an hour later.

¶ 8 Hoaglund testified that plaintiff left work on July 18 without Hoaglund's knowledge. Plaintiff's leave request was not denied outright, and Hoaglund was willing to allow plaintiff a week but asked her to "change the timeframe" because SHS "had just lost an employee" and was "three employees short." On cross-examination, Hoaglund admitted that plaintiff offered to "do payroll" while in Bosnia but Hoaglund "did not think that was a good idea." Hoaglund noted that plaintiff had some vacation in April or May so SHS was not denying all of her vacation requests but work was not as short-staffed then as when she made the request at issue. Hoaglund also argued that "visiting my family is different from my family is sick."

¶ 9 Plaintiff admitted that she took a week's vacation in Mexico but argued that she and other employees worked harder for about seven months while a position went unfilled.

¶ 10 The referee issued her decision in November 2014, finding that the preponderance of the evidence was that plaintiff left her job without good cause attributable to her employer and was thus ineligible for benefits. The referee found that plaintiff worked for SHS as an accountant from October 2011 through July 18, 2014, she requested "16 days off of work for vacation time to visit her family in Bosnia," the request was denied, and she "left her job to visit her family" on July 18.

¶ 11 Plaintiff appealed to the Board, filing through counsel a brief arguing that the referee's decision was not supported by competent substantial evidence and that the referee erred in finding plaintiff's actions amounted to voluntary leaving without good cause. Plaintiff argued that her

decision was not voluntary but the result of an "ultimatum in which she had a very short time to decide" between her job and going "on her first vacation in over two years to visit her ill parents in another country." Plaintiff also argued that her decision was not a matter beyond SHS's control because SHS denied her vacation requests in the preceding two years, she submitted the instant request seven weeks in advance and SHS had "allowed her to believe that her request would be approved," but then SHS "failed to provide [her] with the opportunity to reach a scheduling compromise" while allowing other employees "long vacations" and "permit[ing] other employees to work away from the office."

¶ 12 SHS filed a responsive brief to the Board, arguing that the referee's decision was not erroneous. SHS argued that plaintiff had taken "nearly five days of her allotted ten days of vacation in May of 2014 to travel to Mexico" and wanted 15 days "to visit her family for a religious holiday in July of 2014" because "others in her family could attend" at that time. SHS argued that plaintiff booked the trip and only then formally requested leave to visit her family, "never mentioning that it had to do with her supposedly ill parents." When Hoaglund and Silver denied her request, she did not change her travel plans but appealed to the owners of SHS, who on July 18 "confirmed SHS's earlier denial of" leave. Plaintiff "walked off the job" that day. SHS argued that plaintiff's decision was therefore not coerced, nor was the decision to deny her 15 days' vacation within SHS's control because she had already used much of her allotted vacation time. SHS also argued that the evidence showed that plaintiff requested, and intended to take, a family vacation rather than visiting ailing relatives. Lastly, SHS argued that plaintiff had failed to show that she was treated differently than other SHS employees; others could have taken longer vacations by saving vacation time, or worked in positions where they could be spared more than plaintiff.

¶ 13 The Board affirmed the referee's decision in a February 2015 order finding that the record and briefs adequately presented the evidence and issues so that no further evidentiary proceedings were necessary. The Board found that plaintiff made her request on June 9, 2014, "to visit her parents in Bosnia" from July 14 to August 11 when she had about a week of vacation time available, but she was willing to take the remainder of the leave as unpaid. Plaintiff had made her travel arrangements before making her request. She testified to planning the trip to coincide with a religious holiday and when other family members could attend. She did not request the time-off as family medical leave but testified that she wanted to visit her parents because they had serious health problems.

¶ 14 The Board found that plaintiff's supervisor denied the request on June 13, citing staffing needs and the length of the requested leave. Plaintiff appealed to the owners of SHS but was denied on July 18 due to staffing needs. SHS suggested that she request leave for a different or shorter period and also advised her that she would be terminated if she took the leave without approval. Plaintiff took the trip despite the denial and last worked on July 18.

¶ 15 The Board rejected plaintiff's argument that her separation was not voluntary. "The record in this case is clear that it was [plaintiff's] action that ended her employment. She absented herself from work after the employer's unequivocal denial of her request for time off. By remaining at work, she could have continued employment. By taking the trip, she took the action that ended the employment. [Plaintiff] left work voluntarily, and her eligibility turns on whether the cause of her leaving was attributable to the employer."

¶ 16 The Board found that plaintiff "made no attempt in this case to demonstrate the circumstances that might bring her leaving work under the terms of Section 601B(1)." Assuming arguendo that plaintiff's stated reason for her trip was true, she had a compelling personal reason to

travel despite SHS's denial of her request but a "compelling personal reason is not good cause attributable to the employer under Section 601A, however, unless the employer's conduct contributed to it." However, SHS merely enforced its policies in denying plaintiff's request and it was within its prerogatives for SHS to insist that she be at work, so SHS's "conduct did not play any part" in plaintiff's decision to leave work. The Board concluded that plaintiff "chose to absent herself from work after 7/18/14" and ended her employment relationship, "and her reasons for leaving were personal and not attributable to" SHS.

¶ 17 Plaintiff filed an administrative review action in the circuit court. The court affirmed the Board's decision on June 24, 2015, and this appeal timely followed.¹

¶ 18 On appeal, plaintiff contends that the Board's ineligibility finding was erroneous.

¶ 19 Section 601 of the Insurance Act provides that a person is ineligible for unemployment insurance benefits when "he or she has left work voluntarily without good cause attributable to the employing unit." 820 ILCS 405/601(A) (West 2012). However, section 601 provides an exception when a claimant leaves work voluntarily because:

"he or she is deemed physically unable to perform his or her work by a licensed and practicing physician, or because the individual's assistance is necessary for the purpose of caring for his or her spouse, child, or parent who, according to a licensed and practicing physician or as otherwise reasonably verified, is in poor physical or mental health or is a person with a mental or physical disability and the employer is unable to accommodate the individual's need to provide such assistance." 820 ILCS 405/601(B)(1) (West 2012).

¹ While the record does not include a copy of the circuit court's order of June 24, it includes an order setting a hearing for June 24 and plaintiff's June 24 notice of appeal stating that she is appealing an order of June 24.

¶ 20 Good cause exists when circumstances create substantial pressure to leave employment that would compel a reasonable person in the same circumstances to do so. *Lojek v. Department of Employment Security*, 2013 IL App (1st) 120679, ¶ 36. A substantial and unilateral change in employment may constitute good cause. *Id.* Voluntary leaving is not attributable to the employer unless the claimant's cause for leaving is within the employer's control, including but not limited to the employer's implementation of a substantial change in employment conditions. *Id.* Moreover, the claimant must, if possible, make a reasonable effort to resolve the cause of her leaving. *Id.* When a claimant invokes the medical exception in section 601(B)(1), she must have informed her employer of the health problem and must offer competent testimony or evidence that adequate health reasons existed to justify her leaving work. *Id.*, ¶ 42.

¶ 21 We review the decision of the Board, not the circuit court. *Petrovic v. Department of Employment Security*, 2016 IL 118562, ¶ 22. The Board is the trier of fact in cases regarding unemployment insurance claims, and its findings of fact are considered prima facie true and correct. 735 ILCS 5/3-110 (West 2012); *Lojek*, ¶ 31. The Board's decision as to whether a claimant left work voluntarily without good cause under the Insurance Act presents a mixed question of law and fact reviewed for clear error. *Petrovic*, ¶ 21; *Lojek*, ¶ 32. The Board's decision is clearly erroneous only if, after reviewing the entire record, we definitely and firmly believe that a mistake has occurred. *Petrovic*, ¶¶ 21-22.

¶ 22 Here, plaintiff invokes the Family Medical Leave Act (Leave Act) (29 U.S.C. §§ 2611 et seq. (2012)) in support of her contention of error. However, she did not claim family leave or invoke the Leave Act in applying to SHS for leave. Her request form sought vacation time from July 21 to August 11 for "visiting family in Europe," and she admitted in her testimony that she did not request family medical leave. In her counsel-filed brief to the Board, plaintiff did not argue the

Leave Act nor the medical exception in section 601(B)(1) of the Insurance Act, making only off-hand references that her trip was to "visit her ill parents" and she was choosing between her job and "see[ing] her parents for possibly the very last time." The Board found that plaintiff did not attempt to show circumstances placing her claim under section 601(B)(1). We agree with the State defendants² that plaintiff has forfeited claims under the Leave Act and section 601(B)(1) by not raising them in the Board proceedings. *Walls v. Department of Employment Security*, 2013 IL App (5th) 130069, ¶ 18.

¶ 23 We also agree with defendants that, were we to consider claims under the Leave Act or section 601(B)(1), plaintiff would be unsuccessful. As noted above, section 601(B)(1) applies in relevant part when the claimant's "assistance is necessary for the purpose of caring for his or her *** parent who, according to a licensed and practicing physician or as otherwise reasonably verified, is in poor physical or mental health." (Emphasis added.) 820 ILCS 405/601(B)(1) (West 2012). The Leave Act similarly provides in relevant part that "an eligible employee shall be entitled to a total of 12 workweeks of leave during any 12-month period for one or more of the following: *** (C) [i]n order to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition." (Emphasis added.) 29 U.S.C. § 2612(a)(1) (2012). However, plaintiff did not seek leave to care for her parents but to visit them, and the Board did not clearly err in concluding that she failed to provide the requisite evidence that her parents had adequate health reasons for plaintiff's absence from work.

¶ 24 Generally, we see no clear error in the Board finding that plaintiff made her travel arrangements before she requested leave from SHS, that she did not have sufficient vacation time under SHS's policies to take the amount of leave she requested, that SHS informed her that her

² The Department, its Director, and the Board.

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request for leave was denied before the beginning of her trip, and she chose to go on the trip nonetheless. It is also not clear error to conclude that, far from SHS making a substantial change in employment conditions, it was adhering to those conditions while plaintiff was seeking a substantial change in conditions in her favor. On this record, we cannot conclude that the Board clearly erred in finding plaintiff ineligible for benefits under the Act because she left SHS's employment voluntarily without good cause attributable to SHS.

¶ 25 Accordingly, we affirm the judgment of the circuit court.

¶ 26 Affirmed.