2016 IL App (1st) 152782-U

No. 1-15-2782

Third Division
September 29, 2016

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

TESHA WILSON, Plaintiff-Appellant, v. ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY; DIRECTOR OF THE ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY; BOARD OF REVIEW; and THE UPS STORE, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 15 L 050235 Honorable Kay Marie Hanlon, Judge, presiding.

JUSTICE COBBS delivered the judgment of the court.
Justices Lavin and Pucinski concurred in the judgment.

O R D E R

¶ 1 *Held*: Department's denial of unemployment benefits affirmed where plaintiff voluntarily left work without good cause attributable to her employer.

¶ 2 Plaintiff Tesha Wilson brings this *pro se* appeal from an order of the circuit court of Cook County in favor of the Illinois Department of Employment Security (Department), the Director of the Department, the Board of Review (Board), and the UPS Store (collectively

defendants). The court affirmed the Board's determination that plaintiff was ineligible to receive unemployment benefits because she left work voluntarily, without good cause from her employer. Plaintiff appeals contending that she did not leave her employment voluntarily but was "forcibly removed and unjustifiably terminated because she was pregnant." We affirm.

¶ 3 BACKGROUND

¶ 4 The record reveals that plaintiff Tesha Wilson was employed by DSMT Service, LLC, a UPS Store franchise (UPS Store) as an assistant manager from April 2007 until August 21, 2014. On September 21, 2014, plaintiff sought unemployment insurance benefits claiming that she was discharged from the UPS Store. The UPS Store protested the claim stating:

> "Tesha was not laid off from work. Tesha resigned to go home and care for her new born daughter. Tesha was not asked or forced to leave. She went on maternity leave 4/30/14, after she had her daughter, then came back to work, 5/21/14, while her daughter was in the hospital getting better. Once her daughter was released, Tesha decided that she wanted to quit working and be home to take care of her new born 8/20/14. Tesha also used and was paid all three weeks of vacation paid that she was entitled to."

¶ 5 A Department claims adjudicator interviewed plaintiff and Donna Trainor, the owner of the UPS Store. The claims adjudicator determined that plaintiff voluntarily left employment to care for her child and the separation was not attributable to the UPS Store. Consequently, plaintiff was ineligible for unemployment benefits under section 601(A) of the Illinois Unemployment Insurance Act (Act). 820 ILCS 405/601(A)(West 2014). Plaintiff sought reconsideration, which was denied. Plaintiff then filed an administrative appeal of the Department's determination.

¶ 6 A Department referee held a telephonic hearing at which plaintiff represented herself. The UPS Store did not participate. Plaintiff testified that in April 2014, she prematurely gave birth to twins. One of the children did not survive and the other child remained in the hospital due to health concerns. After their birth, plaintiff received permission from Trainor to take approximately four weeks' vacation from work. Plaintiff returned to the UPS Store on May 21, 2014, and discovered that Trainor had already hired a new person for her position; however, plaintiff continued to work there. Trainor asked plaintiff what she planned to do when her child was discharged from the hospital and plaintiff said, "Well, when she come home I'll probably take my maternity leave and *** [then] I would be back to work." According to plaintiff, Trainor responded "Okay, that's fine with me."

¶ 7 On August 21, plaintiff told Trainor that her daughter was coming home from the hospital that day and that she would be leaving but she "would be back." Trainor responded "No, you're not coming back." Plaintiff did not tell Trainor when she would be back or that she believed she was taking her maternity leave. Plaintiff did not have written authorization to take additional time off work and did not know the UPS store's policy for maternity leave. She personally felt that 90 days of maternity leave was appropriate. Plaintiff returned to the UPS Store on September 16, 2015, at which time Trainor told plaintiff that she no longer worked at the UPS Store and asked her to return her keys.

¶ 8 The referee affirmed the claims adjudicator's determination and found that plaintiff left employment voluntarily. Thereafter, plaintiff appealed to the Board, which affirmed the referee's determination. In doing so it stated, "The claimant informed the employer on August, 21, 2014 that she was leaving work as her child was coming home from the hospital. [Plaintiff] told the employer that she would return. [Plaintiff] assumed that the employer

would allow her to return back to work." The Board also noted that plaintiff told the claims adjudicator that her reason for leaving was that her baby was coming home from the hospital and that she would return to work when she had bonded with her child. Ultimately, the Board held that plaintiff left work voluntarily for personal reasons that were not attributable to her employer and was ineligible for unemployment insurance benefits. Plaintiff appealed to the circuit court, which affirmed the decision of the Board.

¶ 9 ANALYSIS

¶ 10 At the outset, we note that plaintiff has failed to comply with the rules governing appellate briefs set forth in Supreme Court Rule 341(h) (eff. Jan. 1, 2016). Notably, she has failed to provide a cohesive argument identifying the issues presented for review or any citation to authority. Ill. S. Cr. R. 341(h). Plaintiff's *pro se* status does not excuse her from complying with supreme court rules and it is within our discretion to dismiss this appeal. *Twardowski v. Holiday Hospitality Franchising*, 321 Ill. App. 3d 509, 511 (2001). Nevertheless, we choose not to do so where we have the benefit of the record and of defendants' cogent brief. *Id.*

¶ 11 We next address defendants' contention that plaintiff forfeited her claim that she is eligible for benefits under section 601(B)(1) of the Act because she raised this argument for the first time in the circuit court. Section 601(B)(1) allows for a claimant who voluntarily left employment to receive unemployment insurance benefits when:

> "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 *** and the employer

is unable to accommodate the individual's need to provide such assistance." 820 ILCS 405/601(B)(1)(West 2014).

Here, plaintiff did not argue to the Board that she is eligible for benefits under section 601(B)(1). It is well established that issues not raised in administrative proceedings are procedurally defaulted and may not be raised for the first time in the circuit court. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 212-13 (2008); *Pesoli v. Department of Employment Security*, 2012 IL App (1st) 111835, ¶ 23. Moreover, plaintiff did not present any evidence from a licensed and practicing physician that her child was in poor health when she was released from the hospital and that plaintiff's assistance was needed. In fact, plaintiff stated that her child was "doing fine" and that she left to "bond" with the child. Accordingly, this argument is procedurally defaulted and precluded from our review. *Cinkus*, 228 Ill. 2d at 212-13; *Pesoli*, 2012 IL App (1st) 111835, ¶ 23.

¶ 12 Defendants additionally assert that this court should strike the two documents labeled Exhibits B and C attached to plaintiff's brief because they were not presented at the administrative level and are not in the official record on appeal. The appellate court is limited to considering the record of the administrative proceedings. *Lipscomb v. Housing Authority of County of Cook*, 2015 IL App (1st) 142793, ¶ 11. Consequently, Exhibits B and C attached to plaintiff's brief, which do not appear in the record, are stricken.

¶ 13 We now turn to plaintiff's argument that the Board erred in finding that she left work voluntarily and therefore was ineligible for unemployment benefits. Plaintiff contends that she was discharged when she left work to care for her child. Defendants maintain that plaintiff was not discharged, but chose to leave employment. Our review of an 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). Whether an employee left work without good cause attributable to her employer involves a mixed question of law and fact to which a "clearly erroneous" standard of review applies. *Id.* (citing *AMF Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 395 (2001)). The Board's decision is clearly erroneous only where our review leaves us with a definite and firm conviction that an error has been made. *Id.* at 942-43.

¶ 14 The claimant bears the burden of establishing eligibility for unemployment insurance benefits. *White v. Department of Employment Security*, 376 Ill. App. 3d 668, 671 (2007). Under section 601(A) of the Act, a former employee is ineligible for unemployment benefits if she left work voluntarily without good cause attributable to her employer. 820 ILCS 405/601(A). "Good cause results from circumstances that produce pressure to terminate employment that is both real and substantial and that would compel a reasonable person under the circumstances to act in the same manner." *Childress*, 405 Ill. App. 3d at 943. For a voluntary leaving to be attributable to an employer, the cause for leaving must be within the employer's control. *Lojeck v. Department of Employment Security*, 2013 IL App (1st) 120679, ¶ 36. Thus, an employee who leaves employment for personal reasons cannot establish good cause. *White*, 376 Ill. App. 3d at 672.

¶ 15 In this case, plaintiff worked for the UPS Store from April 2007 until August 21, 2014. She was given permission to take off work immediately after she gave birth to twins on April 7, 2014. She returned to work on May 21, 2014, and continued to work at the UPS Store until she informed Trainor that she was leaving to take care of her child. Despite the fact that she had already taken time off work after her children were born, plaintiff maintains that she was taking her maternity leave in August. Plaintiff admitted, however, that she was not aware of

the UPS Store's maternity leave policy. She assumed it was 90 days because that is the amount of time plaintiff felt was appropriate. She also admitted that she did not have written permission from Trainor to leave a second time. Although plaintiff testified that Trainor verbally agreed to allow her to take a maternity leave when her daughter came home from the hospital, Trainor disputed that fact in her protest and interview. We note that it is the Board's responsibility to weigh the evidence, determine the credibility of witnesses, and resolve conflicts in testimony (*Hurst v. Department of Employment Security*, 393 Ill. App. 3d 323, 329 (2009)) and we will not reweigh the Board's credibility determination. Significantly, contrary to plaintiff's contention, the record shows that plaintiff did not have permission to leave. When plaintiff told Trainor that she "would be back," Trainor responded, "No, you're not coming back."

¶ 16 Moreover, plaintiff cannot establish that her leaving employment was attributable to the UPS Store. Plaintiff's job was available to her when she returned to work in May. The UPS Store had no control over plaintiff's desire to be at home with her child in August. There is nothing in the record to suggest that the conditions of her employment substantially changed. Rather, the record supports the Board's finding that plaintiff could have continued to work at the UPS Store but chose to leave. Accordingly, the Board's decision finding that plaintiff left employment voluntarily without good cause attributable to the UPS Store was not clearly erroneous.

¶ 17 CONCLUSION

¶ 18 For the foregoing reasons, we affirm the judgment of the Board.

¶ 19 Affirmed.