2019 IL App (2d) 180746-U
No. 2-18-0746
Order filed September 11, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

HEIDI J. FLYNN, Plaintiff-Appellee, v. JEFFREY D. MAYS, THE DEPARTMENT OF EMPLOYMENT SECURITY BOARD OF REVIEW, and LENA LIVING CENTER, Defendants (Jeffrey D. Mays and The Department of Employment Security Board of Review, Defendants-Appellants).	)	Appeal from the Circuit Court of Stephenson County. No. 18-MR-42 Honorable Glenn R. Schorsch, Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices McLaren and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The Department properly denied plaintiff unemployment benefits, as plaintiff voluntarily left her employment without good cause attributable to the employer.

¶ 2 Defendants, Jeffrey D. Mays and the Department of Employment Security Board of Review (Board), appeal the judgment of the circuit court of Stephenson County reversing the

Board's ruling that plaintiff, Heidi J. Flynn, was disqualified from receiving unemployment benefits. Because the Board properly ruled that plaintiff was ineligible for benefits, we reverse.

¶ 3 I. BACKGROUND

¶ 4 Plaintiff applied for unemployment insurance benefits with the Department of Employment Security (Department). After her employer, the Lena Living Center, objected to her claim, an administrative law judge (ALJ) conducted a telephone hearing.

¶ 5 The following facts were established at the hearing. The employer operated a residential care facility in Lena. Plaintiff, a licensed cosmetologist, was employed to provide hair care to the residents. Plaintiff set her own hours and established the rate she would charge the residents. Plaintiff worked at the facility for about three years.

¶ 6 On August 24, 2017, Judy Barker, the facility administrator, gave plaintiff a letter dated August 23, 2017. The letter advised plaintiff that she was being discharged effective September 17, 2017.

¶ 7 Barker testified that the only reason plaintiff was discharged was that the employer had decided "to go a different direction." According to Barker, plaintiff could have continued to work until September 17, 2017.

¶ 8 Upon reading the letter, plaintiff told Barker that she was taking her supplies and would not return to work. Barker had no idea why plaintiff decided to do so. Barker denied that plaintiff was discharged for any misconduct.

¶ 9 The ALJ asked Barker whether plaintiff was discharged for refusing to provide hair care to a resident with a communicable disease. In denying that she was, Barker explained that, on May 25, 2017, plaintiff told Barker and the previous administrator that she would not provide hair care to any resident with a communicable disease. According to Barker, the employer had

no problem with plaintiff not doing a resident's hair for that reason and plaintiff remained employed with no issues.

¶ 10 Plaintiff testified that she considered herself discharged as of August 24, 2017. She admitted that she never asked if she could remain working until September 17, 2017. When plaintiff asked Barker why she was being discharged, Barker told her that the employer wanted to go in a different direction. When plaintiff asked Barker what she had done wrong, Barker would not tell her.

¶ 11 When the ALJ asked plaintiff why she did not continue to work until September 17, 2017, plaintiff answered that she was concerned that she might be required to provide hair care to a resident with a communicable disease, which could cause her to lose her license. Thus, she decided that it was in her best interest to leave on August 24, 2017.

¶ 12 At the hearing, the employer contended that plaintiff had voluntarily left her employment on August 24, 2017, as opposed to being discharged on that date. The ALJ issued a written decision identifying the issue as whether plaintiff was discharged for misconduct related to her work, under section 602(A) of the Unemployment Insurance Act (Act) (820 ILCS 405/602(A) (West 2016)). Finding that the evidence did not establish any misconduct by plaintiff, the ALJ ruled that plaintiff was not disqualified under section 602(A) from receiving unemployment benefits.

¶ 13 The employer appealed to the Board. The Board reversed. In doing so, it ruled that section 601(A) of the Act (820 ILCS 405/601(A) (West 2016)), as opposed to section 602(A), applied. It then found that plaintiff was not discharged on August 24, 2017, but left work voluntarily. The Board further found no evidence of good cause attributable to the employer for

why plaintiff voluntarily left on August 24. The Board thus ruled that, under section 601(A), plaintiff was disqualified from receiving benefits.

¶ 14 Plaintiff then appealed to the circuit court. After conducting a hearing, the court issued a written order reversing the Board's decision and awarding plaintiff benefits. The order contained no reasoning. Defendants then filed this timely appeal.

¶ 15 II. ANALYSIS

¶ 16 On appeal, defendants contend that the Board's decision to deny plaintiff benefits was proper, as the evidence showed that plaintiff voluntarily left her employment without good cause attributable to the employer. Although plaintiff has not filed a brief, we will decide the merits of the appeal. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 17 When we review an administrative decision, we review the Board's decision and not that of the circuit court. *Matlock v. Illinois Department of Employment Security*, 2019 IL App (1st) 180645, ¶ 18. When reviewing an unemployment-benefits claim, we defer to the Board's factual findings, unless they are against the manifest weight of the evidence. *Matlock*, 2019 IL App (1st) 180645, ¶ 18. If there is any evidence in the record to support a finding, that finding is not against the manifest weight of the evidence and must be sustained on review. *Matlock*, 2019 IL App (1st) 180645, ¶ 18. Further, the Board must determine the credibility of the witnesses, weigh the evidence, and resolve any conflicts in the testimony, and we may not substitute our judgment for that of the Board. *Matlock*, 2019 IL App (1st) 180645, ¶ 18.

¶ 18 The Act provides economic relief for those who are involuntarily unemployed. *Matlock*, 2019 IL App (1st) 180645, ¶ 22. To that end, the Act is to be liberally construed to protect

individuals from the severe economic insecurity that results from involuntary unemployment. *Matlock*, 2019 IL App (1st) 180645, ¶ 22.

¶ 19 Under the Act, an employee may receive unemployment benefits if she meets the eligibility requirements and is not subject to any disqualifications or exemptions. *Matlock*, 2019 IL App (1st) 180645, ¶ 22. Under section 601(A) of the Act, a person is ineligible for benefits if she voluntarily left work without good cause attributable to her employer. 820 ILCS 405/601(A) (West 2016).

¶ 20 Good cause for leaving employment exists where the facts and circumstances produce real and substantial pressure to leave one's employment and compel a reasonable person under the circumstances to leave. *Childress v. Department of Employment Security*, 405 Ill. App. 3d 939, 943 (2010). Leaving employment is not attributable to the employer unless the employee's cause for leaving is within the employer's control. *Lojek v. Department of Employment Security*, 2013 IL App (1st) 120679, ¶ 36. Thus, when determining whether good cause exists, the focus is on the employer's conduct, not the employee's. *Matlock*, 2019 IL App (1st) 180645, ¶ 23. However, the employee must, when possible, make a reasonable effort to resolve the cause of her leaving. *Lojek*, 2013 IL App (1st) 120679, ¶ 36.

¶ 21 The question of whether an employee left work without good cause attributable to her employer involves a mixed question of law and fact. *Matlock*, 2019 IL App (1st) 180645, ¶ 19. When we review a mixed question of law and fact, we apply the clearly-erroneous standard. *Matlock*, 2019 IL App (1st) 180645, ¶ 20. Under that standard, we will overturn the Board's decision to deny benefits only if we are left with a definite and firm conviction, based on the entire record, that the Board's decision was a mistake. *Matlock*, 2019 IL App (1st) 180645, ¶ 20.

¶ 22 In this case, we first address whether, on August 24, 2017, plaintiff voluntarily left her employment. She did.

¶ 23 The evidence showed that, although plaintiff was to be discharged on September 17, 2017, she was allowed to continue working until that date. Indeed, the Board found that plaintiff could have worked an additional three weeks after receiving the August 23, 2017, letter. Thus, the finding that plaintiff voluntarily quit on August 24, 2017, as opposed to being discharged, was not against the manifest weight of the evidence.

¶ 24 We next address whether plaintiff quit without good cause attributable to her employer. She did.

¶ 25 Plaintiff contended that she left because she was concerned that, if she continued to work past August 24, 2017, she might jeopardize her cosmetology license. However, there was no evidence to suggest that plaintiff was required to do anything at work that would have put her license at risk. Indeed, the record showed that, after refusing to provide hair care to a resident with a communicable disease on May 25, 2017, plaintiff was not disciplined. Nor was there any indication that the situation on May 25, 2017, had anything to do with her discharge. Rather, the evidence showed that it was not until three months later that plaintiff was discharged, because her employer wanted to go in a different direction. More importantly, the record did not show that, had plaintiff continued to work, she would have been required to provide hair care to any resident with a communicable disease. Because there was no evidence that the employer did anything to cause plaintiff to leave work on August 24, 2017, she did not leave for good cause attributable to her employer.

¶ 26 Nor did plaintiff make any reasonable effort to resolve her asserted cause for leaving. See *Lojek*, 2013 IL App (1st) 120679, ¶ 36. Although she asked Barker why she was being

discharged, she never specifically asked whether it had anything to do with her prior refusal to provide hair care to a resident with a communicable disease or, more importantly, whether she would be expected to provide such services if she continued to work until September 17. Merely asking why she was being discharged was not a reasonable effort at resolving any concern that she might have had about putting her license at risk should she be required to provide hair-care services to such a resident.

¶ 27 For the foregoing reasons, the Board properly denied plaintiff unemployment benefits under section 601(A) of the Act.

¶ 28 III. CONCLUSION

¶ 29 For the reasons stated, we reverse the judgment of the circuit court of Stephenson County.

¶ 30 Reversed.