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**IN THE
COURT OF APPEALS OF INDIANA**

MICHELLE D. TIMMONS,)

Appellant-Claimant,)

vs.)

No. 93A02-0810-EX-941

REVIEW BOARD OF THE INDIANA)
DEPARTMENT OF WORKFORCE)
DEVELOPMENT and CEDAR LANE FAMILY)
DENTISTRY, P.C.,)

Appellees.)

APPEAL FROM THE REVIEW BOARD
INDIANA DEPARTMENT OF WORKFORCE DEVELOPMENT
Cause No. 08-R-02596

April 9, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Michelle Timmons appeals the decision of the Review Board of the Indiana Department of Workforce Development, which denied her request for unemployment compensation benefits. Because there is sufficient evidence to support the Board's decision, we affirm.

FACTS AND PROCEDURAL HISTORY

Timmons began working for Cedar Lane Family Dentistry, P.C., in July of 2007. On December 10, 2007, when Timmons was 28 weeks pregnant with twins, her doctor placed her on bedrest for the remainder of her pregnancy. After the twins were born, Timmons was on disability leave for a number of weeks. Timmons planned to return to work at Cedar Lane on May 1, 2008. On April 28, 2008, Timmons informed Cedar Lane that she would be able to work only part-time because her babysitter for the twins had quit. Cedar Lane declined to allow Timmons to return to work part-time.

Timmons filed a claim for unemployment compensation benefits. The claim was denied, and Timmons appealed to an Administrative Law Judge who determined she was entitled to benefits. Cedar Lane appealed the ALJ's decision to the Board, and the Board denied Timmons' claim:

As indicated above, the Review Board finds that the Employer did not discharge the Claimant; the Claimant voluntarily left the employment.

CONCLUSIONS OF LAW: The Claimant previously worked as a full-time dental assistant, and when she offered to return to work from her leave of absence on a part-time basis only, she was rejecting the conditions of her employment and was making a new offer to work for the Employer under different conditions. When the Employer refused to accept the Claimant's new employment conditions, no meeting of the minds occurred, and no new employment relationship began. The Claimant voluntarily left the employment.

* * * * *

When the Claimant attempted to return to work after her leave of absence, she placed conditions on her return. Instead of working full-time, the Claimant proposed that she work part-time. The Claimant was unable to return to work full-time because she was unable to find childcare for her twins. Although the Claimant had a good personal reason for conditioning her return, the Claimant did not have good cause in connection with the work to sever the employment relationship. The Claimant voluntarily left the employment without good cause in connection with the work.

(Appellant's Br. at 12-13.)

DISCUSSION AND DECISION

Timmons asserts the evidence does not support the Board's decision that she voluntarily left her employment with Cedar Lane. An employee who voluntarily leaves employment without good cause is ineligible for unemployment benefits. *Quillen v. Review Bd. of Ind. Employment Sec. Div.*, 468 N.E.2d 238, 241 (Ind. Ct. App. 1984); *see also* Ind. Code § 22-4-15-1. Whether an employee voluntarily left work is a question of fact for the Board. *M & J Mgmt., Inc. v. Review Bd. of Dept. of Workforce Dev.*, 711 N.E.2d 58, 62 (Ind. Ct. App. 1999).

The Board's findings of fact are "conclusive and binding." Ind. Code § 22-4-17-12(a). Nevertheless, we review findings of "basic fact" under a "substantial evidence" standard of review." *McClain v. Review Bd. of Ind. Dept. of Workforce Dev.*, 693 N.E.2d 1314, 1317 (Ind. 1998), *reh'g denied*. We neither reweigh the evidence nor assess the credibility of witnesses. *Id.* Rather, we consider only the evidence most favorable to the Board's findings, and reverse only if there is no substantial evidence to support the findings. *Id.*

Employers have the right to establish business hours, working schedules, and other employment terms. *Quillen*, 468 N.E.2d at 241. An employee may request special terms of employment, but those terms become part of the employment contract only if the employer agrees to them. *Id.*

Timmons challenges two specific findings by the Board:

The Dentist rejected the Claimant's offer to return to work on a part-time basis. The Claimant quit the employment when her offer to return to work under different conditions than what she had previously worked was rejected.

(Appellant's Br. at 12.) Timmons asserts the dentist first accepted her offer to work part-time, and then called her the next day to reject it. She also asserts she did not "quit" her employment.

Timmons was to return to work at Cedar Lane on May 1, 2008. On April 28, Timmons went to Cedar Lane

to explain my situation with my babysitter, um, and to ask if there was a way we could work out in May on me working Mondays and Wednesdays. For sure the first week I was able to work Monday, Tuesday, Wednesday and then the next three weeks was [sic] going to be Monday and Wednesday unless my mom or someone could relieve me and I could go in but in the meantime I was going to interview other babysitters.

(Appellant's App. at 18.)

Dr. Philip Mirise testified Cedar Lane's intention was to rehire Timmons after her maternity leave "if the conditions were right." (*Id.* at 20.) After Timmons came to him and explained her situation with the babysitter, he "spent the rest of the day thinking about it and I called her around that time and let her know that" it was not going to work. (*Id.*) He was concerned about whether she would be reliable, because Cedar Lane is

sufficiently busy to need two full-time dental assistants.

Timmons' testimony that Cedar Lane accepted, and then later rejected, her offer to work part time is not favorable to the judgment; accordingly we cannot consider it as we determine whether the evidence supports the Board's finding. *See McClain*, 693 N.E.2d at 1317. Dr. Mirise's testimony was that he listened to what Timmons offered, thought about it for the day, and then phoned her to decline her offer to work part-time. That evidence supports the finding Cedar Lane declined Timmons' offer to work part-time.

We also find the evidence supports the finding Timmons voluntarily quit her employment at Cedar Lane. Timmons' testified she told Dr. Mirise she was able to return to work only on a part-time basis. The logical implication is that she simply was unable to return full-time. Accordingly, Timmons terminated her employment with Cedar Lane when she did not accept the offer to return full-time.

Because the evidence supports the challenged findings, we affirm the judgment in favor of Cedar Lane.

Affirmed.

BRADFORD, J., and FRIEDLANDER, J., concur.