**Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.**

APPELLANT PRO SE:

**JENNIFER J. DANIELEWICZ**
Griffith, Indiana

ATTORNEYS FOR APPELLEE REVIEW BOARD:

**GREGORY F. ZOELLER**
Attorney General of Indiana

**ELIZABETH ROGERS**
Deputy Attorney General
Indianapolis, Indiana

# IN THE
# COURT OF APPEALS OF INDIANA

| | | |
|---|---|---|
| JENNIFER J. DANIELEWICZ, | ) | |
| | ) | |
| Appellant, | ) | |
| | ) | |
| vs. | ) | No. 93A02-0812-EX-1114 |
| | ) | |
| REVIEW BOARD OF THE INDIANA DEPARTMENT OF WORKFORCE DEVELOPMENT and MICKEY'S LINEN & TOWEL SUPPLY, INC., | ) | |
| | ) | |
| Appellees. | ) | |

APPEAL FROM THE REVIEW BOARD
OF THE INDIANA DEPARTMENT OF WORKFORCE DEVELOPMENT
Cause No. 08-R-03085

**April 23, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAILEY, Judge**

## Case Summary

Appellant Jennifer J. Danielewicz ("Danielewicz"), pro se, appeals the decision of the Review Board of the Indiana Department of Workforce Development ("the Board"), denying her request for unemployment insurance benefits because she voluntarily left her employment with Mickey's Linen & Towel Supply, Inc. ("Mickey's"). We affirm.

## Facts and Procedural History

The relevant facts found by the Administrative Law Judge ("ALJ"), as partially adopted and partially modified by the Board, are as follows:

> Claimant worked for the Employer, a linen supply company, as a Route Settlement Clerk – balancing routes, answering calls, and working with route runners on a daily basis – from April 1999 until her last day worked on June 6, 2008. Although the Claimant enumerated several things about her employment that she disliked, the precipitating event that caused her to leave her employment was the firing of the Office Manager on the morning of June 6, 2008.
>
> At approximately 7:50 a.m. on June 6, 2008, the Office Manager, who is also the Claimant's sister, was discharged by the Employer for purportedly engaging in an extra-marital affair with a co-worker. The General Manager met with the Claimant and told her that the Employer had discharged her sister. He explained that her job was not in jeopardy and that the Employer would like her to stay with the company, but he would understand if she felt she had to leave. The Claimant left the employment at approximately 10:00 a.m. The Claimant did not give notice nor did she explain to the General Manager why she was leaving.
>
> At the hearing the Claimant's stated reason for leaving the employment was that the working conditions had become intolerable, she had taken her complaints to the General Manager through the Officer Manager and nothing had been resolved, so the discharge of the Office Manager meant that her issues would never be resolved. Over the course of her employment, the Claimant had complained to the Office manager regarding the heating and air conditioning units not working properly; general uncleanness of the facility

> due to the lack of a janitor; rampant rodents – including mice, squirrels, and raccoons; and exposure to sexually explicit materials and conversation.
>
> As the route settlement clerk, the Claimant dealt with the route workers on a daily basis and was in the route room to deliver paperwork, to talk with the route workers, and to pass through the room on the way to the ladies' room. The Claimant ran to the Office Manager on several occasions to document "offensive" and "sexually explicit" language and documents that she had discovered while in the route room or at coworkers' desks. In January 2008 she found an "offensive" note that discussed the exchange of 13 2XL shirts for Large shirts because the "fat guy quit." Claimant's Ex. 3. The Claimant wears size 2XL clothing. One "sexually explicit" comment was that the Route Worker supervisor told her, in response to her request that they try to motivate everyone to work together, that he had no problem "putting his foot in workers' asses to make them work together." In March or April 2008 the Claimant went so far as to photograph a calendar that was in an open desk drawer. Claimant's Ex. 2.
>
> The Claimant complained directly to the General Manager regarding heating and air conditioning problems and rodent issues. Steps were taken to fix the heating/air conditioning issues, and the Employer changed extermination companies. The Claimant did not complain to the General Manager about sexually explicit materials or sexual harassment by the route workers other than to present him with one offensive document that she found on someone's desk in January 2008 when she was dropping off paperwork. Claimant's Ex. 4. According to the Claimant, the General Manager returned the note to the worker's desk with a note asking him to explain to the General Manager what the document was. Claimant's Ex. 5. There is no evidence on the record as to what occurred next. The Claimant voluntarily left her employment on June 6, 2008 due to her sister's discharge from employment.

(App. 12-13.)

On June 26, 2008, a claims deputy of the Indiana Department of Workforce Development determined that Danielewicz was not eligible for unemployment insurance benefits because she voluntarily left her employment without good cause. Danielewicz appealed. After a hearing, the ALJ reversed the deputy's decision upon finding that Danielewicz left her employment with good cause in connection with the work. Mickey's

appealed to the Board. On October 31, 2008, the Board reversed the decision of the ALJ upon determining that Danielewicz left her employment without good cause in connection with the work. This appeal ensued.

**Discussion and Decision**

The Indiana Unemployment Compensation Act provides that "[a]ny decision of the review board shall be conclusive and binding as to all questions of fact." Ind. Code § 22-4-17-12(a). Indiana Code Section 22-4-17-12(f) provides that when the Board's decision is challenged as contrary to law, the reviewing court is limited to a two part inquiry into: (1) "the sufficiency of the facts found to sustain the decision"; and (2) "the sufficiency of the evidence to sustain the findings of facts." Under this standard, courts are called upon to review (1) determinations of specific or "basic" underlying facts, (2) conclusions or inferences from those facts, sometimes called "ultimate facts," and (3) conclusions of law. McClain v. Review Bd. of Ind. Dep't of Workforce Dev., 693 N.E.2d 1314, 1317 (Ind. 1998).

Review of the Board's findings of basic fact is subject to a "substantial evidence" standard of review. Stanrail Corp. v. Review Bd. of Ind. Dep't of Workforce Dev., 735 N.E.2d 1197, 1202 (Ind. Ct. App. 2000), trans. denied. In this analysis, the appellate court neither reweighs the evidence nor assesses the credibility of witnesses and considers only the evidence most favorable to the Board's findings. Id. We will reverse the decision only if there is no substantial evidence to support the Board's findings. Id. The Board's determinations of ultimate facts involve an inference or a deduction based upon the findings

of basic fact, and the ultimate facts are typically reviewed to ensure that the Board's inference is reasonable. Id. We examine the logic of the inference drawn and impose any applicable rule of law. Id. Some questions of ultimate fact are within the special competence of the Board, and it is therefore appropriate for us to accord greater deference to the reasonableness of the Board's conclusion. Id. However, as to ultimate facts which are not within the Board's area of expertise, we are more likely to exercise our own judgment. Id.

Finally, we review conclusions of law to determine whether the Board correctly interpreted and applied the law. Id. "In sum, basic facts are reviewed for substantial evidence, conclusions of law are reviewed for their correctness, and ultimate facts are reviewed to determine whether the Board's finding is a reasonable one." Id.

Danielewicz challenges the Board's finding of the ultimate fact that she voluntarily terminated her employment without good cause, thus disqualifying her from receiving benefits pursuant to Indiana Code Section 22-4-15-1(a). The question of whether an employee voluntarily terminated employment without good cause is a question of fact to be determined by the Board. Indianapolis Osteopathic Hosp., Inc. v. Jones, 669 N.E.2d 431, 433 (Ind. Ct. App. 1996). The claimant has the burden of establishing good cause. Id. The claimant must demonstrate that (1) the reasons for abandoning employment were such as to impel a reasonably prudent person to terminate employment under the same or similar circumstances, and (2) the reasons are objectively related to the employment. Id.

In support of her argument that she left her employment for good cause, Danielewicz contends that she experienced sexual harassment and reported her concerns to Tammy

Derucki, who was then fired in "a case of retaliation." Appellant's Brief at 4. According to Danielewicz, after her sister's termination, she felt unprotected in the workplace and left, believing that "any reasonable person, under similar circumstances, would have had a similar reaction." Appellant's Brief at 5. Danielewicz's appellate brief does not elaborate upon the general allegation of harassment, nor does she point to a particular instance of harassment that occurred and was ignored by the management in charge after her sister's firing.[1]

The evidence most favorable to the Board's findings is that Danielewicz worked at Mickey's for nine years, but left on the same day that her sister was fired. Mickey's general manager spoke with Danielewicz within hours of her sister's firing and assured Danielewicz that her job was safe. Nevertheless, Danielewicz left Mickey's employ immediately.

It is only when the demands placed upon employees are so unreasonable or unfair that a reasonably prudent person would be impelled to leave that the unemployment compensation system will compensate an employee who has voluntarily quit his or her job. Marozsan v. Review Bd. of Ind. Employment Sec. Div., 429 N.E.2d 986, 990 (Ind. Ct. App. 1982). Reasons which are purely personal and subjective must be excluded. Id. at 989. Undoubtedly, Danielewicz would have preferred to have the opportunity to report her workplace concerns directly to her sister, who would then report to the general manager. However, the employer's expectation that Danielewicz continue her work without this chain of reporting is not so unreasonable that a reasonably prudent person would be impelled to

[1] During the telephonic hearing, Danielewicz explained that she was exposed to "materials" brought into the "route room" in late 2007. (Tr. 6.) Danielewicz also testified that she was present during a 2007 conversation between other employees that included explicit language she found objectionable.

leave employment. Danielewicz did not establish that she voluntarily terminated her employment for good cause.

Affirmed.

DARDEN, J., and ROBB, J., concur.