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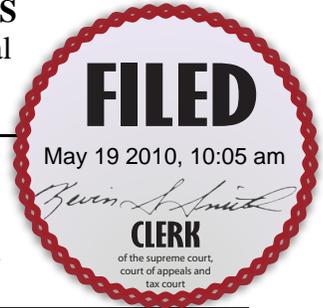
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**IN THE
COURT OF APPEALS OF INDIANA**

R.M.,)
)
Appellant-Defendant,)
)
vs.)
)
REVIEW BOARD OF THE INDIANA)
DEPARTMENT OF WORKFORCE)
DEVELOPMENT, *et al.*,)
)
Appellee-Plaintiff.)

No. 93A02-0910-EX-986

APPEAL FROM THE REVIEW BOARD OF THE DEPARMENT OF WORKFORCE
DEVELOPMENT
Steven F. Bier, Chairperson
Cause No. 09-R-3478

May 19, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

R.M. appeals the Indiana Department of Workforce Development Review Board's (the Review Board) decision determining that she was ineligible for unemployment benefits.

R.M. raises the following consolidated and restated issue for review: Was the Review Board's finding that R.M. voluntarily left her employment without good cause in connection with the work reasonable?

We affirm.

The facts most favorable to the Review Board's determination follow. In May 2007, R.M. began employment with S.C.S., which is a group home for individuals with behavioral problems. All of the residents residing in the S.C.S. group home are assessed and assigned to the home by the State of Indiana. The goal of the group home is to rehabilitate the residents to the point where they can possibly live independently. R.M. was employed as a Direct Support Professional, which involved working with and assisting the residents toward rehabilitation as well as cooking meals for them. Prior to accepting the job with S.C.S., R.M. was aware that the four male residents assigned to S.C.S. all had behavioral problems and a history of aggressive or violent behavior and that at least one of the residents had a history of physically striking staff members. As part of her job, R.M. participated in various behavioral management training programs. R.M. received training on each of the resident's behavioral management plans and on how to deescalate their problematic behavior. R.M. was also trained on how to place residents in a safe hold to prevent them from hurting themselves or others.

On September 19, 2008, R.M. was assaulted by the resident who had a known history of physically attacking the staff. The resident became upset over a menu choice and struck

R.M. in the head and neck, causing R.M. bruising and soreness. Following the attack, R.M. told S.C.S.'s program coordinator that she did not think the resident who struck her should remain in the group home, but the program coordinator reminded her of the policy that the State had sole discretion regarding placement and removal of residents.

Following the attack on R.M., S.C.S. temporarily increased staffing at the group home and sent a safety memo to the employees regarding safety precautions to be used by staff to deal with the violent resident. R.M. took a scheduled vacation during the week following the attack but returned to work at S.C.S.

In mid-October 2008, the resident who had hit R.M. bit another staff member. R.M. spoke with the director of operations about her opinion that the resident should not be assigned to the group home and about whether the job was right for her. The director of operations reiterated the State's process of determining placement in the group home, reminded R.M. that the group home environment was where she signed up to work, and told her that she was at a crossroads and had a decision to make.

By December, the resident who struck R.M. continued to make threats and complain about the lunch menu. R.M. again asked if that resident could be removed from the group home because he had struck a total of seven people, including her, since she had started working for S.C.S. in May 2007. On December 20, 2008, R.M. left her employment with S.C.S.

R.M. applied for unemployment benefits, and a claims deputy determined that R.M. had "voluntarily left employment with good cause in connection with the work" and that she

was entitled to unemployment benefits. *Appellant's Appendix* at 107. S.C.S. then appealed the deputy's determination of eligibility.

On July 28, 2009, an Administrative Law Judge (ALJ) held a telephonic hearing to determine whether R.M. had voluntarily left her employment with good cause. During the hearing, R.M. testified that she quit her job at S.C.S. because of the resident who had assaulted her and that she had waited three months before she quit because she became "increasingly . . . fearful" of his behavior and did not feel safe working there. *Transcript* at 12. The ALJ, after concluding that R.M.'s "working conditions were so unreasonable or unfair that a reasonably prudent person would be impelled to leave the employment" and that she had voluntarily left her employment with good cause in connection with the work, determined that she was eligible for unemployment benefits. *Appellant's Appendix* at 112.

S.C.S. then appealed the ALJ's decision to the Review Board, which reviewed the recording of the telephonic hearing and all exhibits from that hearing. The Review Board determined that R.M. had voluntarily left her employment without good cause in connection with the work and concluded, in relevant part:

[R.M.] accepted the employment with the Employer with the knowledge that she would be around individuals with aggressive and violent behavior. She was aware that one of the residents had a history of striking staff members. Someone who accepts a job with knowledge of those working conditions assumes some risk. [R.M.] provided no evidence – other than her statement that she had an increasing fearfulness of the resident – to explain what changed after her decisions in September and October to continue working for the Employer. The Review Board finds that a reasonable employee in [R.M.]'s position would not have left her employment when she did. [R.M.] had decided to continue her employment after the assault upon herself and her coworker and then abruptly decided to leave the employment two months later. [R.M.]'s argument that she did not want to create more staffing problems by leaving earlier is not persuasive given that she left abruptly two months later

without any seeming regard for staffing pressures. [R.M.] left the employment after expressing again that she did not think the resident who assaulted her should be in the home. It was not the prerogative of [R.M.] to choose the residents that she wished to supervise. [R.M.] did not have good cause to leave her employment.

Appellee's Appendix at 2-3. Thus, the Review Board reversed the determination of the ALJ and concluded that R.M. was not entitled to unemployment benefits. R.M. now appeals.

R.M. contends she was improperly denied unemployment compensation benefits. Specifically, she argues that her fear of being physically attacked at the group home constituted good cause for terminating her employment.

The Indiana Unemployment Compensation Act provides that any decision of the Review Board shall be conclusive and binding as to all questions of fact. Ind. Code Ann. § 22-4-17-12(a) (West, Westlaw through 2009 1st Special Sess.). A Review Board decision may be challenged as contrary to law, in which case, the reviewing court reviews the sufficiency of the facts found to sustain the decision and the sufficiency of the evidence to sustain the findings of facts. I.C. § 22-4-17-12(f). Under this standard, we 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), *reh'g denied*.

We review the Review Board's findings of basic fact under a “substantial evidence” standard of review. *Id.* In this analysis, we neither reweigh the evidence nor assess the credibility of witnesses, and we consider only the evidence most favorable to the Review Board's findings. *McClain v. Review Bd. of Ind. Dep't of Workforce Dev.*, 693 N.E.2d 1314.

Reversal is warranted only if there is no substantial evidence to support the Review Board's findings. *Stanrail Corp. v. Review Bd. of Dep't of Workforce Dev.*, 735 N.E.2d 1197 (Ind. Ct. App. 2000), *trans. denied*. Next, we review the reasonableness of the Review Board's determination of ultimate facts. These facts involve an inference or deduction based upon the Review Board's findings of basic fact. *McClain v. Review Bd. of Ind. Dep't of Workforce Dev.*, 693 N.E.2d 1314. Finally, conclusions of law are reviewed to determine whether the Review Board correctly interpreted and applied the law. *Stanrail Corp. v. Review Bd. of Dep't of Workforce Dev.*, 735 N.E.2d 1197.

The purpose of the Unemployment Compensation Act is to provide benefits to those who are involuntarily out of work, through no fault of their own, for reasons beyond their control. *Davis v. Review Bd. of Ind. Dep't of Workforce Dev.*, 900 N.E.2d 488 (Ind. Ct. App. 2009). Consistent with the purpose of unemployment compensation laws, a stricter standard is imposed on those who voluntarily quit working. *Id.*

R.M. challenges the Review Board's finding of ultimate fact that she voluntarily terminated her employment without good cause. An employee who voluntarily leaves employment without good cause in connection with the work is not entitled to unemployment compensation benefits. *See* I.C. § 22-4-15-1(a); *Best Chairs v. Review Bd. of Ind. Dep't of Workforce Dev.*, 895 N.E.2d 727 (Ind. Ct. App. 2008). The determination of whether an employee quit for good cause is a question of fact for the Review Board. *Davis v. Review Bd. of Ind. Dep't of Workforce Dev.*, 900 N.E.2d 488. It is the employee's burden to establish that he or she quit for good cause. *Id.* To meet such a burden, the employee must demonstrate that:

(1) the reasons for leaving 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. This second component requires that the employee show her reasons for terminating employment are job-related and objective in nature, excluding reasons which are personal and subjective.

Best Chairs v. Review Bd. of Ind. Dep't of Workforce Dev., 895 N.E.2d at 730 (quoting *M & J Mgmt., Inc. v. Review Bd. of the Dep't of Workforce Dev.*, 711 N.E.2d 58, 62 (Ind. Ct. App. 1999)). Indeed, “[i]t is not the purpose of the Unemployment Security Act to allow employees to terminate their employment merely because working conditions are not entirely to their liking.” *Marozsan v. Review Bd. of Ind. Employment Sec. Div.*, 429 N.E.2d 986, 990 (Ind. Ct. App. 1982). Instead, “[i]t is only when the demands placed upon employees are unreasonable or unfair, so much so that a reasonably prudent person would be impelled to leave that the Act will provide compensation to employees who voluntarily quit their job.” *Id.*

R.M. argues that her fear of being physically attacked constituted good cause to leave her employment with S.C.S. and cites *Foster v. Review Bd. of Ind. Employment Sec. Div.*, 421 N.E.2d 744 (Ind. Ct. App. 1981).¹ In that case, a dog groomer voluntarily left her employment after she had to work with sick dogs, use inadequate supplies, and do her work in an unclean grooming room. The Review Board found that these working conditions were such that the dog groomer was unable to satisfactorily perform her grooming job duties but determined that she did not have good cause to quit her job. *Id.* On appeal, the dog groomer

¹ R.M. cites a New Jersey case in arguing that the nature of a person’s work should not defeat a showing of good cause. See *Domenico v. Bd. of Review, Dep't of Labor & Indus.*, 469 A.2d 961 (N.J. Super. Ct. App.

argued that the bad working conditions constituted good cause for her to terminate her employment, and our court agreed. *Id.* We determined that the poor working conditions were objective, not subjective or personal, reasons for the dog groomer’s act of terminating her employment and were related to her job because the conditions made it difficult for her to properly perform her dog grooming duties. *Id.* We also concluded that the poor working conditions that caused the dog groomer to leave her employment were such that would motivate a reasonable and prudent person to terminate employment. *Id.* Accordingly, we reversed the Review Board’s decision.

R.M. contends that like the dog groomer in *Foster*, she was faced with unsafe working conditions that constituted good cause for her to terminate her employment with S.C.S. The State, on the other hand, argues that “unlike the poor working conditions in *Foster* that impacted the dog groomer’s ability to *perform* her job, the ‘working conditions’ that [R.M.] complains of were an integral *part* of the job [R.M.] was hired to perform.” *Appellee’s Brief* at 9. Under the facts of this case, we agree with the State.

Here, the evidence most favorable to the Review Board’s findings shows that R.M.

Div. 1983). Because we have ample Indiana caselaw relating to reviewing a good-cause determination, we need not specifically address that case.

agreed to work for S.C.S., an employer that operates a behavioral group home for individuals that have been placed in the home by the State. When R.M. accepted the job of a Direct Support Professional, she was aware that the four male residents assigned to S.C.S. all had behavioral problems and a history of aggressive or violent behavior and that at least one of the residents had a history of physically striking staff members. R.M.'s job involved providing care for and working directly with the residents, including the resident with known physically aggressive behavior. R.M. received training on the residents' behavioral management plans, on how to deescalate their problematic behavior, and on how to place residents in a safe hold to prevent them from hurting themselves or others. Additionally, R.M. was aware that the State had the sole discretion on the placement and removal of residents from the group home.

Under the specific facts and circumstances presented in this case, we cannot say that R.M.'s reason for leaving her employment—fear of being physically attacked—constituted good cause for terminating her employment. While R.M.'s reason for leaving her employment was related to her job, it is bit attenuated to say that the reason—fear—was exclusively objective and not subjective. Nevertheless, R.M.'s reason for leaving her employment would not impel a reasonably prudent person to terminate employment under the same or similar circumstances such as have been presented here where R.M. took a job working with aggressive group home residents, was aware of the working conditions prior to taking the position, and had received training to ameliorate any potential problems that may arise from working in such an environment.

The Review Board's findings regarding the nature of R.M.'s work at S.C.S., her

awareness of the nature of the work prior to taking the job, her training to deal with the unique working conditions of her position, and her reasons for terminating her employment are supported by substantial evidence and not challenged by R.M.² These findings, in turn, provide a reasonable basis for the Review Board's determination that R.M. voluntarily terminated her employment without good cause. *See e.g., Richey v. Review Bd. of Ind. Employment Sec. Div.*, 480 N.E.2d 968 (Ind. Ct. App. 1985) (affirming Review Board's determination of no good cause where employee terminated her employment because she felt uncomfortable in her employment situation); *M & J Mgmt., Inc. v. Review Bd. of the Dep't of Workforce Dev.*, 711 N.E.2d 58 (holding that an employee who terminated her employment because she personally disagreed with a policy of the employer failed to carry her burden of proving she left her employment with good cause).

Because the Review Board's finding of ultimate fact that R.M. voluntarily terminated her employment without good cause was reasonable under the specific circumstances presented in this case, we affirm the Review Board's determination that R.M. is not entitled to unemployment benefits.³

KIRSCH, J., and ROBB, J., concur.

²R.M. does challenge the Review Board's finding that "[s]omeone who accepts a job with knowledge of those working conditions assumes some risk." *Appellee's Appendix* at 2. R.M. has not shown that this conclusion is an unreasonable inference given the evidence presented involving the job duties and working environment at S.C.S. and R.M.'s awareness of the same.

³Contrary to R.M.'s assertion, our holding affirming the Review Board's decision in this case does not equate to a broad holding that all employees with dangerous job duties will never be able to terminate their employment with good cause and will never be protected by the Unemployment Security Act. In this case, R.M. did not meet her burden of showing that she terminated her employment with good cause in connection with the work, and our holding is limited to the unique facts of this case.