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**IN THE
COURT OF APPEALS OF INDIANA**

TANISHA R. SAUNDERS,)

Appellant,)

vs.)

No. 93A02-0712-EX-1163

REVIEW BOARD OF THE)
INDIANA DEPARTMENT OF)
WORKFORCE DEVELOPMENT and)
LOGAN COMMUNITY RESOURCES, INC.,)

Appellees.)

APPEAL FROM THE REVIEW BOARD OF THE
INDIANA DEPARTMENT OF WORKFORCE DEVELOPMENT
Cause No. 07-R-02794

September 3, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Tanisha R. Saunders (“Saunders”) appeals the Unemployment Insurance Review Board’s (“Review Board”) determination that she was not entitled to unemployment benefits. We reverse.

Issue

Saunders raises one issue, which we restate as: whether the Review Board reasonably determined that Saunders resigned without good cause.

Facts and Procedural History

For reasons explained below, the following basic facts are those most favorable to the determinations of the administrative law judge (“ALJ”) and the Review Board. Saunders began working for Logan Community Resources, Inc. (“Logan”) in July 1997. Logan provided services to developmentally disabled individuals in eight group homes, including the Walnut Group Home (“Walnut”). All events relevant to the dispute occurred in 2007.

On May 27, Saunders reported to work and found feces in two restrooms. She recorded in a communication log that the restrooms were unsanitary at the beginning of her shift. Because it was the first time Saunders had encountered such a situation, she was upset and did not clean the restrooms.

Patti Ewing, another Logan employee, confronted Saunders three days later regarding the report in the communication log. Saunders later testified that Ewing “just started yelling and getting in my personal space.” Transcript at 5. Ewing and Saunders were face-to-face, inches apart.

That day, Saunders filed a “Logan Incident Report,” describing the incident as

follows:

Upon arriving to work [Ewing] said she would like to talk to me after I punch in. She approached me in the office about a situation that happened on Sunday 5/27/07, which included a note I left in the communication book about the bathrooms being full of bm when I arrived. She said another staff . . . told her I said the bathrooms were nasty at the beginning of my shift. She began yelling at me and calling me a liar [sic]. She said I don't know who I'm messing with. I told [Ewing] that I was not going to argue with her. She repeatedly left the office area and returned with acts of intimidation including walking behind me while yelling and standing / blocking the doorway. There was a time when I felt threatened and thought she was going to hit me. Another staff . . . intervened and pulled her into the kitchen telling her to calm down. [The staff member] told her to go home to calm down. On two occasions, she yelled "move!" when I was sitting in the office chair so she could answer the phone and punch out before her shift ended. Several times she asked, "what are you looking at?" During all the commotion one of the client's [sic] wanted to know if everything was o.k. and she yelled "go and sit down!" She told me I wasn't worth losing [sic] her job and she punched out around 8:30 p.m. Shortly after that [the staff member] decided to punch out and leave. She also stated it was my word against hers about the bathrooms being nasty.

Appendix at 18-19. Logan investigated the incident.

Saunders' direct supervisor was Walnut house manager Sandra Bethel ("Bethel"). On June 5, Bethel and two other Logan employees met with Saunders and Ewing. Bethel disciplined Saunders with a "Type B Written Warning" for contributing to unsanitary conditions. *Id.* at 24. Bethel also disciplined Ewing with a Type B Written Warning and wrote,

On May 27th 2007, a note was left in the communication log. On May 30th 2007 you confronted another employee about the note that was left, which lead [sic] into a hostel [sic] environment in the work place. On May 31st an internal investigation was conducted and concluded on June 1st 2007. Finding from the investigation states you violated Policy # H-12-01 Code of Conduct and Policy # A-01-01 Type B Work Rules # 4. Which states: Threatening, intimidating, coercing, using derogatory and/or abusing language or harassing any member of management, employee, or customer on Logan premises.

Follow-up Plan: You will reframe [sic] from creating a hostile environment of any kind while you are an employee of Logan Community Resources. . . . Failure to comply will result in further disciplinary actions up to and including termination.

Id. at 23.

Saunders did not feel safe working with Ewing. Saunders' shift was moved two hours later, and Ewing's shift was moved two hours earlier, so that their shifts would not overlap. Although the record is not clear, it appears that their shifts had overlapped for four hours, and that the revised schedule resulted in their shifts being consecutive.

While that arrangement worked initially, Ewing began to linger beyond her shift. Saunders testified that there "was another staff working and if that staff stayed over she would stay too, um, until that staff's shift ended." Tr. at 7. When they saw each other, they did not speak. Saunders stated, "[i]t was just, um, just a very uncomfortable situation." Id. at 9. On June 12, Saunders submitted a letter "as a formal grievance." App. at 22. She wrote,

After being attacked by a co-worker named Patti Ewing, for documenting the unsanitary conditions of two bathrooms at the end of [Ewing's] shift, I reported the incident to the on call QMRP and immediately filed an incident report. During the verbal attack, [Ewing] used anger and intimidation toward me to express her feelings. . . . Our working relationship has been ruined. I no longer feel save [sic] working with Ewing or even coming in contact with her through shift change. I do not want to be placed in a situation where she has the potential to have another explosive outburst. I have repeatedly expressed these concerns to the investigating staff and [Bethel]. According to Logan's employee handbook, such behavior is not tolerated and employees will be disciplined by termination of employment. Therefore, I do not believe this incident has been resolved in a satisfactory manner.

Id. (emphasis added).

A meeting was scheduled for Saunders to meet with department director Jeff Johnston

regarding the issue. However, Saunders was unable to attend because her electricity was off and therefore she was unable to get her car out of her garage. The parties disputed how communications then proceeded between Saunders and Johnston. Saunders and Logan each claimed to have attempted unsuccessfully to contact the other.¹ A Logan client was in failing health and died during this period of time, requiring Johnston's attention. According to Logan human resources director Klemens Bartosik ("Bartosik"), that "contributed to the situation of both parties being unable to reach each other." Tr. at 15.

On July 9, Saunders approached Johnston with her letter of resignation, written to be effective that day. According to Saunders, Johnston indicated that "he was willing to get [Saunders] out of the situation." Id. at 8. Saunders said, "by then it was just too late" "[b]ecause [she] had been placed in that situation for over a month and [Logan] didn't, nobody did anything about it." Id. As Johnston asked for a day to look for a solution, Saunders agreed to "hold off on resigning." Id. at 9. Two days later, he proposed that Saunders meet with two Logan employees, including Bartosik. Saunders resigned.²

On July 19, Bartosik submitted a written statement to the Department of Workforce Development, concluding as follows:

The resignation came without warning or notice to management since Ms. Saunders and Ms. Ewing had been working together with a brief overlap of time at the change of shifts without incident. In addition, management felt that there were options available to resolve the issue. Management continues to attempt to resolve Ms. Saunders [sic] issues to this day. Repeated attempts to

¹ Johnston did not testify or submit a written statement.

² The resignation letter, dated and delivered on July 9, is in the record. Given this testimony, however, it is not clear what day was the last Saunders actually worked at Logan.

discuss this issue with Ms. Saunders have been unsuccessful. The organization will allow Ms. Saunders to rescind her resignation immediately.

App. at 29. The Department determined that Saunders was not entitled to unemployment benefits because she resigned without good cause. In appealing the Department's determination, Saunders wrote that she "decided to tender [her] resignation only after it became clear to [her] that these concerns were not being addressed." Id. at 2.

An ALJ held a telephonic hearing with two witnesses, Saunders and Bartosik. The ALJ asked Saunders,

ALJ: Had you worked in any other group home during your ten years there?

A: Yes, I have but they were supposed to give me the same schedule that I had and none of the other homes had the schedule that, um, I was working.

ALJ: Well, would they have . . . could they have moved the other person?

A: Well, I guess that wasn't an option. I, I really don't know.

Tr. at 10. Bartosik did not contradict this testimony other than to say, "[w]e did have work available." Id. at 16.

Saunders asked Bartosik, "why didn't you guys offer me anything until I decided to put my resignation in?" Id. Bartosik answered as follows:

We did make, uh, special preparation to allow minimal contact between the two parties. There were no further incidences during that period of time and at, at that particular point in time we did not want to disrupt the continuity in the home so we felt the situation at that particular point in time, uh, was, was not in, in an emergency, uh, situation because both parties had worked together for approximately one month prior to, um, Ms. Saunders submitting her resignation and they worked without incident.

Id.

Saunders acknowledged that she did not inform Logan that Ewing was lingering beyond her shift. When the ALJ asked her to explain, she responded,

Because they [sic] was a lot of tension. [Bethel] and, um, Ms. Ewing were friends and it was just a lot of tension because at first, um, Sandy Bethel . . . wouldn't even, she wouldn't look my way. She wouldn't speak to me and so I just, I didn't say anything to her about it.

Id. at 17. After Bartosik cross-examined Saunders, the ALJ followed with additional questions regarding this assertion.

ALJ: What did you observe that led you to believe they were good friends.

A: Um, [Bethel] played a lot of favoritism and I wrote a letter about that, which I had submitted to Jeff Johnston about things that were going on in the home.

ALJ: When did you write a letter to Mr. Johnston about their friendship and favoritism?

A: I wrote the letter, I really can't remember, I think it was before, um, this incident happened with me and [Ewing] and I also, um, submitted it to human resources Faye White.

...

ALJ: What did the letter say?

A: Um, it basically talked about, um, [Bethel] playing favoritism and, um, a couple things about wanting me to falsify, um, documentation.

ALJ: Who wanted you to falsify documentation?

A: Um, the house manager [Bethel].

...

ALJ: And what did she want you to falsify?

A: Um, there was . . . I had went on vacation and I had somebody work for me and she left a note in the communication log that, um, I was to go in

and sign for, you know, um, sign stating that I did work on those overnights, which I, I didn't work and I wrote back to her that I was on vacation and I couldn't sign for those, somebody worked for me. She basically just went in and say, um, "It's no more than what I have to do every month and, you know, this is your responsibility whether you're there or not," so I just put all that in the letter.

ALJ: . . . [W]ould that person have been willing to sign those documents, do you know?

A: Well, they're supposed to when they're working and they have to document that they completed, uh, certain assignments on their shift.

Id. at 18-19. When Bartosik asked why Saunders had not introduced the letter as an exhibit, she said, "I didn't think it would have anything, um, to do with, um, the reason for me quitting." Id. at 20. Bartosik did not object and did not offer testimony to contradict her.

The ALJ found that Bethel and Ewing were friends and that Saunders "reasonably did not believe that reporting [her] concerns to her supervisor [Bethel] would serve any purpose." App. at 31. The ALJ reversed the Department's decision and determined that Saunders had good cause to leave.

The Review Board listened to a recording of the hearing and reviewed all of the documents in the record. It found that, once Logan made the shift change, "[n]othing happened to justify [Saunders'] alleged fear of [Ewing]." Id. at 33. "[Saunders'] contact with [Ewing] was minimal and impersonal." Id. It reversed the ALJ's determination, concluding that Saunders resigned voluntarily without good cause.

Saunders now appeals pro se.

Discussion and Decision

I. Standard of Review

Any decision of the Review Board is conclusive and binding as to all questions of fact. Ind. Code § 22-4-17-12(a) (West 2005). After extensive analysis, our Supreme Court characterized appellate review of Review Board decisions as follows:

[B]asic facts are reviewed for substantial evidence, legal propositions are reviewed for their correctness. The best that can be said for ultimate facts or “mixed questions” as a general proposition is that the reviewing court must determine whether the Board’s finding of ultimate fact is a reasonable one. The amount of deference given to the Board turns on whether the issue is one within the expertise of the Board.

McClain v. Review Bd. of Ind. Dep’t of Workforce Dev., 693 N.E.2d 1314, 1318 (Ind. 1998). “The Board’s conclusions as to ultimate facts involve an inference or deduction based on the findings of basic fact.” Id. at 1317. Rather than questions of law, they are “more appropriately characterized as mixed questions of law and fact. As such, they are typically reviewed to ensure that the Board’s inference is ‘reasonable’ or ‘reasonable in light of [the Board’s] findings.’” Id. at 1318 (edit in original) (citations omitted). Some ultimate facts, such as whether an employee resigned “voluntarily,” are not within the Review Board’s area of expertise. Id. “As to these, the reviewing court is more likely to exercise its own judgment.” Id.

Here, the Review Board accepted some of the ALJ’s findings, even though it reversed the ALJ’s determination. “The Review Board adopts and incorporates the findings of fact of the [ALJ] except to the extent inconsistent with this decision and as modified herein.” App. at 32. Accordingly, we take into account both sets of findings. Also, we note that the parties

disputed very few of the basic facts in the case.

II. Analysis

On appeal, Saunders argues that the Review Board's determination that she resigned without good cause was not reasonable. The General Assembly prefaced Indiana Code Article 22-4 with the following as a guide for application of the unemployment compensation system:

Economic insecurity due to unemployment is declared hereby to be a serious menace to the health, morale, and welfare of the people of this state and to the maintenance of public order within this state. Protection against this great hazard of our economic life can be provided in some measure by the required and systematic accumulation of funds during periods of employment to provide benefits to the unemployed during periods of unemployment and by encouragement of desirable stable employment.

Ind. Code § 22-4-1-1 (West 2005).

A person who resigns voluntarily without good cause is ineligible for benefit rights. Ind. Code § 22-4-15-1(a) (West 2005); Trelleborg YSH, Inc. v. Review Bd. of Ind. Dep't of Workforce Dev., 798 N.E.2d 484, 486 (Ind. Ct. App. 2003). "Good cause" has two elements. First, the employee's reason for leaving "must be job related and objective in character." Ky. Truck Sales, Inc. v. Review Bd. of Ind. Dep't of Workforce Dev., 725 N.E.2d 523, 526 (Ind. Ct. App. 2000). On appeal, the Review Board asserts that Saunders did not meet this requirement, but it does not support this assertion with argument or citation to the record. Appellee's Brief at 6. As a result, we cannot affirm the Review Board's decision on this basis. See Ind. Appellate Rule 46(A)(8)(a) and Majors v. State, 773 N.E.2d 231, 235 n.2 (Ind. 2002).

The second element of good cause is whether the "demands placed upon an employee

are so unreasonable or unfair that ‘a reasonably prudent person would be impelled to leave.’” Ky. Truck Sales, 725 N.E.2d at 526 (quoting Marozsan v. Review Bd. of Ind. Emp. Sec. Div., 429 N.E.2d 986, 990 (Ind. Ct. App. 1982)). The Review Board concluded that Saunders was ineligible for benefits because “a reasonably prudent employee would not leave her employment under the circumstances presented in this case.” App. at 33. It gave two reasons.

The Review Board found that Saunders “never brought her concern about [Ewing] lingering after work to management’s attention.” Id. However, in her grievance letter submitted to Logan’s human resources department and management, Saunders wrote, “I no longer feel save [sic] working with Ewing or even coming in contact with her through shift change.” Id. at 22. Thus, while not indicating the length of time they were in contact, Saunders clearly identified the nature of the issue and the reason for her concern. Notwithstanding the Review Board’s finding of ultimate fact that Saunders’ fear was unjustified, the written statement spoke for itself. It notified Logan that its attempt to resolve the dispute was allegedly not working as intended. Based upon the written grievance, it was unreasonable for the Review Board to infer that Logan lacked notice of the continuing issue.

Also, the Review Board reasoned that “there were no further confrontations between [Saunders] and [Ewing]. Nothing happened to justify [Saunders’] alleged fear of [Ewing].” Id. at 33. Nonetheless, the ALJ and the Review Board each found that Saunders “felt uncomfortable” around Ewing, even after Logan implemented the revised schedule. Id. at 32. There was no dispute that Ewing confronted Saunders in harsh, physically threatening terms. Ewing stood within inches of Saunders’ face and yelled at her. Ewing called

Saunders a liar and spoke in threatening terms. At different points during the confrontation, Ewing stood behind Saunders and she blocked Saunders' path to the door. In addition, Ewing yelled at a client. Another Logan employee was so concerned about Ewing's behavior that she encouraged Ewing to go home. Logan disciplined Ewing and offered no evidence to suggest that Saunders' account of the incident was inaccurate. Furthermore, Logan was sufficiently concerned about the dispute that it revised both employees' schedules so that they would not overlap. Effectively, Logan asked the Review Board to ignore Saunders' discomfort with encountering Ewing during shift changes, when in fact, it had recognized that the conflict warranted precautionary measures.

Furthermore, Saunders testified that she notified Logan, in writing, of serious allegations against Bethel, her direct supervisor. Saunders described the letter as asserting that Bethel asked Saunders to falsify records. She stated that she gave that letter to Faye White who, like Bartosik, performed human resources duties for Logan. Bartosik acknowledged that he was the custodian of Saunders' personnel file, but he did not object to or refute Saunders' assertion, even when prompted for comment by the ALJ. Presumably, such a document would have been in Saunders' personnel file. None of the findings of the ALJ or the Review Board stated explicitly whether either factfinder believed Saunders' testimony. However, the ALJ found that Saunders "reasonably did not believe that reporting [her] concerns to her supervisor would serve any purpose." *Id.* at 31. At minimum, therefore, the ALJ found that Bethel and Ewing were friends and that their friendship would frustrate Saunders in seeking relief. The Review Board did not address this matter, concluding simply that Logan's management had no notice of the ongoing issue.

Meanwhile, although acknowledging the competing testimony regarding Saunders' and Johnston's efforts to reach the other, the Review Board made no finding about what actually happened. The only undisputed evidence on this question was Bartosik's acknowledgement that a client's illness and death contributed to the situation. Therefore, with respect to this basic fact, the evidence most favorable to the Review Board's decision was that each party was partially responsible for the lapse in communication.

As a practical matter, although Logan asserted that it would allow Saunders to rescind her resignation, it offered no testimony about where or when Saunders would work. Bartosik's only testimony was that Logan had work available. However, Bartosik did not contradict Saunders' testimony that "they were supposed to give me the same schedule that I had and none of the other homes had the schedule that, um, I was working." Tr. at 10.

The few disputed facts in this matter were tangential to the critical events. Ewing threatened and yelled at Saunders. Logan disciplined Ewing and took steps to separate the two employees. It received a written grievance in which Saunders asserted that its corrective measure did not resolve the issue. It then was at least partially responsible for a lapse in communication. Not wanting "to disrupt the continuity in the home," Logan delayed in responding to the written complaint of a ten-year employee. *Id.* at 16. On this mixed question of law and fact, we conclude that the Review Board's denial of unemployment insurance benefits was not reasonable.

Conclusion

The Review Board's determination that Saunders resigned without good cause was not reasonable.

Reversed.

RILEY, J., and BRADFORD, J., concur.