
SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-004024-23T2

LAVANA WILSON,
Appellant,

vs.

CIVIL ACTION
ON APPEAL FROM
BOARD OF REVIEW
DEPARTMENT OF LABOR

BOARD OR REVIEW,
DEPARTMENT OF LABOR, and
AT&T MOBILITY SERVICES LLC

Respondents.

BRIEF
FOR
APPELLANT LAVANA WILSON

LAVANA WILSON
APPELLANT
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PROCEDURAL HISTORY

Appellant (Lavana Wilson) filed for unemployment benefits with the State of New Jersey Department of Labor on or about February 21, 2023. The agency issued an initial determination denying benefits on March 23, 2023. Appellant timely appealed the initial determination on March 30, 2023 to the Appeal Tribunal (Aa1-Aa7).¹ The first recorded telephone hearing was held before the Appeal Examiner Clayton Baker on September 8, 2023 (1T)² and a denial decision was mailed on September 8, 2023 (Aa8-Aa10). On September 13, 2023, Appellant appealed the Appeal Tribunal's decision to the Board of Review including exhibits of the FMLA documents signed by her physician (Aa11-Aa14). Shortly after, on September 18, 2023, Appellant emailed the Board of Review regarding her financial hardships with attachments (Aa15-Aa23). On October 18, 2023, Appellant emailed the Department of Labor regarding her financial hardships with attachments (Aa24-Aa26). After reviewing the case, the Board of Review issued a remand decision on November 3, 2023 (Aa27-Aa28). A second phone hearing before the Appeal Tribunal's examiner Clayton Baker was held on January 8, 2024 (2T) and a denial decision was mailed on January 23, 2024 (Aa29-Aa32). On February 7, 2024, Appellant appealed the

¹ Aa = Appellant Appendix

² 1T = Transcript of September 8, 2023

2T = Transcript of January 8, 2024

second denial decision to the Board of Review (Aa33-Aa34). Appellant emailed the Board of Review regarding her financial hardships on July 1, 2024 (Aa35-Aa37). On July 18, 2024, the Board of Review issued an affirmed decision (Aa38-Aa40). On August 20, 2024, Appellant filed an appeal with the Superior Court of New Jersey, Appellate Division (Aa41-Aa44), and subsequently filed an amended notice of appeal on August 28, 2024 (Aa45).

STATEMENT OF FACTS

Appellant was employed by AT&T Mobility LLC (employer) from October 15, 2012 to February 20, 2023 with her last position being held in their Fraud Department. Appellant was seen as a model employee throughout her tenure. Leading up to her resignation with the employer, Appellant began to suffer from mental health conditions, including depression and anxiety, after surviving brain surgery and traumatically separating from her child's father. Appellant brought this to the attention of her superiors (crying out for help), however, instead of receiving empathy through assistance in this dark time, her symptoms became exacerbated by an increasingly unstable work environment. Due to worsening symptoms, Appellant reached out to the employer's Human Resources (HR) department for assistance. HR suggested that Appellant file for a Family Medical Leave (FMLA) through her physician and that a therapist could be assigned to her. After being evaluated, Appellant's physician prescribed her medication to help ease the depression and anxiety and confirmed, in the FMLA paperwork, that the work environment was negatively impacting her mental health. Based on his evaluation, the employer approved the FMLA documents noting the serious health condition as "Chronic Conditions Requiring Treatment" along with weekly therapy (Aa7). Despite approving the FMLA documents and therapist, the employer took no steps to adjust her workload (forcing mandatory overtime), modify the work environment or offer

any reasonable accommodations. Appellant attempted to remain positive, but the same stressful and mentally harmful conditions persisted in the form of bullying through micro-management thus confirming that she was subjected to abnormal working conditions which were "so compelling as to give her no other choice but to leave the employment" (N.J.A.C.12:17-9.1(b)). Appellant continued to experience worsening health effects, with her therapist documenting the direct connection between her declining mental health and the employer's failure to provide support proving that her condition of mental health was attributable to the work by the standards set forth in N.J.A.C,12:17-9.3. With no reasonable alternative and employer's failure to provide accommodations, Appellant was compelled to resign, establishing good cause attributable to the work under N.J.S.A 43:21-5(a).

Following her resignation, Appellant applied for unemployment benefits on February 21, 2023. On March 23, 2023, the New Jersey Department of Labor found Appellant ineligible for benefits. Appellant appealed this determination on March 30, 2023 (Aa1) and a phone hearing was held before the Appeal Tribunal on September 8, 2023 (1T) concluding that Appellant voluntary left employment without good cause attributable to the work under N.J.S.A 43:21-5(a), thereby disqualifying her from receiving unemployment benefits via mail on September 8, 2023 (Aa8-Aa10). During this time, Appellant experienced severe financial hardships due to the denial of unemployment benefits. She submitted extensive

exhibits to the Appeal Tribunal on September 13, 2023 (Aa11-Aa14), the Board of Review on September 18, 2023 (Aa15-Aa23) and the Department of Labor on October 10, 2023 (Aa24-Aa26), including an eviction notice from her landlord, confirming that she had lost her home due to financial inability to pay rent, a notice of vehicle repossession, demonstrating that she lost reliable transportation making it even more difficult to find employment and bank records proving that her account balance was exhausted, leaving her without financial support to provide for her child, further exacerbating the hardship and emotional toll caused by the employer's failure to accommodate her condition.

Appellant appealed to the Board of Review and after reviewing the case, rather than issuing a final decision, remanded the matter back to the Department of Labor for further proceedings on November 3, 2023 (Aa27-Aa28). The Department of Labor held a second hearing and issued a new decision on January 23, 2024 (Aa29-Aa32), again ruling against Appellant. Appellant emailed her notice of appeal letter to the Board of Review on February 7, 2024 (Aa33-Aa34) and after emailed communication regarding her financial hardships with exhibits on July 1, 2024 (Aa35-Aa37). On July 18, 2024 the Board of Review affirmed the Department of Labor's ruling, denying Appellant's request for benefits (Aa38-Aa40). Appellant maintains that the Department of Labor and Board of Review failed to do their due diligence in confirming the severity of her mental health state by choosing to not

contact the therapist assigned to her by the employer's HR department. The Appellant also contends that the Board of Review erred by failing to acknowledge its legal authority to recognize "constructive discharge", resulting from intolerable working conditions, as good cause for resignation. Having exhausted all administrative appeals, Appellant appealed a judicial review in the Superior Court of New Jersey, Appellate Division on August 20, 2024 (Aa41-Aa44) with an amended notice of appeal on September 28, 2024 (Aa45). Appellant argues that the Department of Labor and the Board of Review misapplied the law, by improperly denying her benefits while failing to consider substantial evidence demonstrating that her resignation was for good cause attributable to the work N.J.S.A 43:21-5(a).

ARGUMENT

THE DEPARTMENT OF LABOR AND THE BOARD OF REVIEW MISAPPLIED THE LAW BY DENYING APPELLANT UNEMPLOYMENT BENEFITS, FAILING TO PROPERLY CONSIDER THE SUBSTANCIAL MEDICAL EVIDENCE PRESENTED AS WELL AS THE FINANCIAL HARDSHIPS SHE ENDURED DURING AND AFTER EMPLOYMENT WITH AT&T MOBILITY LLC. AS A RESULT, APPELLANT SHOULD BE AWARDED UNEMPLOYMENT BENEFITS.

The denial of unemployment benefits under N.J.S.A. 43:21-5(a), N.J.A.C.12:17-9.1(b) and N.J.A.C.12:17-9.3 were misapplied due to the fact that neither the Department of Labor nor the Board of Review properly considered the substantial medical evidence presented to understand that Appellant felt she had no other choice than to voluntarily resign. The bullying by way of “micro-management” added to the severe decline of her mental health (Aa11). Appellant believed that her newborn child’s life would have been at risk should she have stayed in that environment. Under New Jersey Law, an appellant is disqualified from unemployment benefits under N.J.S.A. 43:21-5(a) only if they voluntarily leave work without good cause attributable to the work (Aa8-Aa10). However, case law has established that good cause exists when an employee is forced to resign due to a work-related condition that adversely affects their health.

Gutekunst v. Board of Review, 97 N.J. Super. 191 (App. Div. 1967) held that an employee who resigns due to workplace conditions affecting their health is entitled to unemployment benefits. The court recognized that a resignation under

such circumstances is not voluntary but necessary. *Zielenski v. Board of Review*, 85 N.J. Super. 46 (App. Div. 1964) found that when an employer fails to address a harmful work environment, and an employee resigns as a result, the resignation is not voluntary. *O'Neill v. Unemployment Comp. Bd. of Rev.*, 36 A.3d 250 (Pa. Commw. Ct. 2012) ruled that resignations due to medically documented conditions exacerbated by work are considered constructive discharges and qualify for unemployment benefits. Cases *Gutekunst* and *Zielenski*, prove that Appellant's resignation was directly caused by the employer's failure to accommodate her medical condition. The Department of Labor's oversight in failing to contact the Appellant's therapist and failure to consider severe financial hardships further demonstrates a lack of due diligence, making the decision legally flawed and unsupported by the evidence.

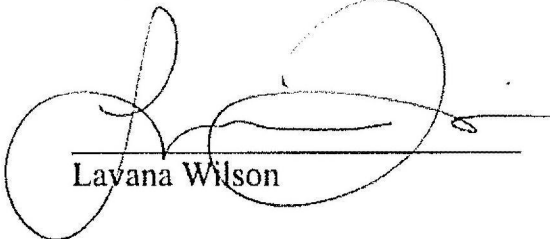
The Department of Labor and the Board of Review negated to properly consider the evidence. The Department of Labor's decision was legally deficient because it misapplied N.J.S.A 43:21-5(a) by failing to recognize that Appellant's resignation was not voluntary but medically necessary. They failed to consider substantial medical evidence, including Appellant's FMLA documentation notated and signed by her physician, specific details stating that the Department of Labor chose not to contact the employer assigned therapist and the disregard of appellant's financial exhaustion evidence further establishes that case laws were ignored.

Resignations due to medically documented conditions caused by the workplace qualify for unemployment benefits. Because of these erroneous errors, the decisions of the Department of Labor and the Board of Review must be reversed.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court reverse the decision of the Board of Review and find that she is entitled to her unemployment benefits. Her resignation was not voluntary but was necessitated by a decline in mental instability, intolerable working conditions and substantial financial hardships. Had the Department of Labor conducted a proper review of the substantial amount of evidence, the Board of Review's decision would have been supported by the facts and the established laws.

Respectfully submitted,



Lavana Wilson

Dated: 4/4/25



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VIA E-COURTS

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Re: Lavana Wilson v. Board of Review, Department of Labor, and
AT&T Mobility Services, LLC
Docket No.: A-4024-23

Civil Action: On Appeal from a Final Agency Decision of the
Board of Review

Letter Brief of Respondent, Board of Review, In Opposition
to Appeal

Dear Ms. Hanley:

Please accept this letter brief pursuant to Rule 2:6-2(b) on behalf of
Respondent, Board of Review.



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PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS¹

Appellant, Lavana Wilson, began working for AT&T Mobility Services, LLC, on October 15, 2012, and became a fraud analyst for AT&T in March 2020. (1T:9-10).² In October 2022, AT&T introduced a mandatory overtime policy requiring fraud department employees to work additional hours beyond their regular schedules. (1T:14; 1T:27-28). The policy was seasonal, and thus temporary. (1T:28-29). Despite her initial compliance with the policy, Wilson later informed her supervisor that she was unable to fulfill her overtime obligations because she lacked childcare arrangements. (1T:14-15). Wilson raised her concerns with a member of management and proposed alternative

¹ Because they are closely related, these sections are combined for efficiency and the court's convenience.

² "1T" refers to the transcript of the Appeal Tribunal hearing that took place on September 8, 2023; "2T" refers to the transcript of the Appeal Tribunal hearing that took place on January 8, 2024.

solutions, none of which were accepted. (1T:14). She ultimately fulfilled her overtime obligation by covering her shifts with intermittent leave under the Family and Medical Leave Act (FMLA). (1T:14-15).

In October 2022, Wilson was diagnosed with anxiety and depression, which she attributed to ongoing personal matters. (2T:8-9). She disclosed her diagnoses to her supervisor, who then directed her to contact the human resources (HR) office. (2T:11). HR then referred Wilson to AT&T's employee assistance program, and as a result she was provided access to therapy sessions. (2T:11-12).

Beyond these issues, Wilson alleged that she experienced a hostile work environment, citing several incidents of what she perceived as micromanagement and unprofessional supervisory conduct. (1T:12-14; 1T:19-24). These included verbal exchanges during a fire drill, and a separate occasion involving her manager, Antonio DaSilva, speaking loudly on the office floor. (1T:20-23). Despite these claims, Wilson failed to submit any formal complaints, though she stated that she raised her concerns verbally to both her management and her union. (1T:24; 2T:14).

Wilson's last physical day in the office was January 17, 2023, after which she utilized accrued paid time until she resigned from her position on February 20, 2023. (1T:9). At the time of her resignation, Wilson was neither subject to

disciplinary action nor under any threat of termination. (1T:30-31). And when she resigned, Wilson stated the reason for leaving was dissatisfaction with management and the overall work environment. (1T:24-25; 2T:13). In fact, Wilson's position remained available to her, had she chosen to continue her employment with AT&T. (1T:30).

Shortly after she resigned, Wilson filed a claim for unemployment benefits on February 29, 2023. (Aa8).³ On March 23, 2023, a Deputy of the Division of Unemployment Insurance mailed a notice of determination (Determination) to Wilson's address of record. (Aa8). The Determination found her disqualified from receiving benefits as of January 15, 2023, because she voluntarily resigned without good cause attributable to the work. Ibid.

Wilson appealed the Determination to the Appeal Tribunal on March 30, 2023, (Aa1), and the Tribunal conducted a telephonic hearing on September 8, 2023, (Aa8; 1T:6). In a decision mailed September 8, 2023, the Appeal Tribunal upheld the Deputy's Determination, but revised Wilson's disqualification date to February 19, 2023. (Aa9).

Wilson appealed the Appeal Tribunal's decision to the Board of Review on September 13, 2023, explaining that she was experiencing financial hardship

³ "Aa" refers to Appellant's appendix; "Ab" refers to Appellant's brief.

due to the Tribunal's decision. (Aa11-14). And although Wilson's financial hardship was not at issue – and thus not considered by the Appeal Tribunal – Wilson provided the Board with documents in support of these claims on September 18, 2023. (Aa15-23; Aa24-26).

Recognizing the need for further factual development, the Board remanded the matter to the Appeal Tribunal on November 3, 2023. (Aa27). In particular, the Board directed the Appeal Tribunal to obtain additional testimony to determine whether Wilson's "condition of health was attributable to the work, whether working conditions were adverse and duly grieved prior to her leaving, and thus whether claimant had good cause attributable to the work for leaving." Ibid.

The Appeal Tribunal held a second telephonic hearing on January 8, 2024. (Aa29; 2T:2-3). Although Wilson testified that her physician had diagnosed with her anxiety and depression, she also testified that her depression and anxiety were personal in origin and that her physician had never advised her to resign from her position. (2T:8-9; 2T13-14). She also acknowledged that she never requested a formal accommodation or filed a grievance, even after being referred to the EAP for therapy. (2T:9-10; 2T:13-14). Upon consideration of the additional testimony and supporting documentation, the Appeal Tribunal reaffirmed its decision on January 23, 2024. (Aa29-30). The Appeal Tribunal

determined that Wilson had not demonstrated that her medical condition was caused or worsened by her job or that she had pursued remedies such as requesting an accommodation or alternative work as required by N.J.A.C. 12:17-9.3.

Wilson appealed the Tribunal's decision, and on July 18, 2024, the Board affirmed. (Aa33-34; 38-39). Specifically, the Board found that Wilson had not shown that her mental health condition was attributable to her work at AT&T, and that she was not subjected to abnormal working conditions that were "so compelling as to give [her] no choice but to leave the employment." (Aa38). Thus, the Board determined that Wilson failed to meet her burden under N.J.A.C. 12:17-9.1(c) to demonstrate that she left work voluntarily due to good cause attributable to the work. Ibid.

This appeal followed.

ARGUMENT

THE BOARD OF REVIEW CORRECTLY DETERMINED THAT WILSON LEFT WORK VOLUNTARILY AND WITHOUT GOOD CAUSE ATTRIBUTABLE TO THE WORK.

The judicial capacity to review administrative agency decisions is limited. Brady v. Bd. of Rev., 152 N.J. 187, 210 (1997); Pub. Serv. Elec. & Gas Co. v. N.J. Dep't of Env't Prot., 101 N.J. 95, 103 (1985). Unless a court finds that the

agency's action was arbitrary, capricious, or unreasonable, the agency's ruling should not be disturbed. Brady, 152 N.J. at 210; In re Warren, 117 N.J. 295, 296 (1989). This limited standard of review is informed by three inquiries: (1) whether the agency's action violates express or implied legislative policies, that is, whether the agency followed the law; (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not have been made on a showing of the relevant factors. Mazza v. Bd. of Trs., 143 N.J. 22, 25 (1995).

Our courts therefore accord a "strong presumption of reasonableness" to an agency's exercise of its statutorily delegated responsibilities. City of Newark v. Nat. Res. Council, 82 N.J. 530, 539 (1980). And substantial deference is given to an agency's interpretation of its own statutes. N.J. Tpk. Auth. v. AFSCME, Council 73, 150 N.J. 331, 351 (1997). Moreover, "[t]he burden of demonstrating that the agency's action was arbitrary, capricious or unreasonable rests upon the person challenging the administrative action." In re Arenas, 385 N.J. Super. 440, 443-44 (App. Div. 2006).

The purpose of the New Jersey Unemployment Compensation Law, N.J.S.A. 43:21-1 to -71, is to alleviate the worker and her family of the burden of involuntary unemployment by providing a temporary source of income to the

worker when she is out of work through no fault of her own. Brady, 152 N.J. at 212. However, “[i]n the wake of a voluntary departure from work, the claimant bears the burden to establish good cause attributable to such work for leaving.” Ardan v. Bd. of Rev., 231 N.J. 589, 602 (2018) (emphasis added) (internal quotation marks omitted); N.J.A.C. 12:17-9.1(c). Thus, the law disqualifies individuals from receiving benefits “[f]or the week in which the individual has left work voluntarily without good cause attributable to such work, and for each week thereafter until the individual becomes reemployed.” Utle v. Bd. of Rev., Dep’t of Labor, 194 N.J. 534, 544 (2008) (internal quotation marks omitted); N.J.S.A. 43:21-5(a).

The statute does not define “good cause,” but courts have interpreted the phrase to mean a “cause sufficient to justify an employee’s voluntarily leaving the ranks of the employed and joining the ranks of the unemployed.” Ardan, 444 N.J. Super. 576, 585 (App. Div. 2016), aff’d, 231 N.J. 589 (quoting Domenico v. Bd. of Rev., 192 N.J. Super. 284, 287 (App. Div. 1983) (internal quotation marks omitted)). To be entitled to benefits, a claimant must therefore leave for “a reason related directly to the individual’s employment, which was so compelling as to give the individual no choice but to leave the employment.” N.J.A.C. 12:17-9.1(b). As the Supreme Court of New Jersey has held, “[t]he test of ‘ordinary common sense and prudence’ must be utilized to determine

whether an employee's decision to leave work constitutes good cause.” Brady, 152 N.J. at 214 (quoting Zielenski v. Bd. of Rev., 85 N.J. Super. 46, 52 (App. Div. 1964)).

Here, the Board correctly determined that Wilson was disqualified from unemployment benefits because she left work voluntarily without good cause attributable to the work. (Aa38). Wilson made the unilateral decision to resign, despite no threat of termination, no disciplinary action, and the continued availability of her position. (1T:30-31). Further, there is no evidence that Wilson was facing abnormal working conditions so severe that she was deprived of the choice of remaining at her job. Indeed, “[a]n employee who leaves work for good, but personal, reasons is not deemed to have left work voluntarily with good cause.” Ardan, 444 N.J. Super. at 585 (citations omitted). Although Wilson claims that she had discussions with management about “disrespect” and “bullying,” she did not file any formal or written grievances with human resources, her union, or with management. (1T:24; 2T:14). Rather, any issues were addressed at the time she discussed them with her supervisors. (2T:15). Wilson therefore failed to carry her burden of showing that she had a reason that was “so compelling as to give [her] no choice but to leave the employment.” N.J.A.C. 12:17-9.1(b).

The Board also correctly held that Wilson was not entitled to an exception based on any medical condition. If an individual leaves a job due to physical or mental condition that is aggravated by working conditions, however, he or she may be entitled to benefits if there was no other suitable work available that could have been performed within the limits of their disability. N.J.A.C. 12:17-9.3(b). This exception requires the employee to: (1) notify her employer of a medical condition that is aggravated by her working conditions; (2) request an accommodation; and (3) afford her employer the opportunity to address her concerns and determine whether other suitable work was available. Ardan, 231 N.J. at 599. Further, medical certification is required to support any finding of good cause attributable to the work. N.J.A.C. 12:17-9.3(d).

Wilson failed to satisfy all of those criteria. While Wilson has offered some documentation showing that she suffers from a mental health condition, she has not provided proof that her condition was either caused or aggravated by her working conditions, as required under N.J.A.C. 12:17-9.3(b). (Aa2-7; 2T8-9). And there is nothing in the record suggesting she was advised by a medical professional to leave her job because of a concern regarding her mental health, which the law also requires. N.J.A.C. 12:17-9.3(d); (see 1T; 2T). Moreover, when she advised her employer that she suffered from depression and anxiety, she was referred to its employee assistance program; and there is no

evidence that she ever requested an accommodation after, as required under N.J.A.C. 12:17-9.3(b); (2T:9-10). Thus, Wilson has failed to demonstrate that her mental health condition was either caused or aggravated by her employment as is required by N.J.A.C. 12:17-9.3(b). (Aa29-30).

Wilson's reliance on Gutekunst v. Bd. of Rev., 91 N.J. Super. 191 (App. Div. 1967) and Zielenski is also misplaced. (Ab7-8). First, the reporter citation Wilson provides for Gutekunst is inaccurate, and instead refers to Alperin v. Middletown, 91 N.J. Super. 190 (Super. Ct. 1966), a zoning ordinance case. Moreover, the Board has been unable to locate a case named Gutekunst v. Bd. of Review that stands for the principle Wilson cites.⁴ Similarly, Zielenski offers no help to Wilson. There, like here, the court found that the appellant's dissatisfaction with working conditions did not constitute good cause for leaving work voluntarily. Id. at 54. In short, these arguments are unsupported by the record, and more importantly, call for a misapplication of the voluntary quit standard.

Based on the foregoing, the Board correctly concluded that Wilson voluntarily left her position without good cause attributable to the work. That decision should therefore be affirmed.

⁴ The Board has also been unable to find Oneill v. Unemployment Comp. Bd. of Rev., 36 A.3d 250 (Pa. Commw. Ct. 2012). (Ab8).

CONCLUSION

For these reasons, the Board's decision should be affirmed.

Respectfully submitted,

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

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