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Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2226-15T1

TINA ZIPPIN,

Appellant,

v.

BOARD OF REVIEW, DEPARTMENT
OF LABOR and JUST HOME, INC.,

Respondents.

Argued March 21, 2017 – Decided November 27, 2017

Before Judges Ostrer and Vernoia.

On appeal from the Board of Review, Department
of Labor and Workforce Development, Docket No.
043,777.

Richard J. Bennett argued the cause for
appellant (Central Jersey Legal Services,
Inc., attorneys; Mr. Bennett, on the brief).

Adam K. Phelps, Deputy Attorney General,
argued the cause for respondent Board of
Review (Christopher S. Porrino, Attorney
General, attorney; Melissa Dutton Schaffer,
Assistant Attorney General, of counsel; Mr.
Phelps, on the brief).

Respondent Just Home, Inc. has not filed a
brief.

The opinion of the court was delivered by
OSTRER, J.A.D.

Tina Zippin appeals from the decision of the Board of Review, denying her unemployment benefits because she left her job voluntarily, without good cause attributable to work. We affirm.

Many of the facts are undisputed. Tina Zippin was working as an aide for an adult day care facility, Just Home, Inc., when her mental health condition prevented her from continuing. She stated that a change in her medication was the cause. Her supervisor referred her to a nurse practitioner who concluded she was unable to work, and recommended that Zippin apply for short term disability (which she never did).

Zippin did not communicate with her employer for the next three weeks. Her employer tried without success to reach her by telephone to learn the status of her recovery. Absent any word, her supervisor wrote a letter to Zippin stating:

As of today, you did not contact us to give us [an] update on your situation or to give us a date when you will be able to return to work. We were trying to reach you after our last conversation [three weeks ago] with no result.

Because of all the above, I am assuming that you have abounded [sic]¹ your position in Just Home as a Direct Aid.

¹ The parties do not dispute that the author meant to write "abandoned."

Please feel free to contact me should you have any questions/concerns.

The letter was sent certified mail, with return receipt requested. Shortly thereafter, Just Home mailed to Zippin her personal belongings that she left at the workplace.

Zippin testified she was too disabled to communicate with her employer. She signed for the letter three weeks after it was mailed. She said she was hospitalized for ten days during that period. Shortly after she received the letter, Zippin stopped by her employer's place of business. She inquired about returning to work, but admitted that she was not then able to do so, as she was still receiving intensive out-patient treatment. She was told she would need to present medical proof that she was able to work. Zippin understood that she would be able to return when she was well enough. Yet, she never presented herself to her employer as willing and able to return to work, nor did she provide required medical documentation.

Instead, less than three months after her last day of work, she applied for unemployment insurance. The deputy denied her benefits. At her Appeal Tribunal hearing five months after her last day of work, she conceded she was not ready to work, because she was still in treatment three days a week. Her employer's

representative testified that Zippin could return to work if she provided the necessary medical proof.

The Tribunal reversed the deputy's decision, finding that the employer terminated her employment by its letter stating it assumed she abandoned her job. The Board reversed, concluding the letter did not terminate Zippin; rather, "[i]t told [Zippin] that the employer considered that she abandoned her job and [she] could contact them." Furthermore, Zippin "never attempted to return to work or contact the employer [She] left her job voluntarily and did so without good cause attributable to the work."

On appeal, Zippin contends she was entitled to benefits as she left work because of illness, and then her employer terminated her by way of the letter quoted above. We are unpersuaded.

Well-settled principles guide our analysis. A person is generally disqualified from receiving unemployment benefits if he or she "has left work voluntarily without good cause attributable to such work" N.J.S.A. 43:21-5(a). A person is deemed to have done so when he or she leaves work because of a health condition that is not work-related but disables the person from returning. N.J.A.C. 12:17-9.3(b) ("When a non-work connected physical and/or mental condition makes it necessary for an individual to leave work due to an inability to perform the job,

the individual shall be disqualified for benefits for voluntarily leaving work.").

Even if a worker does not expressly say, "I quit," an employer may conclude the worker has abandoned work if he or she is "absent from work for five or more consecutive work days and . . . without good cause fails to notify the employer of the reasons for his or her absence" N.J.A.C. 12:17-9.11. "Good cause" for not communicating with the employer "means any situation over which the claimant did not have control and which was so compelling as to prevent the employee from notifying the employer of the absence." Ibid. An abandoned job is treated as voluntarily leaving work without good cause attributable to work. Ibid.

However, the worker is not deemed to have voluntarily quit work if he or she leaves work due to illness – intending to return – and makes a reasonable effort to preserve his or her job, but the employer refuses to allow the worker to return and terminates employment. N.J.A.C. 12:17-9.3(c) ("[A]n individual who has been absent because of a personal illness or physical and/or mental condition shall not be subject to disqualification for voluntarily leaving work if the individual has made a reasonable effort to preserve his or her employment, but has still been terminated by the employer.") (emphasis added).

We exercise a limited review of the Board's decision. Brady v. Bd. of Review, 152 N.J. 197, 210 (1997). The critical question here is whether Just Home terminated Zippin by way of its certified letter. We defer to the Board's factual finding that it did not, as the Board relied on sufficient credible evidence in the record. See Lourdes Med. Ctr. of Burlington Cnty. v. Bd. of Review, 197 N.J. 339, 367 (2009).

First, by its express terms, the letter did not terminate Zippin. Rather, in view of Zippin's lack of communication for three weeks, the employer understandably stated that it assumed she abandoned her position. Zippin was invited to contact the employer with questions or concerns. So, if she did not intend to abandon her job, she could have corrected her employer's impression. Zippin apparently did just that, when she visited her workplace after receiving the letter.

Second, as further evidence that Just Home did not intend to terminate Zippin, a supervisor told Zippin when she visited the workplace that she could return to work upon proof she was medically fit. Even at the Appeal Tribunal hearing months later, that remained the employer's position.

We recognize that Zippin contends she was too disabled to communicate with her employer until she was released from the

hospital, over a month after she left work.² In other words, she claims she had good cause for not communicating, and therefore had not, in fact, abandoned her job. N.J.A.C. 12:17-9.11. However, we need not resolve that question. Nor need we resolve whether she made a "reasonable effort to preserve her employment." N.J.A.C. 12:17-9.3(c). Those facts would be important if Just Home terminated her, or refused to reinstate her upon her request. Cf. De Lorenzo v. Bd. of Review, 54 N.J. 361, 364 (1969) (affirming Board's conclusion that an employee is entitled to benefits "when an employee becomes ill and does those things reasonably calculated to protect the employment and, notwithstanding that she is not reinstated, there is no voluntary leaving of work" (emphasis added)).

Notwithstanding its letter, Just Home did not terminate Zippin, or refuse her return. When she visited the workplace after receiving the letter, Zippin understood that a job was still available if she could prove she was able. But she was not. Even months later, at the Appeal Tribunal hearing, Just Home's

² We also recognize that the Board's statement that she "never attempted to . . . contact the employer" is contrary to the undisputed evidence that Zippin visited the employer, albeit three weeks after the letter was sent, and six weeks after she left work because of illness.

representative said a job remained available, but Zippin was not ready.

In sum, whether Zippin had abandoned her work, or remained out for reasons of illness and had taken reasonable steps to preserve her job, she was still not entitled to benefits because she was neither terminated, nor denied reinstatement by her employer.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION