SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5557-14T4

YOHANNA C. ROSAS,

Appellant,

v.

BOARD OF REVIEW, and
KID CLAN SERVICES, INC.,

Respondents.

Argued April 5, 2017 – Decided April 27, 2017

Before Judges Fuentes, Simonelli and Gooden Brown.

On appeal from the Board of Review, Department of Labor and Workforce Development, Docket No. 032,301.

Sarah Hymowitz argued the cause for appellant (Legal Services of New Jersey, attorneys; Ms. Hymowitz, Anisa Rahim and Melville D. Miller, Jr., on the briefs).

Robert M. Strang, 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; Adam Verone, Deputy Attorney General, on the brief).

Respondent Kid Clan Services, Inc., has not filed a brief.

PER CURIAM

Appellant Yohanna Rosas appeals from the May 25, 2015 final decision of respondent Board of Review (Board), which affirmed the October 10, 2014 decision of the Appeal Tribunal that Rosas was disqualified from receiving benefits pursuant to N.J.S.A. 43:21-5(a) because she left her employment at Kid Clan Services, Inc. (Kid Clan) voluntarily without good cause attributable to the work. We affirm in part and remand to allow the parties to develop a record concerning the application of N.J.A.C. 12:17-11.5(a)(3).

I.

We derive the following facts from the record. Rosas has a history of migraine headaches that pre-dated her employment with Kid Clan, a provider of child therapy services. The frequency of her headaches in 2005 ranged from twenty per month to two or three per month, depending on her medication. In 2006, even though she was taking Propranolol, she still had migraines three times a week. Another medication, Frova,[1] helped her migraines, but she

[1] According to the United States National Library of Medicine:

> Frovatriptan is used to treat the symptoms of migraine headaches (severe throbbing headaches that sometimes are accompanied by nausea and sensitivity to sound and light).

discontinued taking it when she began working at Kid Clan on May 17, 2011. While working at Kid Clan, she had two or three migraines a week.

Rosas worked in accounts receivable at Kid Clan. Her job duties included billing; assisting patients with insurance claims and prior authorizations; making bank deposits; answering the phones when the receptionist was unavailable; and ordering supplies, including promotional and therapeutic supplies. Rosas was also hired to perform bookkeeping services for Prima Pizza, which Kid Clan's president, Dinah Leiter, owned. Rosas's job duties as bookkeeper for Prima Pizza included balancing reconciliations; balancing credit card reconciliations; paying vendors, sales taxes, and payroll taxes; assisting with payroll with another company; preparing vendor passes; and making bank deposits.

> Frovatriptan is in a class of medications called selective serotonin receptor agonists. It works by narrowing blood vessels around the brain, blocking pain signals from being sent to the brain, and stopping the release of certain natural substances that cause pain, nausea, and other symptoms of migraine. Frovatriptan does not prevent migraine attacks or reduce the number of headaches you have.

https://medlineplus.gov/druginfo/meds/a604013.html

During her employment with Kid Clan, the number of patients Rosas had to assist increased from approximately fifty to approximately one hundred and forty. Rosas claimed she was never advised that her workload may increase. In December 2013, Rosas told Leiter that she was overwhelmed and needed help. She did not tell Leiter that her work was aggravating her migraines.

In a February 27, 2014 e-mail, Rosas advised Leiter that she felt uncomfortable and disrespected, was treated as if she was not doing her job, and could not work "under the disorganization & pressure." Rosas also said she was depressed, stressed with migraines, overwhelmed, and feeling discriminated against. She did not say that the work aggravated her migraines. She advised Leiter that she was resigning, effective March 14, 2014.

On February 28, 2014, Leiter met with Rosas and offered to remove her Prima Pizza bookkeeping duties, but Rosas refused to give up those duties. Leiter then offered to hire someone to alleviate Rosas's workload. On March 17, 2014, Leiter hired an assistant to do the Kid Clan billing. However, the assistant was terminated after three months because her work was substandard, inaccurate, and did not provide much help to Rosas.

On May 20, 2014, Rosas notified Leiter that she would be absent from work due to a migraine headache and upset stomach. On May 21, 2014, Rosas saw Sapna Singh, M.D., who provided a note

stating "Please excuse Rosas . . . from work from 5/20/14 until 5/22/14 due to medical reasons." Rosas submitted the note to Leiter, but no other medical documentation.

On May 28, 2014, Leiter asked Rosas if an assistant in the Kid Clan office could help alleviate her workload. Rosas responded, "I think she can help me! Is she available? I need help!! Specially entering Prima [Pizza]'s bill in QuickBooks. Can we install it in her laptop and share the information?" Leiter replied "Yes definitely[,]" and ordered a new server so that Rosas and the assistant could use QuickBooks at the same time.

Rosas resigned before the server was installed and before the assistant could assist her. She left her job in a fit of rage in the middle of the day on July 22, 2014, leaving behind items on her desk and her shoes underneath. She had received a call from an employee of Prima Pizza, who accused her of telling Leiter that he was stealing from the pizzeria, and felt threatened; however, she said this was not the reason she left. She did not notify Leiter until July 25, 2014, that she resigned because the job was aggravating her health condition.

On August 3, 2014, Rosas applied for unemployment benefits. On September 9, 2014, a Deputy Director of the Division of Unemployment Insurance denied her application after determining that she left work voluntarily on July 22, 2014, without good

cause attributable to the work. Rosas was disqualified for benefits from July 20, 2014, until she worked eight or more weeks and earned at least ten times her weekly benefit rate. The Deputy stated that Rosas "left [her] job as an accounts receivable employee when [she] walked off the job in the middle of the day. The job became too much for [her] to handle. This is the nature of the job."

Rosas appealed to the Appeal Tribunal. She submitted medical documentation that pre-dated her employment with Kid Clan, which confirmed she was diagnosed with migraine headaches in 2005, and prescribed medications. Rosas testified before the Appeal Tribunal that when she worked for Kid Clan, she took medication once every twelve hours, which occasionally worked, but increased it to two every twelve hours in February 2104, without a doctor's advice. She also testified that she stopped taking Frova, which had helped her in the past.

In an October 10, 2014 written decision, the Appeal Tribunal found that: (1) Rosas left work voluntarily because she perceived the workload was overwhelming, stressful, and had an adverse effect on her health; (2) the employer attempted to accommodate Rosas by hiring an assistant to help alleviate the workload; and (3) Rosas failed to present unequivocal medical evidence to her employer before leaving the job showing that her duties of employment or

conditions of the job caused or aggravated her health condition. The Appeal Tribunal also found there was no evidence establishing that the conditions of the work were significantly sufficient to warrant leaving the work to join the ranks of the unemployed. The Appeals Tribunal concluded that Rosas was disqualified for benefits under N.J.S.A. 43:21-5(a) because she left work voluntarily without good cause attributable to the work.

On appeal to the Board, Rosas submitted an office note from a visit with Dr. Singh on October 1, 2014, which stated that she complained of frequent headaches and dizziness and had quit her job in July 2014 because of the worsening of her migraines due to excessive stress at work. Rosas also submitted a letter from Dr. Singh, dated October 17, 2014, which stated that she explained to the doctor that the excessive stress and workload were aggravating her migraine headaches and she could not perform her daily duties. Based on Rosas's explanation, the doctor stated that Rosas "presented severe [m]igraine headaches triggered by stress work related aggravating her neurological medical condition." In a May 25, 2015 decision, the Board affirmed the Appeal Tribunal's decision without modifications.

II.

On appeal, Rosas contends that the Board erred in concluding she was required to provide her employer with medical documentation

of her migraine condition to establish medical good cause for leaving her job. We disagree.

Our review of an administrative agency decision is limited. Brady v. Bd. of Review, 152 N.J. 197, 210 (1997). "[I]n reviewing the factual findings made in an unemployment compensation proceeding, the test is not whether [we] would come to the same conclusion if the original determination was [ours] to make, but rather whether the factfinder could reasonably so conclude upon the proofs." Ibid. (quoting Charatan v. Bd. of Review, 200 N.J. Super. 74, 79 (App. Div. 1985)). "If the Board's factual findings are supported 'by sufficient credible evidence, [we] are obliged to accept them.'" Ibid. (quoting Self v. Bd. of Review, 91 N.J. 453, 459 (1982)). We also give due regard to the agency's credibility findings. Logan v. Bd. of Review, 299 N.J. Super. 346, 348 (App. Div. 1997). "Unless . . . the agency's action was arbitrary, capricious, or unreasonable, the agency's ruling should not be disturbed." Brady, supra, 152 N.J. at 210.

Moreover, we "should give considerable weight to a state agency's interpretation of a statutory scheme that the legislature has entrusted to the agency to administer." In re Election Law Enf't Comm'n Advisory Op. No. 01-2008, 201 N.J. 254, 262 (2010). "We will defer to an agency's interpretation of both a statute and implementing regulation, within the sphere of the agency's

authority, unless the interpretation is plainly unreasonable." Ibid. (citation omitted). However, we are "not bound by [an] agency's interpretation of a statute or its determination of a strictly legal issue[.]" Lavezzi v. State, 219 N.J. 163, 172 (2014) (first alteration in original) (citation omitted). "Thus, to the extent [the agency's] determination constitutes a legal conclusion, we review it de novo." Ibid.

An individual is disqualified for unemployment 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 and works eight weeks in employment[.]" N.J.S.A. 43:21-5(a).

An employee who has left work voluntarily bears the burden of proving that he or she "did so with good cause attributable to work." Brady, supra, 152 N.J. at 218 (citation omitted); N.J.A.C. 12:17-9.1(c). "While the statute does not define 'good cause,' our courts have construed the statute to mean 'cause sufficient to justify an employee's voluntarily leaving the ranks of the employed and joining the ranks of the unemployed.'" Domenico v. Bd. of Review, 192 N.J. Super. 284, 287 (App. Div. 1983) (quoting Condo v. Bd. of Review, 158 N.J. Super. 172, 174 (App. Div. 1978)). N.J.A.C. 12:17-9.1(b) defines "good cause attributable to such work" as "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."

An employee who leaves work for good, but personal, reasons is not deemed to have left work voluntarily with good cause. Brady, supra, 152 N.J. at 213. Thus, a claimant who leaves work for good, but personal, reasons is subject to disqualification under N.J.S.A. 43:21-5(a). Morgan v. Bd. of Review, 77 N.J. Super. 209, 214 (App. Div. 1962).

> Mere dissatisfaction with working conditions which are not shown to be abnormal or do not affect health, does not constitute good cause for leaving work voluntarily. The decision to leave employment must be compelled by real, substantial and reasonable circumstances not imaginary, trifling and whimsical ones. . . . [I]t is the employee's responsibility to do what is necessary and reasonable in order to remain employed.
>
> [Domenico, supra, 192 N.J. Super. at 288 (internal citations omitted).]

There is a limited exception to this general rule under N.J.A.C. 12:17-9.3(b), which provides as follows, in pertinent part:

> An individual who leaves a job due to a physical and/or mental condition or state of health which does not have a work-connected origin but is aggravated by working conditions will not be disqualified for benefits for voluntarily leaving work without good cause "attributable to such work," provided there was no other suitable work available which the

> individual could have performed within the limits of the disability.

To qualify for this exemption, an employee must provide a medical certification "to support a finding of good cause attributable to work." N.J.A.C. 12:17-9.3(d). The employee must provide uncontroverted medical evidence that her work aggravated her illness and forced her to leave employment. Wojcik v. Bd. of Review, 58 N.J. 341, 344 (1971). In addition to establishing the aggravation of a medical condition, an employee must prove she did all that was necessary to protect her position. Yardville Supply Co. v. Bd. of Review, 114 N.J. 371, 376 (1989) (citing Self, supra, 91 N.J. at 457; DeLorenzo v. Bd. of Review, 54 N.J. 361, 363 (1969)). She must therefore prove that she gave her employer an opportunity to provide an accommodation and notified the employer that her medical condition was the cause of her leaving her job. Ardan v. Bd. of Review, 444 N.J. Super. 576, 586 (App. Div. 2016), certif. granted, ___ N.J. ___ (2017).

Here, Rosas did not provide any medical documentation to Kid Clan confirming that her work aggravated her medical condition, nor did she notify her employer before she resigned that she left because her work aggravated her migraines. To allow her to collect unemployment benefits under these circumstances would allow unscrupulous individuals to misuse the unemployment compensation

program by simply leaving his or her job solely on self-serving unsupported claims or subjective belief that the work aggravated a medical condition, and deprive the employer of the opportunity to address the situation. Such a prospect would threaten the continued viability of the unemployment compensation system and undermine the laudable public policy underpinning the program.

Even assuming that Rosas told her employer prior to resigning that her work aggravated her migraines, she resigned before her employer could implement the accommodation that she agreed would resolve her work-related issues. Stated differently, she did not do all that was necessary to protect her position.

Further, Rosas did not provide uncontroverted medical evidence that her work aggravated her migraines and forced her to leave employment. In the May 20, 2014 note excusing Rosas from work, Dr. Singh did not identify the medical reasons for her absence nor provide any medical documentation that described Rosas's symptoms or diagnosis or confirmed that her job aggravated her medical condition. Dr. Singh also did not state that Rosas must resign or reduce her workload because her present job duties were aggravating her medical condition. None of the other documents Rosas submitted to the Appeal Tribunal or the Board constituted the uncontroverted medical evidence required to prove medical good cause for leaving her job.

We conclude that the Board reasonably interpreted N.J.A.C. 12:17-9.3(d) to require an employee to provide an employer with documentation and unequivocal evidence of a medical condition that was aggravated by the working conditions prior to leaving employment. The Board's decision is not arbitrary, capricious, or unreasonable, and is amply supported by the record.

III.

In the alternative, Rosas contends that the substantial increase in her workload at Kid Clan from fifty patients to one hundred and forty patients constituted "new work" that was unsuitable, thus entitling her to unemployment benefits under N.J.A.C. 12:17-11.5(a)(3). Because the Board did not address this issue, we are compelled to remand this matter to allow the parties to develop an appropriate record for possible appellate review.

Affirmed in part and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.