SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3229-16T3

CHARLENE TECH,

Appellant,

v.

BOARD OF REVIEW, DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT, and GANNETT SATELLITE INFORMATION NETWORK, INC., t/a USA TODAY,

Respondents.

Submitted February 26, 2018 – Decided March 16, 2018

Before Judges Sabatino and Rose.

On appeal from the Board of Review, Department of Labor and Workforce Development, Docket No. 107,454.

Charlene Tech, appellant pro se.

Gurbir S. Grewal, Attorney General, attorney for respondent Board of Review (Melissa Dutton Schaffer, Assistant Attorney General, of counsel; Aimee Blenner, Deputy Attorney General, on the brief).

Respondent Gannett Satellite Information Network has not filed a brief.

PER CURIAM

Appellant Charlene Tech appeals the Board of Review's final agency decision denying her unemployment benefits. The Board's analysis was based on the fact that appellant ceased working after she accepted an early retirement package offered by her long-time employer, the Cherry Hill Courier Post newspaper.[1]

Appellant worked as a sales representative with the newspaper for over thirty years. In August 2015, the newspaper announced that it was offering an early retirement program to encourage departures as a cost-cutting measure. The newspaper specified a deadline of October 12, 2015 as the final day for employees to accept the retirement package. Ten days before that deadline, on October 2, the newspaper's "Chief People Officer" sent appellant an email reminding her of the October 12 acceptance deadline. Although the email stated the retirement program was voluntary, it also contained a gloomy note of caution that if "we don't achieve our goals, we will need to re-evaluate where we stand and we can't rule out implementing other actions in the future."

Appellant discussed the October 2 email with her manager, and asked him if her job was in jeopardy if she did not accept the retirement package. According to appellant, the manager could not assure her that she would continue to be employed. Appellant was

[1] The newspaper is owned by Gannett Satellite Information Network, which elected to not participate in this matter.

aware that two years earlier in 2013 the newspaper had laid off ten other salespersons and had transferred their customer accounts to another location rather than reassigning the accounts to the remaining sales personnel in appellant's office.

Soon after receiving the email and meeting with her manager, appellant learned that the newspaper had reassigned her entire sales territory and all of her sales accounts to a newly-hired individual, allegedly making about half of appellant's salary. The record contains no indication that appellant was assigned or promised any new territory or customer accounts.

Fearing imminent discharge, appellant accepted the retirement package. The record indicates that at least one person who had not accepted the package was subsequently discharged. A newspaper article described the paper's previous cost-cutting campaign as the "biggest" since 2011, and that almost 400 layoffs were projected.

At the telephonic hearing, appellant explained the circumstances, including the undisputed fact that her sales territory had been taken away completely and her customers were being handled by a new employee. Appellant's employer did not attend the hearing and offer competing evidence.

Appellant filed a claim for unemployment benefits, which a Deputy of the agency administratively denied. The Deputy later

issued a second disqualification letter deeming appellant disqualified for a limited period from November 15, 2015 to November 12, 2016 because appellant had obtained salary continuation during that interval.[2]

The Appeal Tribunal denied appellant's claim, concluding that, by accepting the retirement package, she had "left work voluntarily without good cause attributable to the work" and was thus ineligible for benefit under N.J.S.A. 43:21-5(a). The Board of Review upheld that finding. This appeal ensued.

We acknowledge that we owe considerable deference to the Board in administering our state's unemployment compensation laws. Brady v. Bd. of Review, 152 N.J. 197, 210 (1997). Nevertheless, we conclude that on the discrete facts in this particular case, the agency misapplied the applicable legal standards and acted arbitrarily in rejecting appellant's claim.

Although an employee's acceptance of a retirement package is often voluntary conduct that disqualifies the employee from receiving unemployment benefits, case law recognizes that where the employee's fear of layoff is based on "definitive objective facts," she may be eligible despite having accepted the retirement

[2] Appellant did not appeal that second determination. We presume that the issues before us concern her unemployment after November 12, 2016.

package. Id. at 219 (quoting Trupo v. Bd. of Review, 268 N.J. Super. 54, 61 (App. Div. 1993)). Such a claim may be eligible if she accepted the package "because of a real, imminent, and substantial risk of losing [her] job." Fernandez v. Bd. of Review, 304 N.J. Super. 603, 607 (App. Div. 1997).

The undisputed record here shows that appellant met this burden of proof. The elimination of her entire sales territory and her replacement by a lower-paid employee, coupled with the forecasts of further downsizing and the lack of encouragement of appellant's supervisor, realistically left appellant with a strong expectation that she likely would be laid off if she declined the retirement package. The facts here are unlike the generalized circumstances in Brady where no such employee-specific measures were shown and in Fernandez, where there was only a "general letter" sent to all employees and no proof that the appellant's specific job was at risk. Brady, 152 N.J. at 218-19; Fernandez, 304 N.J. Super. at 605-08. Appellant's fear of imminently losing her job was objectively reasonable and "not imaginary, trifling and whimsical . . . ." Brady, 152 N.J. at 214 (quoting Domenico v. Bd. of Review, 192 N.J. Super. 284, 288 (App. Div. 1983)).

Reversed.