

13-1086

FILED

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

DAWN J. HANNA,
Petitioner,

2013 SEP 11 PM 3:31

CATHY S. CANNON, CLERK
KANAWHA COUNTY CIRCUIT COURT

v.

Civil Action No. 13-AA-64
Judge Tod J. Kaufman

UHM

RUSSELL FRY, Commissioner of
Workforce WV, and
WORKFORCE WEST VIRGINIA,
Respondents.

FINAL ORDER

Before the Court is Petitioner's Petition for Appeal filed on May 23, 2013. Petitioner is appealing the West Virginia Workforce Board of Review's (hereinafter "Board") decision finding that she voluntarily resigned from her employment as an elementary school teacher and disqualified her from unemployment benefits.

Factual and Procedural Background

Petitioner was employed by the Board as a teacher from August 28, 1989, to January 2, 2013. At the time of her resignation, Petitioner earned \$2,000 per month. During the 2011-2012 school year, Petitioner oversaw a student fundraiser. Upon returning to work in December 2012, after a leave of absence, Petitioner was confronted regarding missing funds from the fundraiser in the amount of \$1,005.00.

Martha Dean, the Superintendent of the Webster County School Board (hereinafter "School Board"), and Jeremy Pyle, the Principal of the school where Petitioner was employed, contacted Webster County Assistant Prosecutor, Dara Acord, and requested that her office investigate the allegations of theft made by them against Petitioner.

Assistant Prosecutor Acord met with Petitioner in her office on the evening of Thursday, December 13, 2012, after Petitioner had finished her day at work and explained the potential

charges to her. Following the directions of Superintendent Dean and Principal Pyle, she offered claimant the "option" of resigning. She gave her four days, until the following Monday, to make her decision, advising her that she and the School Board wanted her resignation by December 17, 2012. Petitioner did not have time to seek counsel before she was required to make a decision.

On December 17, 2012, Petitioner tendered her resignation to the School Board.

Petitioner testified that she believed that she had no other option than to resign.

Petitioner filed an application for unemployment benefits after her separation from employment. A Deputy Commissioner found Petitioner to be disqualified based on her voluntarily resigning without good cause involving fault on the part of the employer. The Administrative Law Judge (hereinafter "ALJ") affirmed the decision of the Deputy Commissioner. The Board entered an Order on April 24, 2013, affirming and adopting the decision below. Petitioner filed a timely appeal to the Circuit Court of Kanawha County.

Standard of Review

The Court's review is governed by the West Virginia Administrative Procedures Act, W.Va. Code § 29A-5-1 *et seq.* West Virginia Code § 29A-5-4(g) states:

The court may affirm the order or decision of the agency or remand the case for further proceedings. It shall reverse, vacate or modify the order or decision of the agency if the substantial rights of the petitioner or petitioners have been prejudiced because the administrative findings, inferences, conclusions, decision or order are:

- (1) In violation of constitutional or statutory provisions; or
- (2) In excess of the statutory authority or jurisdiction of the agency; or
- (3) Made upon unlawful procedures; or
- (4) Affected by other error of law; or
- (5) Clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

The Court must give deference to the administrative agency's factual findings and reviews those findings under a clearly wrong standard. Further, the Court applies a *de novo* standard of

review to the agency's conclusions of law. *Muscatell v. Cline*, 474 S.E.2d 518, 525 (W.Va. 1996).

Discussion

Petitioner alleges that her resignation was not voluntary, and, even were it to be found legally voluntary, under the unique facts of this case, it was for good cause involving fault on the part of the employer.

Under *Childress*, the West Virginia Supreme Court of Appeals instructed that the general voluntary quit disqualification provision contained in W. Va. Code § 21A-6-3(1) requires an analysis of whether a claimant left his or her employment voluntarily, and if so, whether the claimant left for good cause involving fault on the part of the employer. *Childress v. Muzzle*, 222 W. Va. 129, 133, 663 S.E.2d 583, 587 (2008). The Court noted that "voluntary" means by the free exercise of a person's will, as used in W. Va. Code § 21A-6-3(1). *Id.* Furthermore, the Supreme Court held "that the term 'good cause' as used in West Virginia Code Section 21A-6-3(1) means cause involving fault on the part of the employer sufficient to justify an employee's voluntarily leaving the ranks of the employed and joining the ranks of the unemployed." *Id.*

Under the analysis above, the Court cannot find that Petitioner's resignation was voluntary. Petitioner was under duress with only four days to make a decision without counsel. Furthermore, even if Petitioner's resignation was voluntary, as she could have stayed and fought the felony charges, the Court finds that the Petitioner has shown good cause involving fault on the part of the employer. Petitioner's uncontroverted testimony before the ALJ was that both the Board and the Assistant Prosecuting Attorney Acord wanted her resignation by Monday, December 17, 2012. Additionally, Petitioner testified that Assistant Prosecuting Attorney Acord "assured me that the prosecutor-that their office was not going to do anything else unless the Board

wanted them to investigate or to prosecute." *Transcript*, p. 24. Petitioner's uncontroverted testimony before the ALJ was that Assistant Prosecuting Attorney Acord, Mrs. Dean, the Superintendent of Webster County Schools, and the Board wanted her resignation or she would be prosecuted under the felony charges.

Thus, the Court finds that the Board's decision finding that Petitioner voluntarily resigned without good cause involving fault on the part of the employer is clearly wrong.

Ruling

After carefully reviewing decisions below, the record, the relevant law, and the briefs of the parties, the Court hereby REVERSES the decision of the Board below because the evidence in the record does not support the findings and conclusions of law. Petitioner is not disqualified from unemployment benefits. This case is DISMISSED and STRICKEN from the docket of the Court.

The clerk of the court shall distribute copies of this Order to all counsel of record:

Dan Hardway, Esquire
P. O. Box 625
Cowen, WV 26206

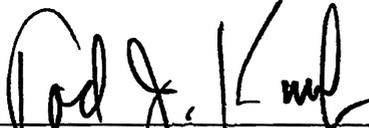
Board of Review
112 California Avenue
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WORKFORCE West Virginia
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Jill E. Hall, Esquire
Bowles Rice McDavid Graff & Love,
LLP
600 Quarrier Street
Charleston, WV 25301

Enter this Order the 16 day of September, 2013.



Tod J. Kaufman, Circuit Court Judge for
Kanawha County

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF THE CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 12th
DAY OF September 2013
Cathy S. Gatson CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA UHM

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. _____

THE BOARD OF EDUCATION OF
WEBSTER COUNTY,

Petitioner,

v.

Civil Action No. 13-AA-64
Honorable Tod J. Kaufman
Circuit Court of Kanawha County, West Virginia

DAWN J. HANNA, RUSSELL FRY,
Acting Executive Director, WorkForce West Virginia;
JACK CANFIELD, Chairman, Board of Review,
GINO COLUMBO, Member, Board of Review; and
LES FACEMYER, Member, Board of Review,

Respondents.

CERTIFICATE OF SERVICE

I, Jill E. Hall, counsel for Appellant and Petitioner Below, The Board of Education of Webster County, do hereby certify that the foregoing “**Supplement to Notice of Appeal Form**” has been served this 10th day of October, 2013, upon the following persons as follows:

Jack Canfield, Chairman
Gino Columbo, Member
Leslie Facemeyer, Member
Board of Review
WorkForce West Virginia
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(Via Hand Delivery)

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Jill E. Hall (WVSB #8812)

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