IN THE SUPREME COURT OF THE STATE OF NEVADA

AMANDA GLASER,
Appellant,
vs.
EMPLOYMENT SECURITY DIVISION, STATE OF NEVADA; CYNTHIA JONES, IN HER CAPACITY AS ADMINISTRATOR OF THE EMPLOYMENT SECURITY DIVISION; CAROL STEWART, IN HER CAPACITY AS CHAIRPERSON OF THE EMPLOYMENT SECURITY DIVISION BOARD OF REVIEW; AND HORIZON ACADEMY, AS EMPLOYER,
Respondents.

No. 54334

FILED

MAR 31 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review in an employment matter. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

Appellant Amanda Glaser voluntarily resigned from her position with Horizon Academy. She filed a claim for unemployment insurance benefits with respondent State of Nevada, Department of Employment, Training and Rehabilitation, Employment Security Division (ESD), but was denied. Glaser appealed. An administrative judge (referee) held a hearing and affirmed the denial. During the hearing, the referee limited Glaser's testimony after determining that her additional testimony would be irrelevant. The Board of Review subsequently affirmed the referee's decision, and the Fifth Judicial District Court denied Glaser's petition for judicial review.

Glaser now appeals the district court order, arguing that: (1) the Board's decision was arbitrary and capricious because she had good cause for voluntarily resigning, and (2) the Referee violated her right to due process by limiting her testimony in the hearing before him.

For the reasons set forth below, we conclude that the decision to deny Glaser unemployment insurance benefits was not arbitrary or capricious and that the referee did not deny Glaser due process by limiting her testimony during the hearing. Therefore, we affirm the district court's order. Because the parties are familiar with the facts and procedural history of this case, we do not recount them further except as necessary for our disposition.

The decision to deny Glaser unemployment insurance benefits was not arbitrary or capricious

Glaser contends that she had good cause for voluntarily resigning, and therefore, there was not substantial evidence to support the decision to deny her unemployment insurance benefits. We disagree.

Standard of review

In reviewing the board's decision, we are limited to determining whether the board acted arbitrarily or capriciously. McCracken v. Fancy, 98 Nev. 30, 31, 639 P.2d 552, 553 (1982). We do not substitute our judgment for that of the board and we only determine whether the board based its decision on substantial evidence. State, Emp. Sec. Dep't v. Weber, 100 Nev. 121, 124, 676 P.2d 1318, 1320 (1984). "Substantial evidence [is that which] 'a reasonable mind might accept as adequate to support a conclusion.'" Brust v. State, 108 Nev. 872, 874-75, 839 P.2d 1300, 1301 (1992) (quoting First Interstate Bank v. Jafbros Auto Body, 106 Nev. 54, 56, 787 P.2d 765, 767 (1990), overruled on other

grounds by Countrywide Home Loans v. Thitchener, 124 Nev. 725, 743, 192 P.3d 243, 255 (2008).

Substantial evidence supports the decision to deny Glaser unemployment insurance benefits

NRS 612.380(1)(a) states that "a person is ineligible for benefits for the week in which the person has voluntarily left his or her last or next to last employment: . . . [w]ithout good cause, if so found by the Administrator . . . ."

Glaser was unable to cite to a specific instance that led to her resignation, but instead argues that her fear of harm to herself or her students and her fear of potential legal liability was sufficient good cause to voluntarily resign under NRS 612.380. Her fears stemmed from staff shortages, from unsupervised chemicals being left in areas open to students, from Horizon rehiring staff that had been fired for cause, and from rumors she had heard that a young male staff-member was spending time in dorm rooms with underage female students. While there is no Nevada law supporting this, Glaser submits caselaw from other states that have found either a reasonable fear of harm to one's health or safety, or a reasonable fear of legal liability was good cause to voluntarily resign.[1] See McCrocklin v. Employment Development Dept., 205 Cal. Rptr. 156, 159-60 (Ct. App. 1984); Robinson v. Employment Sec. Dept., 930 P.2d 926, 928 (Wash. Ct. App. 1996) (superseded by statute on another point of law as set forth in Wash. Rev. Code § 34.05.570(3)); Tarr v. Florida Unemployment Appeals Com'n, 651 So.2d 1246, 1247 (Fla. Dist. Ct. App.

[1]Because Glaser failed to provide substantial evidence to support her fears, we do not need to consider whether or not to adopt this law.

1995). Glaser contends that she went to great lengths to resolve her concerns before resigning by raising her concerns with school administrators. Yet Glaser does not specify how often she met with administrators or with whom she met, except for one meeting with the school's director and human resources officer.

A reasonable person could have determined that Glaser did not have good cause to voluntarily resign under NRS 612.380. We conclude that the board did not act arbitrarily or capriciously by denying unemployment insurance benefits to Glaser.

The referee did not deny Glaser due process by limiting her testimony

Glaser contends that the referee violated her due process rights by limiting her testimony at the hearing. We disagree.

Due process protections of the Fourteenth Amendment of the U.S. Constitution and Article I, Section 8 of the Nevada State Constitution apply to unemployment benefit hearings. Whitney v. State, Employment Security Dep't, 105 Nev. 810, 813, 783 P.2d 459, 460 (1989). Due process requires a state to give a person an opportunity to be heard in a meaningful manner and at a meaningful time. Goldberg v. Kelly, 397 U.S. 254, 267 (1970). It also requires that one have the opportunity to establish any fact which, "according to the usages of common law or the provisions of the constitution would be a protection to himself or property." Wright v. Cradlebaugh, 3 Nev. 341, 349 (1867).

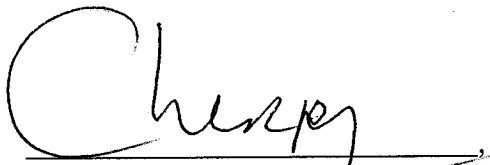
Glaser argues that she was unable to testify about additional concerns she had with Horizon. Yet Glaser does not provide specific concerns; she only states that there were other issues she had reported to her supervisor that she wished to testify about. She also contends that she wished to testify on "the multiple steps she took to resolve those problems and the employer's lack of response," but fails to specify those

potential steps. She contends that by limiting her testimony, the referee deprived her of the right to present any meaningful defense to the denial of her unemployment benefits.

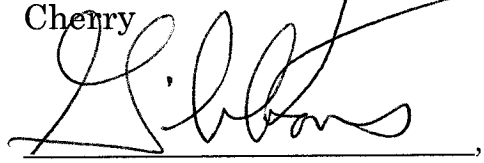
The referee determined that such testimony would not "add anything significant to th[e] record," because none of the purported testimony related to a specific event that compelled Glaser to resign. Therefore, we conclude that the referee did not violate Glaser's due process right.

In light of the foregoing, we affirm the district court order denying Glaser's petition for judicial review.

IT IS SO ORDERED.



_____, J.
Cherry



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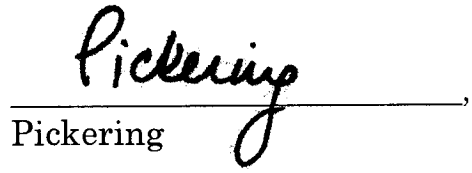
Gibbons



_____, J.
Pickering

cc: Hon. Robert W. Lane, District Judge
Carolyn Worrell, Settlement Judge
Nevada Legal Services
John Thomas Susich
Nye County Clerk