

ARKANSAS COURT OF APPEALS

DIVISION II

No. E12-362

MELINDA FOSTER

APPELLANT

V.

DIRECTOR, DEPARTMENT OF
WORKFORCE SERVICES, AND ALL
AROUND LANDSCAPING, INC.

APPELLEES

Opinion Delivered March 13, 2013

APPEAL FROM THE ARKANSAS
BOARD OF REVIEW
[NO. 2011-BR-00814]

AFFIRMED

WAYMOND M. BROWN, Judge

Appellant appeals from the Arkansas Board of Review's denial of unemployment benefits to her after it found that appellant quit her job due to an injury but without making reasonable efforts to preserve her job rights. We affirm.

Near the end of a vacation in July 2010, appellant was involved in an automobile accident that left her injured. She consulted a physician regarding her injuries and was diagnosed with a torn rotator cuff, among other things. She tried to return to work for a short period of time, but found that sitting at the computer caused her further neck and back pain. Appellant's doctor excused her from work indefinitely pending improvement of her injuries. Appellant filed for leave under the Family Medical Leave Act (FMLA)¹ and her

¹29 U.S.C. 2601 et seq. (1993).



employer, All Around Landscaping, Inc., gave her 12 weeks of leave under FMLA for the period of August 4 to October 27, 2010.

Appellant contacted JoLynn Steenbergen, the owner of All Around Landscaping, Inc., on October 21, 2010, and informed her that she would not be released by her doctor by October 27, 2010. She inquired as to whether she would still have a job when she was eventually released. Steenbergen advised appellant that she was not sure if there would still be a job, but told appellant to contact her when she was released to return to work. That concluded the conversation.

On October 25, 2010, appellant went to her employer and cleared out her things. She did not indicate that she was quitting, nor did she indicate her belief that she had been fired. She did not provide any written notice that she was quitting or that she believed she had been terminated. Appellant was released to return to work on November 23, 2010. She did not inform her employer of release, nor did she contact her employer about resuming her job. Appellant applied for unemployment benefits on November 30, 2010.

The Department of Workforce Services (the Department) found that appellant had no intent to quit, but was simply unable to return when required. It found that she was discharged due to absenteeism beyond her control and made proper notification to the employer; therefore, it awarded appellant unemployment benefits. The employer appealed the Department's determination.

The Appeal Tribunal (the Tribunal) found that appellant "quit her job because she could not return to work at the conclusion of her FMLA leave because of her injury."



However, it found that appellant made reasonable efforts to preserve her job rights and modified the Department's award of benefits under Ark. Code Ann. § 11-10-513(a) to award benefits under Ark. Code Ann. § 11-10-513(b). The employer appealed to the Board of Review (the Board).

The Board found that the weight of the evidence showed that appellant quit her job due to injury but without making reasonable efforts to preserve her job rights. It reversed the Tribunal's decision and disqualified appellant from receiving benefits. Appellant appealed.

We do not conduct de novo reviews in appeals from the Board of Review; instead, we review the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Board's findings of fact.² The Board's findings are conclusive if supported by substantial evidence, which is such evidence as a reasonable mind might accept as adequate to support a conclusion.³ Even when there is evidence upon which the Board might have reached a different decision, the scope of judicial review is limited to a determination of whether it could have reasonably reached its decision based upon the evidence before it.⁴

A person who voluntarily leaves his employment without good cause connected to the work shall be disqualified for benefits.⁵ However, "[n]o individual shall be disqualified under this section if after making reasonable efforts to preserve his or her job rights he or she left his

²*West v. Dir.*, 94 Ark. App. 381, 383, 231 S.W.3d 96, 98 (2006) (citing *Brooks v. Dir.*, 62 Ark. App. 85, 966 S.W.2d 941 (1998)).

³*Id.*

⁴*Id.* (citing *Bennett v. Dir.*, 73 Ark. App. 281, 42 S.W.3d 588 (2001)).

⁵Ark. Code Ann. § 11-10-513(a)(1) (Repl. 2012).



last work ... [b]ecause of illness, injury, pregnancy, or disability of the individual or member of the individual's immediate family.”⁶

Appellant was required to report to work on October 27, 2010, when her FMLA leave was scheduled to end. This was obviously known to appellant for she contacted her employer about her job prior to that date. Appellant arrived at her employer's business on October 25, 2010, and removed all of her things. While there, she did not inform anyone, verbally or in writing, that she believed she was fired or that she quit. This all occurred prior to the expiration of her FMLA leave.

On October 27, 2010, the date her FMLA expired, appellant did not report for work. She did not contact her employer, verbally or in writing, to advise of her intent to return to work upon receiving her doctor's release, nor did she make a request to return to work. She made no contact with her employer after October 25, 2010. Following appellant's clearing of her work area, she made no attempt to inform her employer that she wanted her job, leaving it with no choice but to assume that she had quit. Both the Tribunal and the Board found that appellant quit her job contrary to claimant's argument that she was fired.

Appellant argues that she did not quit, but believed she had been fired and so saw no reason to inform her employer of her release to return to work. However, the record showed this was an assumption by appellant for she did not specifically ask if she had been fired and she received no notice of termination from her employer. The employer testified that appellant was an asset to the company in support of its argument that it did not fire her.

⁶Ark. Code Ann. § 11-10-513)b)(2)(A).



Cite as 2013 Ark. App. 190

Substantial evidence exists to show that appellant left her last employment without making reasonable efforts to preserve her job rights.

Affirmed.

WALMSLEY and GLOVER, JJ., agree.

Cullen & Co., PLLC, by: *Tim J. Cullen*, for appellant.

Phyllis Edwards, for appellee Artee Williams, Director of Department of Workforce Services.