# ARKANSAS COURT OF APPEALS

DIVISION III
**No.** E-13-1049

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| | **Opinion Delivered** April 30, 2014 |
| SHALON DAVIS<br>APPELLANT | APPEAL FROM THE ARKANSAS BOARD OF REVIEW<br>[NO. 2013-BR-02965] |
| V. | |
| DIRECTOR, DEPARTMENT OF WORKFORCE SERVICES and JACKSONVILLE GARDENS<br>APPELLEES | REVERSED AND REMANDED |

**BRANDON J. HARRISON, Judge**

The Arkansas Board of Review denied Shalon Davis unemployment benefits because it determined that she lacked good cause to quit working as an apartment manager for Jacksonville Gardens. The issue here is whether Davis had good cause to terminate her employment and remain eligible for benefits. We hold that substantial evidence does not support the Board's denial; so we reverse and remand for an award of benefits.

Arkansas Code Annotated Section 11-10-513(a)(1) (Repl. 2012) provides that "an individual shall be disqualified for benefits if he or she voluntarily and without good cause connected with the work left his or her last work." Where a claimant has voluntarily quit work and is seeking unemployment-insurance benefits, the claimant must show by a preponderance of the evidence that he or she had good cause to quit working. *Davis v. Dir. Dep't of Workforce Servs.*, 2013 Ark. App. 515. Good cause is that which would reasonably impel the average able-bodied, qualified worker to give up employment and

depends on the facts and circumstances in each case. *Id*; *see also Magee v. Dir. Dep't of Workforce Servs.*, 75 Ark. App. 115, 55 S.W.3d 321 (2001). Arkansas law does not require a worker to exhaust every possibility while trying to rectify some mistreatment or abuse before quitting his or her job. *Swain v. Dir. Dep't of Workforce Servs.*, 102 Ark. App. 171, 283 S.W.3d 603 (2008). An employee must only act as an average and reasonable employee would under the circumstances. *Id.*

This court affirms the Board's decision if it is supported by substantial evidence. *Garrett v. Dir., Dep't of Workforce Servs.*, 2014 Ark. 50. Substantial evidence is relevant evidence that reasonable minds might accept as adequate to support a conclusion. *Id.* We view the evidence and all reasonable inferences in the light most favorable to the Board's findings. *Id.* Even if the evidence could support a different decision, we ask only whether the Board could have reasonably reached its decision based on the evidence presented. *Id.*

I.

Shalon Davis worked as the community manager for Jacksonville Gardens from December 2009 until she quit in August 2013. Before working for Jacksonville Gardens, Davis had worked as an apartment manager for nine years. Davis testified that she quit Jacksonville Gardens because she needed to pursue a different career due to stress caused by a lawsuit related to her work at the Gardens. The lawsuit arose when a Gardens resident sued Davis individually, Jacksonville Gardens, and Jacksonville Garden's parent company, Enoch, for discriminating against him based on his race and disability. The resident asked for approximately one million dollars in damages. Davis also received several fair-housing complaints that the same resident generated.

During the Tribunal hearing, Davis put on documentary evidence showing that she complained to her supervisors about the stress that the fair-housing investigations and the discrimination lawsuit caused. One exhibit shows that Davis wrote the following to a supervisor: "If I am harassed by [a] resident and cursed at by an employee from corporate and told that I will be fired and my "f" ass will be out the door because of the current lawsuit we need to do what it takes[.]" She wrote this too: "I have document[ed] all the on the job harassment and 2 close physical altercations. . . . I have sent emails and requested intervention from corporate concerning these residents and when . . . corporate office does address the issues then it is my fault . . . [the corporate office's] statement that 'No one was hit' I take issue at this because I feel that I should be protected on the job no matter who it is." "If there is an altercation . . . how will I be protected?" Regarding the lawsuit in which she was apparently named as a defendant, Davis testified, among other things, that she had consulted a private attorney who told her to add the lawsuit to her bankruptcy claim in case she became personally liable for a million-dollar judgment.

Kathryn Hanley, Assistant Director of Field Operations, testified for Jacksonville Gardens. Hanley thought that Davis quit because she wanted to go to school full-time and was not able to work. Hanley indicated that she was familiar with the discrimination lawsuit and talked with Davis about it. Hanley testified that Jacksonville Gardens told Davis that the lawsuit "would not be personally brought against her, because she is covered under insurance [through] the company for any type of lawsuit having to do with her job."

The record also shows that the Gardens resident who sued Davis also threatened her physically by raising his arm at her. As we have noted, Davis complained about the situation to her supervisors at various times; she eventually had a police officer escort her on the property because she was so afraid of the resident. Davis also requested that no personal information be revealed about her through the discrimination lawsuit unless an order of protection was put in place.

We have also listened to exhibit four, which is a recorded conference call between at least one high-level corporate executive, Davis, and others, during which Davis expressed that no prior resident had frightened her as much as this one had. The conference call reveals that Jacksonville Gardens received undisputed detail about the resident's interactions with Davis, including that the resident had threatened Davis with a physical gesture and that she had a police escort when dealing with the problem resident. The conference call also captured a high-level corporate officer cursing as he admonished Davis to be sure she emphasized—if questioned by someone in connection with the lawsuit—how fearful she became upon her encounter with the resident when he raised his arm or hand at her. Neither the conference call nor the particular problems the complaining resident caused were discussed or mentioned by the Appeal Tribunal or the Board's adoption of the Tribunal's decision.

The Tribunal's decision, which the Board adopted, stated:

> While the claimant testified the lawsuit caused her such stress that she consulted a personal attorney, Hanley testified the claimant was covered under the employer's insurance policy and would not have experienced personal liability with regard to any judgment arising from the lawsuit. Both parties agreed the claimant had extensive experience in the type of work she was performing. As such, the claimant would have been aware at the time

> of hire that the position may expose her to complaints from residents. The claimant has not shown by a preponderance of the evidence that the average, able-bodied worker would be impelled to quit under similar circumstances. Therefore, the claimant voluntarily left last work without good cause connected to work.

II.

Viewing the evidence in the light most favorable to the Board, we hold that the Board's finding that Davis voluntarily quit her employment without good cause connected to the work is not supported by substantial evidence. In *Gunter v. Dir. Employment Sec. Dep't*, 82 Ark. App. 346, 350, 107 S.W.3d 902, 905 (2003), we reversed the Board's determination that an employee did not have good cause for leaving his job because the employee's uncontroverted testimony was that he suffered verbal and physical abuse from his work supervisor and that others, including a co-owner, had witnessed the abuse.

Here, Davis put on uncontroverted proof that she experienced verbal lashings from her employer and physical threats by a resident while working as community manager with Jacksonville Gardens. The employer, at the highest level of management, did not deny, but in fact essentially acknowledged, that a resident threatened Davis's physical safety, but it took no remedial action as far as we can tell. The Board's opinion announced that Davis did not have good cause to quit her work because she would have been covered under the employer's liability policy and that Davis should have known that the management position might expose her to complaints from residents. The law, however, only requires that Davis take reasonable steps that an average employee would take under the circumstances to resolve mistreatment before quitting her employment. *See Swain*, *supra*. As for the insurance policy, the record is silent on what the policy's

terms were. We therefore have no information whatever on the potential protective value of the policy that the Board mentioned. What we do know is that an attorney who Davis consulted advised her to protect herself against a potential in personam judgment. That advice would not reassure the average worker.

Morever, as we mentioned, the record does not show that the Gardens acted to alleviate (or ameliorate) the resident-related problem—like offering Davis another job or position, pursuing a protective order against the resident, or evicting the resident who threatened to physically harm a manager. Beyond some assurances at the conference call's beginning that Davis would be protected by an insurance policy and provided a defense lawyer, the employer offered no evidence that it acted to sufficiently alleviate or ameliorate Davis's concerns for this case's purposes.

In contrast, Davis took reasonable steps, including consulting a personal attorney on the liability issue, having a police officer escort her when dealing with a resident who threatened her physical safety, and documenting her complaints and concerns with her employer.

We want to make clear, however, that not every personal (or personnel-related) conflict or stressor associated with a workplace will satisfy Arkansas Code Annotated Section 11-10-513(a)(1)'s good-cause provision. Many employers and their employees have to, at one time or another, deal with some type of work-related conflict or stress. So our opinion should not be read as requiring any employer to provide or maintain a conflict-free workplace under section 11-10-513(a)(1). But given the atypical confluence of facts that this particular record presents, we hold that the Board lacked substantial

evidence to deny Davis benefits. The Board's denial is reversed and the case remanded for an award of benefits.

Reversed and remanded.

WYNNE and GLOVER, JJ., agree.

*Shalon Davis*, pro se appellant.

*Phyllis Edwards*, Associate General Counsel, for appellee.