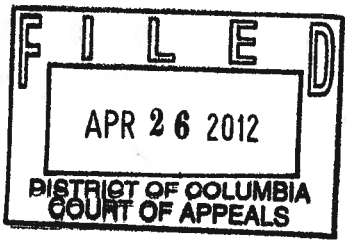
DISTRICT OF COLUMBIA COURT OF APPEALS



No. 11-AA-351

CONSUMER ACTION NETWORK, PETITIONER,

v.

2010-DOES-03047

DANIELLE V. LEWIS, RESPONDENT.

Petition for Review of a Decision of the
District of Columbia Office of Administrative Hearings

(Argued April 11, 2012 Decided April 26, 2012)

Before FISHER and OBERLY, *Associate Judges*, and PRYOR, *Senior Judge*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: After a hearing before the Office of Administrative Hearings (OAH), OAH affirmed an order of the Claims Examiner concluding that respondent, a former employee of Consumer Action Network (CAN), was eligible to receive unemployment compensation benefits.[1] CAN, petitioner here, petitions for review of OAH's Final Order contending that OAH erred when it concluded that, after respondent's initial full-time position of employment was abolished, her decision not to apply for a part-time position with the same employer should be deemed as a voluntary leaving of her employment rendering her ineligible for unemployment benefits. Being unpersuaded by this contention, we affirm.

I.

The testimony and evidence that the parties presented at the OAH hearing on January 19, 2011, establishes that petitioner employed respondent from 2006 to 2010. On May 24, 2010, Lewis informed CAN that she was planning to go on maternity leave from June 18, 2010 until September 1, 2010.[2] On August 25, 2010, by means of electronic mail, respondent informed Effie Smith, Executive Director of CAN, and Brenda Smith, Director of Personnel and Finance, that she was not able to return to work until October 1st. A little over a month later, on September 29th, respondent informed Effie Smith that she would follow her

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[1] D.C. Code § 51-110 (Supp. 2011).

[2] Her leave was approved by Effie Smith, CAN's Executive Director.

physician's advice and take another couple of weeks before returning. The following day, September 30th, after respondent and Brenda Smith exchanged emails regarding insurance coverage, respondent inquired "[d]id something change regarding my position at CAN that I was not informed about?" Brenda Smith replied the next day, October 1st, stating "[t]he budget year that you are referring to ended on September 30th." Failing to obtain an answer regarding her position, respondent renewed her inquiry on October 6, 2010, stating she "ha[d] not received an answer regarding [her] position at [CAN]." Two weeks later, on October 20, 2010, respondent again inquired about her status. On October 22, 2010, she was informed:

> CAN's contract with the [District of Columbia Department of Mental Health (DMH)] expired on September 30[,] . . . [and] CAN's payment of premiums for your medical benefits ceased as of that date.
>
> CAN's new contract with DMH commenced on October 1, but . . . we have had to make changes throughout the organization, including reduced hours and benefits. As part of these changes, your position with CAN has effectively been eliminated.
>
> That said, . . . we do have a part time position available. If you are interested in the possibility of applying for the new part-time position, please [reply] by Monday, October 25, 2010 . . . .

Respondent, via telephone, informed petitioner that she was not interested in the position.

On December 3, 2010, a Department of Employment Services Claims Examiner concluded that respondent "was laid off due to lack of work from the employer and is, accordingly eligible for unemployment compensation benefits." This ruling was appealed in a timely manner.

OAH issued its Final Order on the matter on February 18, 2011. OAH found that respondent "was laid off for lack of work and . . . is qualified to receive [unemployment compensation] benefits." Specifically, OAH found that "[a]t no time during her pregnancy, or at any time during her employment, did Claimant orally or in writing resign her employment with Employer." OAH reiterated the established principle that leaving one's employment is presumed involuntary and that the employer must overcome that presumption in order to deny unemployment compensation benefits. *See, e.g.*, 7 DCMR § 311.3 (2012); *see also Cruz v. District of Columbia Dep't of Emp't Servs.*, 633 A.2d 66, 69-70 (D.C. 1993).

II.

"We must affirm the OAH decision if (1) OAH made findings of fact on each materially contested issue of fact, (2) substantial evidence supports each finding, and (3) OAH's conclusions flow rationally from its findings of fact." *Gilmore v. Atlantic Servs. Grp.*, 17 A.3d 558, 562 (D.C. 2011) (internal quotation marks omitted); *see Rodriguez v. Filene's Basement Inc.*, 905 A.2d 177, 180 (D.C. 2006). "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *E.g.*, *Gilmore*, *supra*, 17 A.3d at 562 (internal quotation marks omitted); *Rodriguez*, *supra*, 905 A.2d at 181 (internal quotation marks omitted). OAH's underlying factual findings "supported by substantial evidence on the record as a whole are binding on the reviewing court." *Gilmore*, *supra*, 17 A.3d at 562 (internal quotation marks omitted); *see McKinley v. District of Columbia Dep't of Emp't Servs.*, 696 A.2d 1377, 1383 (D.C. 1997).

On this record, we conclude that OAH made findings of fact on each materially contested issue, and that there was substantial evidence supporting the findings; lastly the conclusions of OAH flow rationally from the findings of fact. *See Gilmore*, *supra*, 17 A.3d at 562.

OAH's conclusion that respondent did not leave voluntarily flows rationally from the findings of fact. "A leaving shall be presumed to be involuntary unless the claimant acknowledges that the leaving was voluntary or the employer presents evidence sufficient to support a finding by the Director that the leaving was voluntary." 7 DCMR § 311.3 (2012); *e.g.*, *Berkley v. D.C. Transit, Inc.*, 950 A.2d 749, 757 (D.C. 2008); *Cruz v. District of Columbia Dep't of Emp't Servs.*, 633 A.2d 66, 69-70 (D.C. 1993); *Green v. District of Columbia Dep't of Emp't Servs.*, 499 A.2d 870, 873 (D.C. 1985). There is substantial evidence in the record that respondent's departure was involuntary. She never resigned; petitioner simply informed her that her position had been eliminated. Only after terminating respondent was she offered an *opportunity to apply* for a part-time job. In this posture, OAH could rationally conclude that petitioner had not carried its burden of proving that the leaving was voluntary.[3] Accordingly, it is

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[3] Given our conclusion, we need not reach some of the issues concerned with good cause connected with quitting one's employment that will likely be considered in *Consumer Action Network v. Tielman*, No. 11-AA-0350 (argued April 11, 2012).

ORDERED and ADJUDGED that petitioner's petition for review is hereby denied.

ENTERED BY THE DIRECTION OF THE COURT:

Julio A. Castillo
Clerk of the Court

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