

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Linda K. Grina,

Petitioner/Appellant,

Supreme Court No. 20180284

v.

Job Service North Dakota, and
Bismarck Gymnastics Academy,

Respondents/Appellees.

* * * * *

BRIEF OF APPELLANT

* * * * *

Appeal from Judgment dated May 23, 2018
Burleigh County District Court
South Central Judicial District
Honorable Gail Hagerty
Civil No. 08-2018-CV-00531

* * * * *

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STATEMENT OF THE ISSUES

Issue for Review

The weight of the evidence does not support the decision that Grina voluntarily quit her employment with BGA.

[¶1] STATEMENT OF THE CASE

[¶2] Linda K. Grina, Appellant, appeals from a district court judgment affirming an administrative disqualification of her unemployment insurance benefits (A. 25, 27, 31, 38, 39).

[¶3] STATEMENT OF THE FACTS

[¶4] On July 18, 2017, the Bismarck Gymnastics Academy (BGA) wrote a letter to Grina about the transition to a new Executive Director, and informed Grina that she was being placed on probation until October and, “[t]he next step is termination from the academy.” (A. 5).

[¶5] On July 24, 2017, Grina wrote a response letter, “I am relinquishing my title as Program Director and all of its duties that I was appointed to effective immediately. I will stay on as a coach . . .” (A. 6).

[¶6] On August 1, 2017, BGA “presented Linda with two options, to resign completely from BGA or be terminated. She selected to be terminated.” (A. 8, 11). BGA had presented Grina with two letters, one a letter of resignation, and the other a letter of termination. BGA Board member, Justin DeCoteau wrote, “[S]he chose not to resign, so she was terminated.” (A. 7, 10).

[¶7] One Board member objected, “Linda’s letter to us stated she was stepping down from her director duties. She wanted to basically coach.

I thought this is what the gym needed.” (A. 9). He clarified, “We just terminated a coach of 25 plus years of experience, and have no replacement yet.” (A. 10).

[¶8] BGA communicated to the community that Grina was “let go” (A. 8, 11).

[¶9] Grina, an employee of BGA since 1992, made a claim to Job Service North Dakota (Job Service) for unemployment insurance benefits, stating in part, “I sent . . . a letter relinquishing on (sic) duties as program director, I was frustrated with the way I was being treated. I just wanted to coach. On August 1, 2017, I was terminated, the board stating that I resigned my position, but I did not, I relinquished my duties.” (A. 12, 13).

[¶10] Job Service sent a notice of Grina’s claim to BGA, stating, “This employee states that employment ended because: discharge from employment – violation of employer policy or rule” (A. 14). BGA responded (A. 15-20), stating in part, “She responded to her probation via a letter sent on 7/24/17 relinquishing her title as Program Director. The Board of Directors accepted her resignation pursuant to North Dakota at-will employment laws allowing either employee or employer to terminate the employment relationship with or without cause. . . . In response to Linda Grina’s letter resigning her role at (sic) Program Director, BGA Board of

Directors presented Linda with two options. She no longer wanted her position that we had available, so she was given a formal resignation letter to sign. She refused to sign, therefore was presented with a termination letter after she replied with 'Fire Me'. She also refused to sign the termination letter.” (A. 17, ¶2 and ¶7).

[¶11] Job Service found that Grina was discharged, that BGA did not show Grina acted in misconduct, and allowed Grina benefits (A. 21).

[¶12] BGA appealed, and a telephone hearing was conducted to determine the issues, “whether the claimant voluntarily left employment without good cause attributable to the employer or was discharged for misconduct connected with the work.” (A. 22). As to the first issue, “It is generally held that, in order to show good cause for leaving an individual’s employment, the individual must establish the employer said or did something, or failed to do something that would have given the individual good cause to leave his or her employment.” (A. 24).

[¶13] At the telephone hearing, it was shown that Grina began employment with BGA in 1992 as a coach (R. 89, lines 11-12; 98, lines 7-8). In 2015 or 2016, the executive director of BGA was let go, and Grina became the interim executive director/program manager director (R. 89, lines 9-18; 98, lines 9-11). Grina still had her coaching duties, so she was

doing two positions (R. 90, lines 16-20).

[¶14] On May 1, 2017, BGA hired Stephanie Birkeland as the new executive director (R. 94, lines 20-23). “Grina was supposed to work with the new executive director in transitioning.” (R. 91, lines 14-15).

[¶15] Stephanie Birkeland testified that on August 1, 2017, BGA provided Grina with a letter stating that she was going to resign her position, Grina resigned her position, and BGA never stated to Grina that she was fired (R. 87, lines 6-18).

[¶16] Justin DeCoteau testified Grina quit (R. 95, lines 12-15).

[¶17] DeCoteau also testified the Board no longer wanted Grina to coach (R. 91, line 16), that BGA wanted to change direction (R. 92, lines 8-11), that Grina was going to be done coaching, and that there was a new coach (R. 96, lines 13-14).

[¶18] Grina testified coaching was 75 to 80 percent of her time, and program director was 20 percent of her time (R. 99-100). She testified she did 32 to 40 hours a week in the gym coaching classes and in between classes would do the rest of her duties, and sometimes she had overtime (R. 100, lines 7-16).

[¶19] Grina testified that because of the letter of probation and because BGA hired a new executive director she decided she would step

back from the program director duties (R. 99, lines 9-13). On August 1, 2017, two papers were put in front of her, one to resign totally, the other was a letter of termination. “I did not want to resign and I wanted to work.” (R. 97, lines 6-8; 101, lines 5-6). Grina testified she was terminated (R. 98, line 17; 101, line 7).

[¶20] The Decision of the Appeals Referee was that “[t]he greater weight of evidence in the record reflects that the claimant voluntarily quit employment” and, in that she voluntarily quit, she “failed to establish her reason(s) for leaving employment were for good cause.” The Decision then disqualified Grina from unemployment benefits. (A. 23-25).

[¶21] Grina exercised her administrative right to appeal (A. 26). Job Service’s Decision on Review was, “[t]he record has been reviewed and is found to support the findings and reasons set forth in the Appeals Referee’s decision.” The Decision of the Appeals Referee was affirmed. (A. 27).

[¶22] Grina filed a Petition for Review in the district court (A. 28). The district court entered an Order Affirming the Bureau’s Decision (A. 31). Judgment was entered (A. 38). Grina appeals from the Judgment (A. 39).

[¶23] ARGUMENT

[¶24] Issue for Review

[¶25] The weight of the evidence does not support the decision that Grina voluntarily quit her employment with BGA.

[¶26] It was not Grina's decision to make that she would simply step back from the program director duties and be a coach only. That was BGA's decision to make. Her letter of July 24 should have been a request to BGA. In reality, however, that is how her letter was handled.

[¶27] On August 1, BGA was telling Grina she could not be a coach only. Indeed, BGA had decided she would no longer even be a coach.

[¶28] On August 1, BGA stated Grina could resign completely or be fired. Grina clearly did not resign on August 1. Grina clearly was fired on August 1.

[¶29] In her letter of July 24, Grina did not resign as coach. Indeed, she did not even use the word, "resign". If Grina had resigned in that letter, then on August 1 BGA would not have had to present to her a letter of resignation.

[¶30] The greater weight of the evidence was not that Grina voluntarily quit. The greater weight of the evidence is that Grina was fired. On this basis this matter should be reversed. *Hjelden v. Job Service North*

Dakota, 1999 ND 234, ¶¶ 9-11, 603 N.W.2d 500 (a reasoning mind could not have reasonably determined the factual conclusions were proved by a preponderance of the evidence).

[¶31] In making the decision that Grina voluntarily quit, Job Service also found that Grina’s “primary position and job duties were not that of a coach but rather a Program Director.” (A. 24). A reasoning mind could not have reasonably determined this finding by a preponderance of the evidence. Grina went from 100 percent coach for 23 years (R. 90, lines 9-10) to, both coach and “interim” executive director and program director to, both coach and the interim position in transition to the new executive director, with the latter two occurring while Grina spent 32-40 hours in the gym coaching lessons and doing her other duties between lessons. When asked, Birkeland did not know how many hours Grina spent as program director (R. 82, lines 18-20). On the contrary, Grina specifically testified she spent 75 to 80 percent of her time coaching and 20 percent of her time with the duties as program director.

[¶32] Birkeland and DeCoteau’s testimony in the telephone hearing was not consistent with their prior written words in Appendix 7, 8, 10 and 11. Grina’s administrative appeal to Job Service should have been ruled in her favor.

[¶33] Grina's petition to the district court should have been ruled in her favor.

[¶34] In *Holiday Inn v. Job Service North Dakota*, 514 N.W.2d 374, 376 (N.D. 1994), the Court wrote, "[a]n employee voluntarily quits if the person freely chooses to stop working for the employer." This never happened in this case.

[¶35] CONCLUSION

[¶36] WHEREFORE, Grina respectfully requests the Supreme Court of North Dakota to reverse the judgment of the district court and order the reinstatement of her unemployment insurance benefits.

[¶37] Respectfully submitted September 13, 2018.

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[¶38] CERTIFICATE OF SERVICE

I hereby certify that I made service of a true copy of the foregoing
Brief of Appellant in PDF and Microsoft Word format and accompanying
Appendix of Appellant in PDF format, by email, on September 13, 2018, on:
Office of Attorney General @ mtpitcher@nd.gov

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