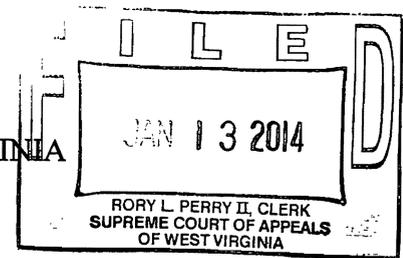


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

NO. 13-1086



THE BOARD OF EDUCATION OF
WEBSTER COUNTY,

Petitioner,

Civil Action No. 13-AA-64

Honorable Tod J. Kaufman

Circuit Court of Kanawha County, West Virginia

v.

DAWN J. HANNA, RUSSELL FRY,
Acting Executive Director, WorkForce West
Virginia; JACK CANFIELD, Chairman, Board
of Review, GINO COLUMBO, Member, Board
of Review; and LES FACEMYER, Member,
Board of Review,

Respondents.

BRIEF OF PETITIONER

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I. ASSIGNMENTS OF ERROR

1. The Circuit Court erred in reversing the decision of the Board of Review of WorkForce West Virginia because the Circuit Court failed to give substantial deference to the factual findings of the Board of Review.

2. The Circuit Court erred in awarding unemployment compensation benefits to Respondent by holding that she involuntarily left her employment with the Webster County Board of Education because her resignation was submitted under duress.

3. The Circuit Court erred in awarding unemployment compensation benefits to Respondent by holding that she left her employment with the Webster County Board of Education for good cause involving fault on the part of the Board.

II. STATEMENT OF THE CASE

Petitioner the Wester County Board of Education (“Board”) appeals an Order of the Circuit Court of Kanawha County, West Virginia, reversing the decision of the Board of Review of WorkForce West Virginia, which held that Respondent Dawn Hanna (“Hanna”) was disqualified from receiving unemployment compensation benefits because she voluntarily quit her employment with the Board.

1. **Hanna’s employment with the Board.**

Hanna was employed by the Board as a teacher from August 28, 1989, to January 2, 2013. (App. 4). Hanna tendered her resignation from the Board on December 17, 2012.¹ (App. 1). At the time of her resignation, Hanna earned \$2,000 per month. (App. 18). During the 2011-2012 school year, Hanna supervised a student cookbook fundraiser. (App. 1). Hanna

¹ Although Petitioner resigned on December 17, 2012, her resignation was not effective until January 2, 2013.

collected money from the students and turned the money into the school office with a receipt. (Id.). On December 10, 2013, upon returning to work following a leave of absence, Hanna was confronted by a State Trooper regarding missing funds from the student fundraiser in the amount of \$1,005.00. (Id.). Hanna was threatened with arrest and a felony prosecution at that time. (App. 36).

Hanna was subsequently contacted by the Prosecuting Attorney's office and asked to attend a meeting with the Assistant Prosecutor. (App. 10). On December 13, Hanna met with the Assistant Prosecutor, Dara Acord. (App. 1, 11). During that meeting, the Assistant Prosecutor explained to Hanna that the alleged theft constituted a felony and told Hanna she could either resign her employment and pay back the missing funds or face criminal prosecution. (App. 1, 17 at ¶ 6). Ms. Acord gave Hanna four days to decide. (Id.). The Board has consistently denied that it was involved in giving Hanna the option to resign or be prosecuted. (App. 3). On December 17, 2012, Hanna voluntarily resigned her employment with the Board to avoid prosecution for the alleged felony. (App. 1, 4, 17). Hanna stated that she resigned "because [she] was threatened by the Prosecutor's office and [the] State Trooper." (App. 1).

2. Procedural overview.

Hanna filed a claim for unemployment benefits on December 18, 2012, one day after she submitted her resignation, and prior to the effective date of the resignation on January 2, 2013. (App. 1). At the first step of the administrative process, a Deputy determined that Hanna was disqualified from receiving unemployment benefits on January 10, 2013, finding that she left work voluntarily without good cause involving fault on the part of the Board. (App. 3). Hanna appealed that decision, and a telephonic hearing was held before Administrative Law

Judge, Truman L. Sayre (“ALJ”), on February 25, 2013. (App. 5, 6).² The ALJ then issued a decision affirming the decision of the Deputy. (App. 18-19). After hearing Ms. Hanna’s testimony and reviewing the evidence, the Administrative Law Judge concluded:

- Hanna left work voluntarily;
 - There was a controversy concerning missing funds from the student fund raiser.
 - To avoid prosecution, Ms. Hanna resigned her employment on December 17, 2012.
 - If Ms. Hanna had not resigned her employment, she could have remained employed as a teacher and risked prosecution for the alleged theft.
- (App. 18-19).

Thereafter, Hanna filed an appeal with the Board of Review on March 6, 2013. (App. 21). A hearing was held on April 4, 2013 before the Board of Review, after which a decision was issued on April 24, 2013. (App. 22-23). The Board of Review affirmed the ALJ’s ruling, finding: “The Board of Review, having reviewed all documents in this matter, finds the Administrative Law Judge has made a proper ruling and adopts the finding of the Judge, by reference in its entirety.” (App. 22-23).

Hanna then filed an appeal of the decision of the Board of Review with the Circuit Court of Kanawha County on May 23, 2013. (App. 26). By order dated September 10, 2013, the Circuit Court of Kanawha County reversed the ruling of the Board of Review of WorkForce West Virginia, and concluded that Ms. Hanna did not voluntarily resign her teaching position because she was forced to make the decision to either resign or face prosecution for the

² The Board did not attend or otherwise participate in that hearing. (App. 7).

alleged felony under duress. (App. 60-63). The Circuit Court found in the alternative that, even if Hanna's resignation had been voluntary, such resignation was due to fault on the part of the Board of Education. (App. 62-63).

The Webster County Board of Education seeks relief from the Circuit Court's September 10, 2013, Order and requests this Court to reverse the Circuit Court's ruling and reinstate the Board of Review's finding that Hanna voluntarily quit her employment without good cause involving fault on the part of the Board, and therefore is disqualified from receiving unemployment compensation benefits.

III. SUMMARY OF ARGUMENT

The Circuit Court's Order finding that Hanna resigned her employment under duress and, therefore, did not leave work voluntarily, should be reversed. The Circuit Court found that Hanna resigned under duress, and not voluntarily, because she was given four days to decide whether to resign and pay back the missing funds or face criminal prosecution for an alleged felony. In addition to the fact that the Circuit Court improperly interjected itself as fact-finder in reaching its conclusion, the Circuit Court cited no legal authority for its decision that such circumstances render a resignation involuntary. To the contrary, case law clearly establishes that Hanna's decision to resign and escape criminal prosecution was one made voluntarily and knowingly. Hanna freely chose to resign her position and avoid prosecution for an alleged felony. The fact that this may have been a difficult choice for Hanna does not make her resignation involuntary. As the Board of Review found, Hanna could have chosen to retain her job and defend herself against the allegations made against her. In an exercise of free will, however, Hanna chose to resign her employment and escape criminal prosecution. The decision to resign was thus voluntary.

The Circuit Court's finding that, even if Hanna resigned voluntarily, she did so for good cause involving fault on the part of the Board, also should be reversed. The Circuit Court's finding that the Board imposed the choice to resign or face prosecution for a crime is wholly unsupported by the evidence. Nor is there any evidence or even allegation that the Board imposed the deadline of four days for Hanna to make her decision. This notwithstanding, the Circuit Court's decision improperly expands the circumstances under which an employer can be held to be at fault for an employee's voluntary resignation. It was Hanna who set in motion the events that led to the Assistant Prosecutor giving Hanna the choice to resign or be prosecuted. Hanna's resignation was submitted as a result of her own actions and her own decision to avoid prosecution for an alleged felony. The Board was in no way at fault for Hanna's voluntary resignation.

Hanna resigned her employment from the Board voluntarily, and she did so without good cause involving fault on the part of the Board. Accordingly, the Circuit Court's Order should be reversed, and Hanna should be disqualified from receiving unemployment benefits.

IV. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

This Court has not analyzed the issue of whether a claimant who resigns her employment, allegedly under duress, may qualify for unemployment benefits. The issue in this appeal is whether an employee, faced with a decision to resign employment or face prosecution for an alleged crime, is capable of exercising her free will and making a voluntary decision. The legal principles and public policy issues implicated in this appeal are such that oral argument would significantly aid this Court's decisional process.

Because this case involves an issue of first impression, it is appropriate for Rule 20 oral argument. In addition, this case involves an issue of fundamental public importance. As

this Court recently has noted, the public policy underlying the unemployment compensation statute is fulfilled only when courts ensure that individuals who are not entitled to unemployment benefits are disqualified from receiving benefits:

While we have held that unemployment compensation statutes, being remedial in nature, should be liberally construed to achieve the benign purposes intended to the full extent thereof, we believe that it is also important for the Court to protect the unemployment compensation fund against claims by those not entitled to the benefits of the Act. Also, we believe that the basic policy and purpose of the Act is advanced both when benefits are denied to those for whom the Act is not intended to benefit, as well as when benefits are awarded in proper cases. Additionally, we believe that the Act was clearly designed to serve not only the interest of qualifying unemployed persons, but also the general public.

Childress v. Muzzle, 222, W. Va. 129, 133, 663 S.E.2d 583, 587 (2008) (internal citations and quotations omitted). Because Hanna should be disqualified from receiving unemployment benefits under West Virginia Code Section 21A-6-3(4), the underlying purpose of the unemployment statute will be accomplished only by reversing the Circuit Court's decision and disqualifying Hanna from receiving benefits as a result of her voluntary resignation.

Accordingly, this appeal is appropriate for Rule 20 argument. Alternatively, oral argument is appropriate under Rule 19 because this case involves a narrow issue of law, although Petitioner believes this case is not appropriate for a memorandum decision.

V. STANDARD OF REVIEW

This Court has previously held that the following standard of appellate review applies to unemployment compensation claim decisions:

The findings of fact of the Board of Review of . . . [WorkForce West Virginia] are entitled to substantial deference unless a reviewing court believes the findings are clearly wrong. If the

question on review is one purely of law, no deference is given and the standard of judicial review by the court is *de novo*.

Syl. Pt. 3, Adkins v. Gatson, 192 W. Va. 561, 453 S.E.2d 395 (1994).

VI. ARGUMENT

The operative provision of the applicable unemployment statute appears at West Virginia Code, 21A-6-3(1) and provides as follows:

Upon the determination of the facts by the commissioner, an individual is disqualified for benefits:

(1) For the week in which he or she left his or her most recent work voluntarily without good cause involving fault on the part of the employer and until the individual returns to covered employment and has been employed in covered employment at least thirty working days.

In Childress v. Muzzle, this Court instructed that the general voluntary quit disqualification provision contained in section 21A-6-3(1) requires an analysis of whether a claimant left his or her employment voluntarily, and if so, whether the claimant left for good cause involving fault on the part of the employer. 222 W. Va. 129, 133, 663 S.E.2d 583, 587 (2008). In conducting this analysis, the Court noted that the word “voluntarily” was not defined in the unemployment statute, but held “that the word voluntarily as used in W. Va. Code, 21A-6-3(1) means the free exercise of the will.” Id. This Court went on to note that the term “good cause” is likewise not defined in the unemployment compensation statute but means “cause involving fault on the part of the employer sufficient to justify an employee’s voluntarily leaving the ranks of the employed and joining the ranks of the unemployed.” Id.

As explained below, Hanna’s resignation from employment with the Board was voluntary. In an exercise of free will, Hanna elected to resign her employment and escape prosecution for an alleged felony. She did so in the absence of good cause involving fault on the

part of the Board. Consequently, the Circuit Court’s decision should be reversed, and Hanna should be disqualified from receiving unemployment benefits.

1. The Circuit Court Erred in Reversing the Decision of the Board of Review of WorkForce West Virginia Because the Circuit Court Failed to Give Substantial Deference to the Factual Findings of the Board of Review.

In Adkins v. Gatson, this Court stated the appropriate standard of review in evaluating unemployment compensation claims: “The findings of fact of the Board of Review of . . . [WorkForce West Virginia] are entitled to substantial deference unless a reviewing court believes that the findings are clearly wrong.” Syl. pt. 3, in part, 192 W. Va. 561, 453 S.E.2d 395 (1994). In its Order reversing the Board of Review’s decision, the Circuit Court failed to give deference to the Board of Review’s factual findings and interjected itself as fact-finder. The Circuit Court found that Hanna’s “uncontroverted testimony” evidenced that the Assistant Prosecuting Attorney, the Superintendent of Webster County Schools, and the Board of Education all pressured Hanna to resign or face felony charges under duress, and thus Hanna did not resign voluntarily. (App. 63).

The Circuit Court’s analysis of the facts, however, differs substantially from the Administrative Law Judge’s findings of fact relied upon by the Board of Review. Specifically, the Circuit Court failed to give deference to the ALJ’s finding (adopted by the Board of Review) that, “If the claimant had not resigned her employment, the claimant could have remained employed as a teacher and risked prosecution by the office of the prosecuting attorney of Webster County.” (App. 19, 23). As explained more fully below, this fact was central to the Board of Review’s holding that Hanna’s resignation was voluntary, as it demonstrated that Hanna did have a real choice, and that, in an exercise of free will, Hanna chose to escape

prosecution for an alleged felony rather than defend herself against the charges and retain her employment.

The Circuit Court improperly interjected itself as fact-finder in incorrectly concluding that Hanna did not resign her position voluntarily because her resignation was submitted under duress. The sole reasoning provided by the Circuit Court for its finding that Hanna's resignation was not voluntary was that "she was under duress with only four days to make a decision without counsel." (App. 62). The Board of Review did not find this fact to be relevant. Rather, it found that Hanna resigned her employment to avoid prosecution by the Webster County Prosecuting Attorney's Office. (App. 19).

Moreover, the Circuit Court ignored other facts that demonstrated Hanna resigned voluntarily. Although the Circuit Court found that Hanna had only four days to consider the allegations made against her, it failed to consider that Hanna was first approached on December 10 regarding the alleged felony. Certainly, Hanna understood the severity of the allegations made against her when she was confronted by a State Trooper on that date and accused of committing a felony. One week passed between this date and the date Hanna resigned her position. While Petitioner disputes that Hanna made the decision to resign under duress even if she had only four days to make the decision, it is clear that Hanna was aware of the severity of the accusations made against her by December 10. Hanna admitted this in her brief below. (App. 36) (Hanna "was confronted by a State Trooper who threatened her with arrest and a felony prosecution.").

Finally, there is absolutely no evidence or even allegation that the Board gave Hanna four days to decide whether to resign or be prosecuted. Assistant Prosecutor Acord's statement was that she, not the Board, wanted Hanna's decision by December 17. (App. 17 at ¶

6) (“I also told her that I wanted her decision on that by December 17, 2012.”) (emphasis added). Ms. Acord’s statement nowhere indicates that the Board imposed such a timeline. Hanna herself explained that she “only agreed to resign and pay back the money because [she] was threatened by the Prosecutor’s office and [the] State Trooper” (App. 1). In the original Fact Finding Statement, Hanna herself stated that it was the Assistant Prosecutor who gave her the choice to resign or be prosecuted. (App. 1) (“She [Dara Acord] told me that I could resign and agree to repay the money or they were going to prosecute.”). At the time she filed her unemployment claim, Hanna made no indication that deadline of four days was imposed by the Board.

Later, Hanna testified before the ALJ that “[t]he way she understood it” from her conversation with Ms. Acord was that the Board wanted her resignation and that she “think[s] both” the Board and the Prosecutor’s office wanted an answer by December 17. (App. 11). These statements are the only evidence in any way indicating that Hanna believed the Board wanted her resignation within four days. Certainly, such ambiguous testimony is not sufficient to indicate that the Board of Review’s findings were “clearly wrong.” The Board of Review did not find that the Board pressured Hanna for a decision in only four days because there is no evidence that would support such a finding.

By ignoring the facts surrounding the choice posed to Ms. Hanna to resign or face prosecution, the Circuit Court interjected itself as fact-finder in violation of the deferential standard this Court adopted. For this reason, this Court should reverse the Circuit Court’s Order and reinstate the decision of the Board of Review.

2. The Circuit Court Misapplied West Virginia Code Section 21A-6-3(1) in Concluding that Ms. Hanna Resigned Under Duress Rather than Voluntarily.

Hanna is prohibited from receiving unemployment benefits because she voluntarily resigned her employment without good cause involving fault on the part of the

Board. The word “voluntarily” means “the free exercise of the will.” Childress, 222 W. Va. at 133, 663 S.E.2d at 587. The following statement appears in the Fact Finding Statement provided by Hanna on December 18, 2012, the day following her resignation, and establishes that Hanna voluntarily resigned her employment in a free exercise of her will: “I was given the option to quit or be discharged. I was given this option by Dara Acard [sic], Assistant Prosecutor. **I chose to quit.**” (App. 1) (emphasis added). The Assistant Prosecutor gave Hanna the option to resign and pay back the missing money or be prosecuted. Hanna chose the former option. This decision clearly was voluntary.

This Court has held, in the context of an unemployment compensation case, the fact that a decision is difficult does not make it involuntary. In Philyaw v. Gatson, an unemployment claimant chose to run for a non-judicial office which required her to resign from her judicial office pursuant to West Virginia’s “resign-to-run” statute. 195 W. Va. 474, 466 S.E.2d 133 (1995). The claimant argued that she should not be excluded from receiving benefits because she was required to make a “Hobson’s choice.” The Court noted that a Hobson’s choice is “the choice of taking either that which is offered or nothing; the absence of a real alternative.” Id. at 479, 466 S.E.2d at 138 (citing Random House Dictionary of the English Language 909 (2nd ed. 1987)). The Court then found that “[t]he claimant’s argument must fail because she had the opportunity to choose between running for elective office or retaining her employment.” Philyaw, 195 W. Va. at 479, 466 S.E.2d at 138.

In holding that the claimant was not entitled to receive benefits, the Court noted, “the claimant’s . . . position was always available to her. She held her destiny in her own hands. The claimant triggered the disqualifying event by freely choosing to run for a non-judicial office.” Id. at 479-80, 466 S.E.2d at 138, 139. Just as the claimant did in Philyaw, Hanna had a

real alternative to resigning in this case. As the Board of Review found, she could have defended herself against the charges made and retained her employment. (App. 19, 23). Hanna triggered the disqualifying event in this case by freely choosing to escape prosecution for an alleged crime.

Courts in other jurisdictions have addressed this very issue and determined that a difficult choice is a choice nonetheless. A Florida court found that an unemployment claimant voluntarily quit his job when the claimant allowed his termination to be implemented because he would not respond to a disciplinary recommendation after allegations of misconduct were made. Glenn v. Florida Unemployment Appeals Commission, 516 So.2d 88 (Fla. 3rd DCA 1987). In Glenn, the claimant was provided with a disciplinary action report which recommended his termination for offensive conduct. The report provided the claimant with an opportunity to respond to the allegations prior to a final determination. The claimant failed to take any action regarding the recommendation and failed to avail himself of post-termination appeal rights. The court thus found that the claimant voluntarily relinquished his position, stating:

Whenever feasible, an individual is expected to expend reasonable efforts to preserve his employment. The average, prudent person in the claimant's situation would have made a good faith effort to defend himself against a discharge recommendation when afforded that opportunity. In allowing his dismissal to be implemented forthwith because he would not appropriately acknowledge or respond to the disciplinary action report recommendation, the claimant chose not to avail himself of an accessible avenue by which he might have retained his employment. Under those circumstances, it must be concluded that the claimant voluntarily relinquished his position without good cause attributable to the employer

Glenn, 516 So.2d at 89-90.

In Seacrist v. City of Cottage Grove, 344 N.W.2d 889 (Minn. Ct. App. 1984), a police officer who had committed several instances of misconduct was asked to resign or face

disciplinary proceedings. The officer was asked to resign on the same night that he was confronted about the misconduct. Id. at 891. On appeal of the denial of his unemployment benefits, the officer argued that he was forced to resign under duress. Id. at 892.

The standard of law applicable to the voluntariness issue in Seacrist is the same as the standard applicable to this case. Id. (“A person is disqualified from receiving unemployment compensation benefits when ‘[t]he individual voluntarily and without good cause attributable to the employer discontinued his employment with such employer.’” (quoting Minn.Stat. § 268.09(1)(1) (1982))). The court found that the claimant was disqualified from receiving unemployment benefits because his resignation was voluntary, reasoning that the officer was faced with a choice - discipline which was justified but would jeopardize his chances for another job, or resignation. Given the choice of justified discipline and escaping it by resigning, the court noted that the officer “freely accepted the escape.” Id. at 892. The Seacrist court had earlier addressed the voluntariness of a resignation, holding:

[w]hen an employee, in the face of allegations of misconduct, chooses to leave his employment rather than exercise his right to have the allegations determined, such action supports a finding that the employee voluntarily left his job without good cause.

Ramirez v. Metro Waste Control Comm’n, 340 N.W.2d 355 (Minn.Ct.App.1983) (quoting Board of County Comm’rs v. Florida Department of Commerce, 370 So.2d 1209, 1211 (Fla.Ct.App.1979)); see also, Scott v. Com. Unemployment Comp. Bd. of Review, 437 A.2d 1304 (Pa. Cmwlth. 1981) (school bus operator was disqualified from receiving unemployment benefits where she was told an internal investigation would be launched and she resigned her employment without waiting for the outcome of the investigation).

The reasoning employed in the above-cited cases is sound and in accordance with this Court’s holding in Philyaw v. Gatson. Similar to the these cases, Hanna freely chose to

avoid criminal prosecution when she resigned her employment with the Board. Hanna argued in her brief below that “she did not believe that she had any option other than to resign.” (App. 34). This is simply not true. The other option Hanna had was to keep her job and face prosecution for a felony. The Board made this very finding. In adopting the decision of the ALJ in its entirety, the Board of Review found that, “[i]f the claimant had not resigned her employment, the claimant could have remained employed as a teacher and risked prosecution” (App. 19, 23). Hanna exercised her free will and made a decision that she believed best benefited her. This was Hanna’s choice to make, and she cannot now in hindsight argue that her choice was not voluntary so that she can receive unemployment benefits. The Circuit Court’s decision should be reversed.

3. The Circuit Court Misapplied West Virginia Code Section 21A-6-3(1) Because No Evidence Establishes Fault on the Part of the Webster County Board of Education.

The Circuit Court committed further legal error by misapplying West Virginia Code Section 21A-6-3(1) to the facts of this case. The Circuit Court found that, even if Hanna resigned voluntarily from her employment with the Board, she did so for good cause involving fault on the part of the Board because the Board “wanted her resignation or she would be prosecuted under the felony charges.” (App. 63). “[T]he term ‘good cause’ as used in West Virginia Code Section 21A-6-3(1) means cause involving fault on the part of the employer sufficient to justify an employee’s voluntarily leaving the ranks of the employed and joining the ranks of the unemployed.” Childress, 222 W. Va. at 133, 663 S.E.2d at 587. There is a “required nexus” between the phrases “good cause” and “involving fault on the part of the employer,” which phrases are “link[ed] . . . in a *significant and meaningful fashion*.” Verizon Services Corp. v. Epling, 230 W. Va. 439, 739 S.E.2d 290, 298 (2013) (emphasis added).

West Virginia cases analyzing the issue of whether an employee voluntarily quits for good cause on the part of the employer generally involve an employer's misrepresentations regarding the terms of employment or unilateral changes in the conditions of employment by an employer. Our courts also have addressed the "good cause" prong in the context of a discrimination charge. *See, e.g., Curry v. Gatson*, 180 W. Va. 272, 376 S.E.2d 166 (1988). In the single Syllabus of *Amherst Coal Co. v. Hix*, 128 W.Va. 119, 35 S.E.2d 733 (1945), this Court stated the general rule that, "Customary working conditions not involving deceit or other wrongful conduct on the part of the employer are not a sufficient reason for an employee to leave his most recent work voluntarily. . . ." The Circuit Court's Order improperly expands the circumstances under which an employer could be held to have provided good cause for an employee to "voluntarily leav[e] the ranks of the employed and join[] the ranks of the unemployed." *Childress*, 222 W. Va. at 133, 663 S.E.2d at 587.

There has been no deceit or wrongful conduct whatsoever on the part of the Board. The Circuit Court merely found that the Board wanted Hanna's resignation and that this constitutes good cause involving fault on the part of the employer for which Hanna resigned. First, as established *supra*, the evidence did not establish that the Board posed the choice to Hanna to resign or face criminal prosecution. In the original Fact Finding Statement, Petitioner stated that it was the Assistant Prosecutor who gave her the choice to resign or be prosecuted. (App. 1) ("She [Dara Acord] told me that I could resign and agree to repay the money or they were going to prosecute."). Hanna further stated that she resigned "because [she] was threatened by the Prosecutor's office and [the] State Trooper." (App. 1). There is no evidence and no allegation that the Board presented Petitioner with this choice. In fact, all evidence is to the contrary. Thus, not only was Petitioner's resignation voluntary, it could not have involved fault

on the part of the Board because the Board did not pose the choice to Hanna to resign or be prosecuted in the first place.

Second, even if the Circuit Court's assertion that the Board wanted Hanna's resignation were true, the fact that an employer wishes to see an employee who is suspected of theft resign, as opposed to suffer through a criminal prosecution, hardly creates fault on the part of the employer for that employee's voluntary resignation. Hanna oversaw a student fundraiser. (App. 1). Hanna was responsible for collecting the fundraiser money and turning it into the school office. (Id.). Hanna was accused of theft after money went missing from the fundraiser. (Id.). An investigation was then conducted. (App. 17 at ¶ 5). A State Trooper visited the school to confront Hanna and accused her of committing a felony. (App. 1). The Assistant Prosecutor was then contacted, and that prosecutor gave Hanna the choice of resigning or facing prosecution for the alleged theft. (App. 17). Even if the Board did want to obtain Hanna's resignation in lieu of criminal prosecution, it is an employer's prerogative to reach such a conclusion when, under circumstances such as those extant in this case, an employee sets in motion allegations of wrongdoing.

The Circuit Court's decision that fault on the part of the Board somehow caused Hanna's resignation is misguided and could result in severe restraints on employers when dealing with employees accused of wrongdoing. It was Hanna who set in motion the circumstances that led to the Assistant Prosecutor giving her the choice to resign and repay the missing funds or face criminal prosecution. Frankly, Hanna was fortunate not to have to endure a public prosecution that could have had devastating effects on her career and personal life. Hanna did not resign for good cause involving fault on the part of the Board. Consequently, she is disqualified from receiving unemployment benefits.

VII. CONCLUSION

The purpose of our state's unemployment compensation system is "to provide reasonable and effective means for the promotion of social and economic security by reducing as far as practicable the hazards of unemployment." W. Va. Code § 21A-1-1. "The statute is not intended, however, to apply to those who 'willfully contributed to the cause of their own unemployment.'" Hill v. Board of Review, 166 W. Va. 648, 651, 276 S.E.2d 805, 807 (1981) (quoting Board of Review v. Hix, 126 W. Va. 538, 541, 29 S.E.2d 618, 619 (1944)).

Hanna clearly contributed to the cause of her own unemployment. She set in motion a series of events that ultimately led to the Assistant Prosecutor offering her the choice of resigning or undergoing criminal prosecution for an alleged felony. In an exercise of free will, Hanna chose to voluntarily resign her employment to escape criminal prosecution. Hanna made the choice she felt was best for her, but she did have a choice. She cannot now argue in hindsight that she had no option other than to resign. Moreover, the evidence is clear that the Board is in no way at fault for Hanna's decision to resign.

For these reasons, and those apparent to the Court, Petitioner respectfully requests this Court reverse the Circuit Court's ruling and reinstate the Board of Review's finding that Hanna voluntarily quit her employment without good cause involving fault on the part of the Board, and therefore is disqualified from receiving unemployment compensation benefits.

Respectfully submitted this 13th day of January 2014.

**THE BOARD OF EDUCATION OF
WEBSTER COUNTY**



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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 13-1086

THE BOARD OF EDUCATION OF
WEBSTER COUNTY,

Hanna,

v.

Civil Action No. 13-AA-64
Honorable Tod J. Kaufman
Circuit Court of Kanawha County, West Virginia

DAWN J. HANNA, RUSSELL FRY,
Acting Executive Director, WorkForce West Virginia;
JACK CANFIELD, Chairman, Board of Review,
GINO COLUMBO, Member, Board of Review; and
LES FACEMYER, Member, Board of Review,

Respondents.

CERTIFICATE OF SERVICE

I, Jill E. Hall, counsel for Hanna and Respondent Below, The Board of Education of Webster County, do hereby certify that the foregoing "*Brief of Petitioner*" has been served this 13th day of January, 2014, upon the following persons as follows:

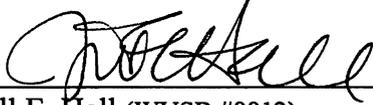
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