

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**Town & Country Animal Hospital, Inc.,
Respondent Below, Petitioner**

vs) No. 12-0154 (Kanawha County 10-AA-121)

**Dawn E. Mead,
Petitioner Below, Respondent**

FILED
February 11, 2013
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Town & Country Animal Hospital, Inc. (“Town & Country”), by counsel David L. Delk Jr., appeals the January 9, 2012 order of the Circuit Court of Kanawha County reversing the decision of the Board of Review of Workforce West Virginia (“Board of Review”). Respondent Mead, by counsel Ronald Kasserman Jr., has filed a response.

The Court has considered the parties’ briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

Respondent Mead worked for Petitioner Town & Country until her employment ended on January 14, 2010. Following respondent’s last day of work, the parties disputed the cause for the end of her employment. Petitioner claimed that respondent resigned, while respondent claimed that petitioner terminated her employment. Respondent thereafter filed a claim for unemployment compensation, which was denied because she had failed to prove that her separation from employment involved fault on the part of her employer. Respondent appealed the decision. A hearing was held before an administrative law judge on April 6, 2010, who again found that petitioner was disqualified from receiving unemployment benefits because she left work voluntarily without good cause involving fault on the part of her employer. Respondent again appealed this decision and the Board of Review affirmed the administrative law judge’s decision by order dated June 30, 2010. On July 30, 2010, respondent appealed the decision to the circuit court, which reversed the Board of Review’s decision.

On appeal, petitioner argues that the circuit court erred in reversing the Board of Review and finding that respondent had been terminated. According to petitioner, applying a clearly erroneous standard to the board’s findings, as required by *Tabor v. Gatson*, 207 W.Va. 424, 426, 533 S.E.2d 356, 358 (2000), should have resulted in the decision being upheld. However, petitioner argues that the circuit court simply did not like the Board of Review’s decision and would have decided the case differently, which requires the subsequent order to be overturned. In response, Respondent Mead argues that the circuit court did not err in reversing the board’s

decision because the administrative law judge's findings were clearly erroneous. According to respondent, the evidence established that she never intended to resign from her position, but was instead terminated.

This Court has previously held that

[t]he findings of fact of the Board of Review . . . 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, in part, *Adkins v. Gatson*, 192 W.Va. 561, 453 S.E.2d 395 (1994). After careful consideration of the parties' arguments, this Court concludes that the circuit court did not err in reversing the board's decision. The Court notes that the circuit court stated an improper standard of review in the order at issue, but upon our review it is apparent that the circuit court believed the board's findings to be clearly wrong in accordance with the standard articulated above.

For the foregoing reasons, we find no error in the decision of the circuit court and its January 9, 2012 order reversing the board's decision is affirmed.

Affirmed.

ISSUED: February 11, 2013

CONCURRED IN BY:

Chief Justice Brent D. Benjamin

Justice Robin Jean Davis

Justice Margaret L. Workman

Justice Menis E. Ketchum

Justice Allen H. Loughry II