UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0776

September Term, 2013

JANICE D. WILLIAMS

v.

BOARD OF APPEALS, DEPARTMENT OF LABOR, LICENSING & REGULATION, ET AL.

Meredith,
Woodward,
Sharer, J. Frederick
(Retired, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: May 21, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Following her decision to quit her job as a janitor at the Jewish Community Center of Baltimore ("JCC"), Janice Williams, appellant, filed a claim for unemployment benefits. The Department of Labor, Licensing, and Regulation ("the Department"), appellee, denied Williams' claim. Williams appealed that decision to the Department's Board of Appeals, which affirmed the denial of her claim. Thereafter, on Williams' petition for judicial review, the Circuit Court for Baltimore County affirmed the denial of benefits.

In her *pro se* appeal Williams raises the following questions, which we rephrase:

I. Did the Department's Board of Appeals err by affirming the claims examiner's denial of her claim for benefits despite the claims examiner's failure to hold an evidentiary hearing?

II. Was it a violation of due process to deny her claim for unemployment benefits without review of the relevant separation information?

III. Did the circuit court err by restricting her testimony and by failing to entertain and reply to her Motion to Offer Testimony?

For the reasons that follow, we shall affirm the judgment of the circuit court.

FACTS and PROCEEDINGS

After Williams quit her job as a janitor at JCC, she filed a claim for unemployment benefits. Along with her claim, Williams asserted the following:

> I last worked for [JCC] on 5/20/12 . . . I voluntarily quit employment with [JCC] because I felt that I was harassed and threatened by my supervisor when I called out sick on one day. I had called the job on 5/21/12 (before my work shift start time) to tell them that I was not going to be able to come in on that day because I was sick/ill. The facility maintenance director, Marsha Curry, didn't answer the phone, but I left messages for her telling her that I would not be in and why. Marsha Curry called me back about 5 minutes after my work shift start time and was asking about what was going on with me (why I was not at work). I told Ms. Curry that I had called and left messages for her to let

> her know that I was sick and would not be in to work on that day. Ms. Curry got mad because I called out at that time. She said "You know what a critical time this is" (because another worker there was out on vacation at that time) and stated that I better bring a doctor's note with me when I return or else it will [not] be good (go well) for me. I told Ms. Curry that I would bring a doctor's note for my absence if that was necessary, but I told her that she didn't have to harass me about my being out sick on that day. I told Ms. Curry that it was not my fault that she was short on staff on that day and that she should not be threatening me because I was calling out. Ms. Curry said that (how she reacts) was not open to discussion (not my business to determine) and she hung up the phone . . . and that was it. After that, I decided that I was not going to go back to work there again. I stopped going in to work after that. I called my direct supervisor, Muriel Fisher[,] a few days later . . . and told her that I had quit. I had . . . about 10 prior run-ins/disagreements with Marsha Curry before the final one. I had talked to Dave Zahn, the manager above Ms. Curry[,] about my problems with her a couple of times (over the prior 8 month period). They met with her once and things improved for a moment, but then deteriorated and went bad again later. There was no other work location or work shift that I could have transferred to (to not have to deal with Ms. Curry) [I] did not think to request a leave of absence from work before I resigned.

The claims examiner reviewing Williams' claim left a voicemail, on June 28, 2012, with a JCC official, requesting "separation information on [Williams]." The claims examiner advised that if he did not receive the information by July 2, 2012, "the issue [would] be resolved with the available information[.]" By July 5, 2012, the call had not been returned and the separation information had not been provided. The claims examiner issued the following ruling:

> [Williams] voluntarily quit employment with [JCC] on 05/20/12 because of alleged [harassment] on the job by [Williams'] supervisor.
>
> Insufficient information has been presented to prove that the quit was either with good cause or due to a valid circumstance. Therefore, it is determined

> that [Williams] voluntarily quit without good cause within the meaning of section 8-1001 of the Maryland Unemployment Insurance Law.
>
> Benefits are denied . . . .

Williams appealed the claims examiner's ruling to the Department's Division of Appeals. After a hearing, the hearing examiner found and ruled as follows:

FINDINGS OF FACT

> [Williams] began working for [JCC] on July 28, 2010. At the time of separation, [Williams] was working as a Janitor. [Williams] last worked for [JCC] on May 19, 2012, before quitting because she felt harassed.
>
> In Mid-November 2011, [Williams] believed she was being harassed by her Supervisor (Marsha Curry) and made [JCC] aware of the same. [Williams] felt harassed because Ms. Curry informed [Williams] that she should not be in [JCC's] break room at 2:45 p.m., but needed to [be] on the work floor working during said time. [Williams] was not on a lunch break during said time. [Williams] produced no evidence that Ms. Curry used profane or abusive language towards her. [JCC] did not respond to [Williams'] concerns immediately. On January 25 and 27, 2012, [JCC's] Human Resources Manager (Jill Shapiro) telephoned [Williams] at the telephone number she provided [JCC] to arrange to meet to discuss with her . . . concerns regarding Ms. Curry. [Williams] did not return Ms. Shapiro's telephone calls. On March 31, 2012, Ms. Shapiro personally approached [Williams] and asked her when she could meet with [JCC] to discuss her concerns. [Williams] did not respond to Ms. Shapiro's request for a day and time to meet. On April 26, 2012, Ms. Shapiro sent [Williams] a letter once again requesting to meet to discuss her concerns and once again [Williams] did not respond to [JCC's] request. . . . On May 20, 2012, [Williams] called off sick, during which time no one answered [JCC's] telephone. Thereafter, [Williams] called and left a voice mail message with [Ms. Curry]. Ms. Curry later called [Williams] back and asked [Williams] to bring a doctor's slip when she returned to work. [JCC's] policy manual provides that a Supervisor has the right to request a doctor's note for absences and [Williams] was provided with said policy when she began working for [JCC]. Ms. Curry's statements made [Williams] feel like she was

being harassed. Thereafter, [Williams] left her employment and did not advise [JCC] she would not be returning to work.

* * *

EVALUATION OF EVIDENCE

* * *

[Williams] had the burden to show that by a preponderance of the evidence that she voluntarily quit [her] position for reasons that constitute either good cause or valid circumstances pursuant to the Maryland Unemployment Insurance Law. . . . In this case, this burden has not been met.

[Williams] quit her job because she believed she was being harassed by her supervisor. No evidence was produced that [Williams'] supervisor used abusive or profane language when she spoke with [Williams]. [Williams] made [JCC] aware of her concerns and [JCC] attempted to address [Williams'] concerns. On at least four (4) separate occasions (both verbally and via written correspondence) [JCC] attempted to arrange to meet with [Williams] and each time [Williams] did not respond to [JCC's] requests. Consequently, [Williams] did not provide [JCC] with an opportunity to fully investigate and address her concerns prior to quitting her job. Instead, [Williams] failed to call or report to work again after her last day of work. Consequently, [Williams] has failed to prove that the reason she quit her job was caused by conditions of her employment or that her reasons were of such a necessitous and compelling nature that she had not [*sic*] reasonable alternative other than to end her employment.

It is thus determined that [Williams] has concurrently failed to demonstrate that the reason for quitting rises to the level necessary to demonstrate good cause or valid circumstances within the meaning of the sections of law cited above.

DECISION

IT IS HELD, that [Williams'] unemployment was due to leaving work voluntarily without good cause or valid circumstances within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-1001. Benefits are denied[.]

The determination of the Claims [Examiner] is affirmed.

Williams, *pro se*, sought judicial review in the Circuit Court for Baltimore County, accompanied by a Motion to Offer Testimony, pursuant to Md. Code Ann. (2004), § 10-222(g) of the State Government Article ("S.G."), in which she argued that her claim for unemployment benefits was denied before she was given "the right to be heard and a hearing." She asserted that she would provide testimony on the following irregularities:

> (1) [t]hat the decision was unconsitutional[;] (2) [f]raudulent [c]oncealment of actions by [the Department][;] (3) [t]hat the decision resulted from an unlawful procedure[;] (4) [m]aterial [a]lteration and [p]lain [e]rror[;] (5) [s]uppression of exculpatory evidence favorable to [her].

Before the circuit court, Williams argued that she was denied unemployment benefits without being given an evidentiary hearing:

> [WILLIAMS]: Well, Your Honor, I was denied unemployment compensation benefits before I had . . . the actual evidentiary hearing itself.
>
> [THE COURT]: I thought . . . there was an evidentiary hearing. I've got the transcript.
>
> [WILLIAMS]: Yes. . . . that was an appeal hearing. After I had been denied, I appealed it. But prior to that the claims examiner denied me an opportunity to be heard at an evidentiary hearing before he made his decision.
>
> [THE COURT]: All right. But then you had an appeal where you were allowed to present evidence, right?
>
> [WILLIAMS]: Well . . . I had not known the claim that was being made against me. I had just found out at the [appeal] hearing. The hearing examiner, she had no preliminary facts. I had never spoken to anyone in the department, the agency.

* * *

> . . . [the claims examiner] made the decision to deny me . . . based on the employer defaulting on the separation information. After [the claims examiner] . . . had given [JCC] seven days to respond to get the separation information, they never responded. So he just denied me without ever getting that information from them.
>
> [THE COURT]: All right. But then you took an appeal from that and there was an evidentiary hearing, right?
>
> [WILLIAMS]: Well, at the evidentiary hearing I was not able to have the people subpoenaed because I had insufficient notice and inadequate opportunity to prepare for the defense because I did not know what the employer had even stated. . . .
>
> Like I said, the claims examiner, he had never given me this information so I couldn't prepare for a defense because I didn't know what I was prepared for. I didn't know what [JCC] were saying, what the reasons they said that I quit is totally different from my reasons for quitting.
>
> [THE COURT]: All right. Well, you had a hearing.

Having heard Williams' claim that she had not been given an appropriate opportunity to present her case, the court asked her to explain the circumstances under which she left the employ of JCC:

> [THE COURT]: And the harassment that you are claiming occurred was what?
>
> [WILLIAMS]: Well, from as early as ten days into my employment, Ms. [Curry], she constantly nit picked even though I had not done anything wrong in the 22 months of employment. I never had any complaints about my work. I gave them quality work.
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> My supervisor, immediate supervisor that I worked with every day, she said that she was pleased to have me on her shift. She had no issues, no problems with me but . . . when Ms. Fisher wasn't present, Ms. [Curry] would somehow

create false allegations against me but then she could never prove these allegations.

I had went to the director of human resources. I complained about [Ms. Curry's] nit picking and her harassment. I went to her manager . . . and I complained to him.

He did at one time speak with [Ms. Curry] and he told me that he would, he would not tolerate any harassment . . .

When I went to Ms. Shapiro, she did absolutely nothing about it and I ended up filing a harassment complaint against her with the president. I had to write a letter to the president of the company because Ms. Shapiro, the director of human resources, and her manager, did not do anything to correct it.

So the president . . . he ordered director Shapiro to conduct an investigation. After two and a half months I had not heard anything from director Shapiro so I approached the president . . . myself and inquired about the disposition or the status of this harassment [claim] and he was very surprised and said that [“]we were waiting for you.[”] And I didn't understand because I . . . did everything that he asked me to do, to submit documentation.

He said that he would schedule a hearing so that I can meet with him. Director Shapiro approached me moments later . . . and stated that she tried to contact me two and a half months earlier and left messages on my phone and did not reach me so she decided to abort the investigation . . .

When that came up [at the hearing before the hearing examiner], I was not prepared to produce this information. So when I appealed that decision to the [Appeals] Board, within 15 days after that [appeal] hearing, I had produced records . . . stating on the dates that director Shapiro stated that she . . . called me and left messages and I did not respond back . . . [the records] indicated and revealed that she had never made those calls.

So she lied to me as well as the president . . . in order to, you know, not conduct an investigation[,] to protect director [Curry].

[THE COURT]: Okay.

> [WILLIAMS]: So I produced this information to the [hearing examiner]. The [hearing examiner] did not raise it. [The hearing examiner] did not review the petition.
>
> [THE COURT]: All right.
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> [WILLIAMS]: So there were a lot of fraud . . . with Ms. Shapiro. That was the main issue because the harassment was the heart of the . . . matter.
>
> That's the reason why I left the employment, because after going through all the grievance procedures, following the chain of command, taking it to the president . . . [Ms. Shapiro] lied to him to state that when she tried to reach me and I did not respond to her calls she aborted because she thought that I had changed my mind. But she never tried to reach me at work and . . . she knew my hours. She knew what time I worked and if she couldn't get me at home she could have reached me at work as she has done in the past when she needed to talk to me.

Williams also contended that JCC had not provided relevant separation information as requested by the claims examiner. She stated further that, during the subsequent appeal hearing, the hearing examiner had not asked JCC for the separation information. She contended that JCC's failure to provide that information should have resulted in a ruling in her favor because "[t]hat's what the law states."

In response, the Department asserted that although Williams complained of not having a hearing before the claims examiner, the subsequent hearing before the Appeals Board was a *de novo* hearing which "was essentially a brand new procedure." The Department stated that "[t]he record shows that [Williams] attended that [appeal] hearing, was able to give evidence, testimony, [and] present documents[.]" As to Williams' contention that the Appeals Board should have ruled in her favor because of inaction by the Department, the

Department noted that "this wasn't a discharge case[,] [t]his was found to be a voluntary quit, and in that kind of case the claimant has the burden to show that she left for reasons that amount to good cause or valid circumstances."

The Department insisted that while there may have been a dispute of facts relating to the circumstances of Williams' departure from JCC, "there doesn't seem to be any dispute that this was a voluntary quit[.]" Moreover, the Department asserted that the facts did not indicate any harassment of Williams, given that the only incidents offered were: (1) an occasion where Williams was in a break room and was told by her supervisor that she should be working because she was not on a scheduled break; and (2) an occasion when Williams called JCC to advise she was too ill to work her scheduled shift and, in turn, was asked to provide a doctor's note to verify the reason for her absence. Therefore, the Department argued, the Board of Appeals' determination that Williams voluntarily left her position of employment without good cause was appropriate and supported by substantial evidence.

The circuit court affirmed the decision of the hearing examiner.

Additional facts will be provided below as our analysis requires.

DISCUSSION

I

Williams asserts that she was denied due process when, after she filed a claim for unemployment benefits, the claims examiner failed to conduct a fact-finding hearing prior to denying her claim. Further, she insists that the claims examiner's denial of her claim for

benefits was an impermissible "default" judgment against her which was due to JCC not submitting separation information for the claims examiner's review.

"The General Assembly declares that, in its considered judgment, the public good and the general welfare of the citizens of the State require the enactment of [the Unemployment Insurance] title . . . for the compulsory setting aside of unemployment reserves to be used *for the benefit of individuals unemployed through no fault of their own*." Md. Code Ann. (2008 Repl. Vol.), § 8-102(c) of the Labor and Employment Article ("L&E") (emphasis added).

Upon the filing of a claim for unemployment benefits, the claims examiner must determine whether benefits should be granted or denied. L&E § 8-806(a)(1). When that determination involves "resolution of a dispute of material fact" the claims examiner must "conduct a predetermination proceeding" and "give each party notice of the time and place of the proceeding." L&E § 8-806(a)(2).

There was no dispute that JCC did not terminate Williams' employment; rather, it was clear, by Williams' own admission, that she left of her own accord. Moreover, there was no dispute of facts, generally. The record reveals that JCC did not submit an account of the relevant facts, or separation information, to the claims examiner. Given JCC's failure to provide the claims examiner with separation information, there could not have been any "dispute" as to any facts. We conclude that where the claims examiner did not have to resolve any conflicts of fact, no predetermination proceeding was required before the claims examiner's decision was issued.

Moreover, the record rebuts Williams' contention that the denial of her claim for benefits was a sort of default judgment resulting from JCC's failure to provide separation information. In the claims examiner's documentation of his efforts to obtain separation information, JCC was advised that if the subject information was not received, the claim would be determined based on the information then in hand, *i.e.*, Williams' account of the relevant facts. The claims examiner made the determination of Williams' eligibility for benefits based only on the account of events that she provided. Nor, do we find a denial of Williams' right to due process when the ruling on her claim was based solely on facts she submitted.[1]

II

Williams asserts that the hearing before the hearing examiner was "simultaneously treated as an appeal and [a] *de novo* [hearing]." She notes that, during the hearing, the relevant separation information was never produced, nor was the fact-finding of the claims examiner. She contends that the "history" referred to by the hearing examiner was, in her words, "ghost tales." Moreover, Williams insists that she was not informed of the claims JCC intended to make at the hearing and as a result she "was not given adequate opportunity to properly prepare a strategy and defense" for her own claims.

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[1]Notably, an excerpt from the Department's Unemployment Insurance handbook, which Williams included in the record extract, provides "[i]t is important [for an employer] to respond to any telephone message and/or request for information within 48 hours *or a determination will be made based on the information provided by the claimant*." (emphasis added).

First, with respect to the failure of JCC to provide separation information, pursuant to L&E § 8-627(a)(1), an employer shall, upon request, provide "a report of the separation from employment of an individual." "An employer that fails to submit a separation notice . . . under subsection (a) . . . is subject to a penalty of $15 for each notice unless the [Department] waives the penalty for cause." L&E § 8-627(e)(1). We have found neither statutory nor case law suggesting that a failure to provide separation information is a fatal procedural defect, nor does Williams cite any. Indeed, the claims examiner advised JCC that a failure to provide information related to Williams' claim would result in a decision based solely on the facts submitted by Williams.

Moreover, because Williams admitted that she voluntarily quit her position with JCC, she assumed the burden to show that good cause existed to justify her decision and that, despite her choice to quit, she was eligible for unemployment benefits. L&E § 8-1001(a)(1) ("An individual who otherwise is eligible to receive benefits is disqualified from receiving benefits if the [Department] finds that unemployment results from voluntarily leaving work without good cause.").

Williams effectively quit her job while not at her workplace and never met with JCC, as requested, for the purpose of discussing and documenting the circumstances of "harassment" that she later viewed as justifying her voluntary departure from employment. On those facts, it is difficult to understand what additional significant information an employer-generated notice of separation would have contained. Furthermore, JCC was

represented at the hearing before the hearing examiner and did provide its account of the events preceding Williams' decision to quit her job. As such, any relevant facts that may have been in the separation information were presumably presented for the hearing examiner's consideration. COMAR 09.32.02.05(B).[2] Accordingly, the hearing examiner did not err in affirming the denial of Williams' claim for unemployment benefits without receiving separation information from JCC.

Next, Williams faults the hearing examiner's lack of review of the claims examiner's findings of fact. Assuming a deficiency, it was obviated by the fact that the hearing before the Appeals Board was a *de novo* proceeding. COMAR 09.32.06.03(H)(1). Any evidence that could have been submitted to the claims examiner could have likewise been presented to the hearing examiner. The hearing examiner was not required to defer to the claims examiner's findings and, unlike the claims examiner, had the benefit of viewing the presentation of argument and evidence at a hearing. Accordingly, we do not agree with Williams that, where the claims examiner's findings were based on far less evidence than was presented to the

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[2] COMAR 09.32.02.05(B), provides in pertinent part:

> . . . Each employer shall indicate on the separation notice the: (1) Reason for the claimant's separation from employment; (2) Last day that the claimant worked for that employer; (3) Amount and form of any pension pay to which the claimant may be entitled, and whether the claimant contributed to the pension; (4) Amount of any holiday pay, vacation pay, severance pay, or special pay paid or payable by the employer; (5) Claimant's last weekly or hourly pay rate; and (6) Other information that the [Department] may request.

hearing examiner, it was an "unlawful procedure" for the hearing examiner to affirm the claims examiner's decision without reviewing the claims examiner's findings of fact.

III

Finally, Williams contends that it was an "abuse of discretion and a denial of substantive due process" for the circuit court to "not entertain or respond to her Motion to Offer Testimony." She further asserts that "she was restricted at the trial from freely speaking" because "the [j]udge stated, '[t]his is an appeal and testimony is confined to the record.'" Williams asserts that the court failed to answer any of the questions in her memorandum and that, during the hearing, although she "continued to speak for the record . . . the [j]udge did not provide her with any answers."

State Government, § 10-222(g), provides in pertinent part:

> **§ 10-222. Judicial review.**
>
> * * *
>
> (g)(1) The court shall conduct a proceeding under this section without a jury.
>
> (2) A party may offer testimony on alleged irregularities in procedure before the presiding officer that do not appear on the record.
>
> (3) On request, the court shall:
>
> (i) hear oral argument; and
>
> (ii) receive written briefs.

During the hearing before the circuit court, Williams was permitted to state for the record her contentions that: (1) JCC failed to follow its own internal grievance procedure in dealing with Williams' complaints of harassment; (2) the claims examiner denied her claim for unemployment benefits without conducting an evidentiary hearing; (3) the claims examiner did not allow her to elaborate, during a phone interview, as to the reasons she quit her job; (4) the claims examiner ruled upon Williams' claim for benefits without receiving the separation information related to her departure from JCC's employ; and (5) when a hearing was conducted at which Williams could present evidence, she was not given notice of JCC's contentions, compromising her ability to properly prepare her "defense," and was "restricted . . . from giving testimony."

Although the circuit court reminded Williams that "you have to confine your argument to the things that are in the record," Williams was afforded considerable latitude by the court and was not restricted in making the points she wished to make. The court's warning was prompted by Williams' argument of factual issues, related to JCC's policy on handling grievances, and her frustration with the Department's procedure, not, as our analysis explains, irregularities or illegalities in such procedure. In our view, the fact that the court did not rule in Williams' favor with respect to the irregularities she perceived does not mean that the court did not consider her testimony in its affirmance of the hearing examiner's decision.

Accordingly, we hold that Williams was not denied the appropriate opportunity to offer testimony, as provided for in S.G. § 10-222(g).

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS ASSESSED TO APPELLEE.