

IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

**CINDY L. ADKINS; CYNTHIA S. COOPER;
and BILLIE J. GILL,**

Appellants,

v.

No. 041722

**CATHY S. GATSON, Clerk of the Circuit
Court of Kanawha County; BOARD OF REVIEW,
WEST VIRGINIA BUREAU OF EMPLOYMENT PROGRAMS;
COMMISSIONER, BUREAU OF EMPLOYMENT
PROGRAMS; CITY OF HINTON,**

Appellees.

**BRIEF ON BEHALF OF APPELLANTS,
CINDY L. ADKINS, CYNTHIA S. COOPER, AND BILLIE J. GILL**

I. KIND OF PROCEEDING AND NATURE OF RULING BELOW

This is an appeal from an April 27, 2004, Order of the Circuit Court of Kanawha County, West Virginia, (Hon. Charles E. King, Jr. presiding), arising out of unemployment compensation claims filed by the Appellants stemming from their employment with Appellee City of Hinton. Although Appellants' unemployment compensation claims had been granted at every stage of the proceedings, i.e., before the Deputy, Administrative Law Judge ("ALJ"), and Board of Review ("BOR"), the Circuit Court nevertheless reversed the award of benefits. Appellants are aggrieved by the April 27, 2004 Order of the Circuit Court of Kanawha County, denying unemployment compensation benefits and seek a reversal of the decision below.

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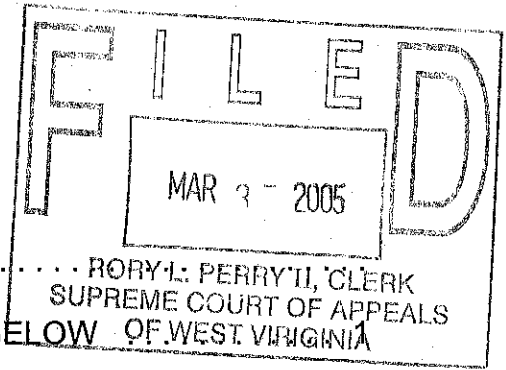


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II. STATEMENT OF FACTS

The Appellants / Claimants comprised the staff of the City of Hinton (Cooper and Gill) and City of Hinton Sanitary Board (Adkins). Appellant Cynthia Cooper was the City Manager, and had been for 18 years before her resignation/constructive discharge on October 8, 2002. T., 11. Appellant Billie J. Gill was an Assistant Clerk for the City, and had been employed for over 4 years when she resigned / was constructively discharged. T., 80-81. Appellant Cindy Adkins was the Sanitary Board Manager, and had worked there for over a year when she resigned / was constructively discharged. T., 120.

On Thursday, September 5, 2002, Melvin "Rex" Cyphers (a retired State Trooper) appeared at City Hall, and was introduced as an "administrator," hired by recently-elected Mayor Cleo Mathews to handle "problems" in the police department. T., 15; 103; 122. Mayor Mathews and Cyphers inquired as to the whereabouts of Police Chief, Tim Adkins (who is the husband of Appellant Cynthia Adkins). T., 16. The Mayor and Cyphers were told that Chief Adkins was on vacation that week due to the anticipated imminent death of his brother; they returned to the Mayor's office with this information. Id. Still not satisfied, Cyphers returned to Appellant Adkins' office, again advised Mrs. Adkins he wished to speak with Chief Adkins, and asked, "...where [i]s he?" Mrs. Adkins (who had a customer) again told Cyphers that she didn't know where her husband was, to which Cyphers replied, while pointing at Mrs. Adkins with his finger, "Well, you have a customer right now, but I will be back to talk to you in just a minute." T., 123.

Cyphers retired to Council Chambers with the Municipal Judge, Curtis Shaffer, but returned to ask Appellant Billie Gill, to contact Chief Adkins for him. Ms. Gill pointed out that Chief Adkins was on vacation, that his brother was in his final illness, and he

should not be disturbed under the circumstances. T., 17. Appellant Cooper went back to Council Chambers, where she again found Cyphers, and reiterated that Chief Adkins had a serious illness in his immediate family, and it would not be very professional to contact him at that time. T., 18. As Mrs. Cooper was returning toward the Mayor's office, she encountered Hinton City Councilman Bobby Wheeler (a man in his 60's who has had two heart attacks) and Cyphers in an escalating exchange which was "...getting a little bit louder as it went on." T., 19. Cyphers told Councilman Wheeler that he (Wheeler) "...need[ed] to get out of the building." Id. Wheeler explained to Cyphers that, as a duly-elected member of City Council, he had as much right to be in City Hall as anyone. Id. Appellant Cynthia Cooper passed by while this confrontation was building up, and upon looking back, "...could see Mr. Cyphers had Councilman Wheeler up against the wall in kind of a choke hold and the [Municipal] Judge was trying to pull Mr. Cyphers off of Councilman Wheeler." T., 20.

Appellant Cooper, who described herself as "...getting hysterical at this time," took the phone from Mayor Mathews and called the West Virginia State Police for assistance. T., 20-21. Mrs. Cooper told the State Police office, "We need help over here. There's a fight." T., 21. In the background, she could hear that her co-worker, Appellant Billie Gill "...was involved in [the altercation]...", as was Hinton Dog Warden, Jerry Wheeler, the brother of Councilman Bobby Wheeler. When Appellant Cooper looked around again, she described the scene as follows:

...they had—the two City police officers had come in and had Mr. Cyphers on the floor handcuffing him...there was just so much that went on in just a few seconds, it's just unreal to try to describe. It was terrifying and I was scared to death...

T., 21. Cyphers resisted arrest by the Hinton city police:

...[h]e was kicking. He kicked the assistant chief of police in the groin area. He choked the other police officer. He's over six foot [sic] tall. He was choking him. All of these—the two police officer[s] had to go to the

hospital. Councilman Wheeler had to go to the hospital. Jerry Wheeler had to go to the hospital. [Cyphers] is huge...and bulky...

T., 22-23. After these events, Appellant Cooper was advised by two retired State Troopers, and a former assistant prosecuting attorney, Richard M. Gunnoe¹ (whom Cyphers had threatened to kill), of Cyphers' dangerous² and unsavory reputation. T., 23-25; 53-54; 90-91; 126-27. Appellant Cooper testified that Cyphers' firearm, which he had carried in a holster during the altercation, had been removed by city police officers "...after he was handcuffed..." T., 26; 48.

Appellant Gill had noticed Cyphers' firearm in a side holster before the altercation. T., 82; 111. Ms. Gill related Cyphers' conduct during the altercation as follows:

I'm not sure whether he grabbed Bobby [Wheeler] by the arm, by the belt, but all I know is Bobby Wheeler went up against the side of the wall. I mean just instantly. It was just like...throwing a sack of trash...I'm sorry, I get nervous when I talk about it. Mr. [Curtis] Shaffer [the Municipal Judge] came out of the Council Chambers and I was screaming. I run [sic] up to the front desk and I called the State Police. I ran back down the hall and [Cyphers] was—I mean Curtis was trying to hold him back and he was just beating Bobby [Wheeler] up against the wall.

* * *
...I grabbed ahold of Cyphers by the neck because he looked like he was going to take his head and bust Bobby's head up against the wall. Now Mr. Wheeler has a heart condition...He's had two heart attacks.

* * *
...when I grabbed ahold of [Cyphers], he said, 'Get your hands off me, you bitch. You're under arrest.'

T., 85-86; 103. Appellant Gill's involvement in the altercation was aimed at pulling Cyphers back from Councilman Wheeler, and preventing Cyphers from "beating his head against the wall." T., 99-100. Appellant Cindy Adkins had been required to go

¹Mr. Gunnoe erroneously is referred to in the transcript as "Mr. Richard M. Figlio." T., 26.

²Before separating his employment from the State Police, Cyphers reportedly threatened to kill his former supervisor. T., 24.

home on a brief errand, and when she got back to City Hall, "...Rex Cyphers was on the floor. He had been handcuffed...Everyone was upset..." T., 124. Appellant Adkins had known Cyphers from before because, when she was 17 or 18 years old and working at Pizza Hut, Cyphers had "...made some very vulgar comments to me," i.e., sexually harassed her. T., 125.

Following the Cyphers / Wheeler altercation, which had happened on a Thursday, City Council President Larry Meador contacted the Appellants and told them "...not to come back to work until this was resolved." T., 27. The Appellants did not work the following Friday, Monday, and Tuesday; on Wednesday, Council President Meador advised them the City "...would provide police protection if we would come back to work." Id. Council President Meador and another City Councilman, Pat Jordan, "...expressed to [Appellants] that they were afraid to be at City Hall and they didn't expect us to stay there if they couldn't be there, if they were feared [sic] for their lives." Id. Cyphers reappeared at City Hall on September 12 and/or 13, and was "intimidating" toward the Appellants; however, police protection was present. T., 58-59; 108.

The police protection for Appellants at City Hall continued until October 1, 2002, when Appellants wrote Mayor Mathews a memo advising that the "...working environment at City Hall continues to be extremely uncomfortable," complaining that the Appellants were being "...forced to work in a daily atmosphere of fear due to the September 5, 2002 altercation," and inquiring, inter alia, as to what Cyphers' employment status was; whether he would be returning to work and would attack again; and how long police protection would be provided. CX 1; T., 27-29. Appellant Cooper described the work atmosphere during this time as "...very stressful...not conducive to getting anything done, [and] [w]e were in constant fear." T., 30; 71. During this time,

Appellant Cooper was taking anti-anxiety medications prescribed by her doctor due to the work-related stress. T., 30. Mayor Mathews did not respond directly to Appellants' memo of October 1, 2002, expressing concerns about workplace safety and Cyphers' status. Rather, she directed a memo to Police Chief Adkins advising him that Cyphers would "...not return [to work] for at least three months." T., 31. The Mayor's representation that Cyphers definitely would be returning to work caused great anxiety and concern to the Appellants. Id.

On October 9, 2002, at an abortive Council meeting (lacking a quorum), with Councilmen Meador, Jordan, and Wheeler present, Mr. Meador advised Appellant Gill that "...he couldn't tell her to come to work because he was in fear for her life." T., 34. When asked why she resigned, Appellant Cynthia Cooper cited the ongoing harassment by Mayor Mathews, which was brought to a climax by Cyphers' intimidation: "I think he was actually hired to terrorize us, to scare us and get us out of the building, make us move." T., 37; 75-77. Appellant Billie Gill likewise cited the Cyphers episode as "the last straw" in her decision to quit her employment. T., 93. Appellant Cindy Adkins quit "...because I was fearful for myself in that building...I didn't know if [Cyphers] was still employed. I didn't know if he would show back up there...I just didn't want to be there if he came back." T., 133. The Appellants learned on October 2, 2002, that their police protection officially was being discontinued; Appellant Cooper was off work on October 3-4, and turned in her resignation on the morning of October 9, 2002. T., 38-39; 66. Appellant Gill resigned on October 9, 2002, and Appellant Adkins resigned on October 10, 2002. T., 133.

Appellant Cooper had, at the time she resigned, 18 years' service to the City of Hinton, and could have retired after 7 more years. T., 72. Appellant Gill had over 4 years' service with the City, and recently had hired an attorney to fight for her job on an

unrelated issue, having had no desire to quit. T., 93; 116-17. Appellant Adkins had worked for the City Sanitary Board for over a year.

III. ASSIGNMENTS OF ERROR

1. The Circuit Court applied the wrong standard of review, and compounded this error by receiving so-called "new evidence" on appeal.

2. The Circuit Court erred by concluding that Appellants did not leave their jobs with good cause involving fault on the part of their employer.

IV. STANDARD OF REVIEW

Findings of fact by the Unemployment Compensation Board of Review of the West Virginia Bureau of Employment Programs are entitled to substantial deference unless a reviewing court believes the findings are clearly wrong. Syl. Pt. 3, Adkins v. Gatson, 192 W.Va. 561, 453 S.E.2d 395 (1994). See also, W.Va. Code §21A-7-21 (findings by the Board of Review shall have like weight to that accorded the findings of a trial chancellor or judge in equity procedure). If the question on review is one purely of law, no deference is given and the standard of judicial review by a court is *de novo*. Id. Syl. Pt. 3, Adkins v. Gatson, 192 W.Va. 561, 453 S.E.2d 395 (1994).

V. LEGAL ARGUMENT

A. THE CIRCUIT COURT APPLIED THE WRONG STANDARD OF REVIEW, AND COMPOUNDED THIS ERROR BY RECEIVING SO-CALLED "NEW EVIDENCE" ON APPEAL.

With regard to the procedure employed by the Circuit Court below, the Circuit Court completely flouted the correct standard of review of a decision by the BOR in an unemployment compensation appeal, and compounded the error by receiving so-called "new evidence," i.e., affidavits tendered by Appellees' counsel on appeal, which were never subject to cross examination. The Circuit Court rationalized these errors by ruling

that the Administrative Procedures Act did not apply under W.Va. Code §29A-5-5, and its review therefore was pursuant to a writ of certiorari, under which it could admit so-called "new evidence" and re-weigh the evidence. Final Order, pp. 1-2. The Circuit Court's novel theory of judicial review runs contrary to well-settled precedent by this Court.

As this Court repeatedly has emphasized, findings of fact by the Unemployment Compensation Board of Review of the West Virginia Bureau of Employment Programs are entitled to substantial deference unless a reviewing court believes the findings are clearly wrong.³ Syl. Pt. 3, Adkins v. Gatson, 192 W.Va. 561, 453 S.E.2d 395 (1994). See also, Patton v. Gatson, 530 S.E.2d 167, 167, 207 W.Va. 168, 168 (1999); Ohio Valley Medical Center, Inc. v. Gatson, 505 S.E.2d 426, 427, 202 W.Va. 507, 507 (1998); Ohio Valley Medical Center, Inc. v. Gatson, 496 S.E.2d 181, 182, 201 W.Va. 231, 232 (1997); Private Industry Council of Kanawha County v. Gatson, 483 S.E.2d 550, 551, 199 W.Va. 204, 205 (1997); Smittle v. Gatson, 465 S.E.2d 873, 876, 195 W.Va. 416, 419 (1995); Davis v. Gatson, 464 S.E.2d 785, 786, 195 W.Va. 143, 144 (1995). This concept essentially is codified in W.Va. Code §21A-7-21, which expressly provides that findings of fact by the Board of Review shall have like weight to that accorded the findings of a trial chancellor or judge in equity procedure. The Circuit Court completely ignored this standard of review in admitting and considering Appellee City of Hinton's so-called "new evidence," i.e., affidavits which never have been subject to cross examination by Appellants (and for that matter, did not qualify as "new" evidence).

³If the question on review is one purely of law, no deference is given and the standard of judicial review by a court is *de novo*. Syl. Pt. 3, Adkins v. Gatson, 192 W.Va. 561, 453 S.E.2d 395 (1994).

If the Circuit Court had engaged in any type of thoughtful analysis of the issue, it would have come to the inescapable conclusion that Appellee's so-called "new evidence" does not satisfy the criteria for submitting such evidence.⁴ Appellee cannot show that the additional evidence was "not available" previously, or that it did not know, nor reasonably could have known, of the evidence in question at the time, as required by 84 CSR 84-1-5.8 (1999). The three affidavits submitted by Appellee City of Hinton, and admitted into evidence by the Circuit Court, were from Mayor Mathews (who actually testified at the ALJ hearing); City Council member Larry Meador (who could have testified at the ALJ hearing but was not called by Appellee); and Melvin "Rex" Cyphers (who could have testified at the ALJ hearing but was not called by Appellee).⁵ Simply put, Appellee could not begin to justify its so-called "new evidence" being offered for the first time on appeal before the Circuit Court, and the Circuit Court erred by (a) not engaging in any critical analysis of the issue, and (b) admitting the affidavits into evidence. On this basis alone, the Circuit Court's decision below cannot stand.

⁴The BOR's procedural rules permit motions to present additional evidence not offered before the ALJ only if specific criteria establishing "good cause" are satisfied. See, e.g., 84 CSR 84-1-5.8 (1999). The Circuit Court gave no consideration to this rule, nor to whether Appellee City of Hinton had satisfied its heavy burden to justify submitting additional evidence on appeal.

⁵Appellants anticipate that Appellee will contend that Cyphers was "not available" because he had criminal charges pending and would have been instructed by his defense counsel not to testify. This Court may dismiss this theory as Appellee never attempted to force the issue by subpoenaing Cyphers and finding out whether he would invoke his self-incrimination rights. Even assuming, *arguendo*, that Cyphers had invoked his 5th Amendment rights, that is no basis for delaying the adjudication of Appellants' unemployment compensation claims, in which he was merely a potential witness.

B. THE CIRCUIT COURT ERRED BY CONCLUDING THAT APPELLANTS DID NOT LEAVE THEIR JOBS WITH GOOD CAUSE INVOLVING FAULT ON THE PART OF THEIR EMPLOYER.

On the merits, the legal framework for analyzing this case is clear. The Appellants are not disqualified from drawing unemployment compensation if they left their jobs with good cause involving fault on the part of their employer. W.Va. Code §21A-6-3(1). See also, Curry v. Gatson, 180 W.Va. 272, 376 S.E.2d 166 (1988) (sexual or racial harassment may constitute good cause for quit). As the following discussion will demonstrate, the Appellants / Claimants had good cause to quit their jobs with the City of Hinton and Sanitary Board. Consequently, the Circuit Court's Order must be reversed, and the decisions by the BOR, ALJ, and Deputy should be reinstated.

West Virginia does not have any reported decisions addressing workplace violence fears in the context of unemployment compensation claims. However, with regard to workplace violence generally, Justice Starcher of this Court has observed that:

[w]orkplace violence, unfortunately, is a fact of life in contemporary society. Women disproportionately suffer from such workplace violence. Frequently, the perpetrators of workplace violence are those employees who kept their frustrations, fears, anxieties, and aggressions just below the surface, eventually erupting in a violent frenzy.

Fairmont Specialty Services v. WVHRC, 206 W.Va. 86, 106, 522 S.E.2d 180, 200 (1999) (Starcher, J., concurring). Other jurisdictions uniformly have recognized that workplace violence fears may form a legitimate basis for resigning one's employment, and therefore, resignations based thereon are not disqualifying for unemployment compensation

purposes.⁶

A brief survey of decisions from other jurisdictions will demonstrate that West Virginia's unemployment statute, which is similar to those in other jurisdictions, allows workplace violence concerns to be a legitimate basis for quitting one's job. In Hat Six Homes, Inc. v. Department of Employment, 6 P.3d 1287 (Wyo. 2000), the Wyoming unemployment statute provided for disqualification if an individual "[l]eft...work voluntarily without good cause attributable to his employment, except for bona fide medical reasons involving his health..." In that case, an employee of a mobile home dealership quit because the company president sexually harassed her and the company vice president threw staplers, cell phones, and driveway alarms about the office, requiring her to duck to avoid being struck. The Supreme Court of Wyoming had no difficulty in affirming decisions below awarding unemployment compensation benefits, concluding that both the sexual harassment and episodes of workplace violence gave good cause for the employee to quit. 6 P.3d at 1293. Ruling against a claimant based on insufficiency of evidence, the New York Appellate Division nevertheless agreed in In the Matter of Gardiner, 272 A.D.2d 709, 707 N.Y.S.2d 533

⁶See generally, Hat Six Homes, Inc. v. Department of Employment, 6 P.3d 1287 (Wyo. 2000) (workplace violence and sexual harassment furnished good cause for quit); In the Matter of Gardiner, 272 A.D.2d 709, 707 N.Y.S.2d 533 (2000) (recognizing safety concerns may justify a quit but finding evidence insufficient); Taylor v. Board of Review, 20 Ohio App.3d 297, 485 N.E.2d 827 (1984) ("an employee cannot be expected to remain on the job until an actual physical assault takes place"); Stark v. Ross, 66 A.D.2d 942, 411 N.Y.S.2d 433 (1978) (unsafe conditions on vessel at sea); Condo v. Board of Review, 158 N.J.Super. 172, 385 A.2d 920 (1978) (threats of harm by co-worker, short of actual attack, furnished good cause); Coleman v. Employment Security Department, 25 Wash.App. 405, 607 P.2d 1231 (1980) (verbal assault sufficient basis for quitting; no disqualification).

(2000), that "...fearing for one's safety may constitute reasonable cause for resigning..."

Ohio also recognizes that a reasonable fear for one's personal safety furnishes just cause for quitting one's job. In Taylor v. Board of Review, 20 Ohio App.3d 297, 485 N.E.2d 827 (1984), a maintenance worker at a bakery previously had been "beaten up" *away from the bakery* by an individual who subsequently became his co-worker at the bakery. The Court of Appeals held:

...an employee has just cause to quit his job and is entitled to unemployment compensation where he is threatened with physical harm by a fellow employee who has already beaten him on a prior occasion and the complaining employee has reported that threat to his employer who does not or is unable to take appropriate steps to alleviate the genuine and reasonable fear of the employee who has quit his job.

485 N.E.2d at 829. Similarly in the case at bar, Appellants had, to one degree or another, experienced the melee at City Hall on the morning of Cyphers' first day at work, and Appellee City of Hinton had discontinued the "appropriate step" of police protection for Appellants before they quit. Clearly, they had good cause to resign their jobs. Id.

New Jersey law is to similar effect. In Condo v. Board of Review, 158 N.J.Super. 172, 385 A.2d 920 (1978), the court faced a case wherein the employee quit because of threats of physical harm by a co-worker, which *never actually culminated in a physical attack*. The court nevertheless held the employee was entitled to unemployment benefits:

[i]n our view threats of physical violence directed to an employee from which he may reasonably conclude that his personal safety is endangered thereby inculcating a genuine fear in the employee is an abnormal working condition. As such, it constitutes good cause for that employee to voluntarily leave his employment.

385 A.2d at 921-22. Thus, Condo stands for the proposition that an employee needn't wait for an attack actually to transpire; reasonable fears of workplace violence are sufficient. So too, Appellants' fears in this case provided good cause to quit. Id.

In Coleman v. Employment Security Department, 25 Wash.App. 405, 607 P.2d 1231 (1980), the Court of Appeals of Washington also recognized that reasonable fears workplace violence (and related concerns), including an assault that never culminated in an actual attack, furnished a legitimate basis to quit. The Coleman court cited the above-quoted language from Condo, supra, and ruled that an employee who had been the victim of an assault (i.e., put in apprehension of a battery), had good cause to quit. 607 P.2d at 1234. The employer in Coleman had added insult to injury by transferring the perpetrator of the assault to the more desirable day shift, rather than the victim/claimant who had requested such a transfer. Similarly here, the Appellee City of Hinton added insult to injury, insofar as Appellants were concerned, by removing their police protection in the wake of the Cyphers melee. Consequently, Cyphers' "violent frenzy" at City Hall, and the atmosphere in the aftermath thereof, gave the Appellants good cause to quit.

The Appellants' fears in this case were reasonable and justified. Mr. Cyphers was introduced to Appellants by Mayor Mathews as an "administrator," yet he carried a handgun in a shoulder holster. Cyphers was described as a man of large stature, well over 6' and 200 pounds. In the initial hours of his first day on the job, Cyphers became embroiled in a verbal confrontation, which erupted into a full-blown melee, with a (much older, sicker and) duly-elected member of City Council, Bobby Wheeler. Appellant Cooper witnessed the melee, as did Appellant Gill. Appellant Gill also physically

intervened to try to prevent Cyphers from "...bust[ing] Bobby [Wheeler]'s head up against the wall," to which Cyphers snarled (as he was attempting to bust Bobby Wheeler's head against the wall), "Get your hands off me, you bitch. You're under arrest." Cyphers himself was subdued and handcuffed by Hinton Police thereafter. It was this scene that Appellant Adkins (who was afraid of Cyphers, having been sexually harassed by him as a teenager) beheld when she returned to City Hall—Cyphers on the floor, handcuffed, after brawling with Councilman Wheeler, a man, in his 60's, who had had two heart attacks. For Appellee City of Hinton to suggest that the Appellants' fears of workplace violence were not reasonable simply strains credulity.

City Hall was closed for several days after the Cyphers attack on Councilman Wheeler, and the Appellants returned to work only with a promise (by City Council) of police protection. When the Appellants attempted to communicate with the Mayor (via the October 1, 2002 memo) to allay their fears that Cyphers might return to work and wreak more violent havoc, the Mayor did not respond directly to their memo. Rather, she sent a memo to Police Chief Tim Adkins (husband of Appellant Cindy Adkins) advising that Cyphers definitely would be returning to work (confirming Appellants' worst fear). On October 9, 2002, the day Appellants Cooper and Gill resigned, Councilman Meador told Gill that "...he couldn't tell her to come to work because he was in fear for her life." T., 34. Apparently, Appellee City of Hinton would require that the Appellants stay on the job until they themselves were the victim of an attack, attempted murder, or worse, by Cyphers, before they would have good cause to quit!

Fortunately, W.Va. Code §21A-6-3(1), contemplates such circumstances, and does not require employees to wait until it is too late for them to leave a workplace

under their own power before quitting their jobs. Clearly, no reasonable person would remain on the job under the conditions these Appellants faced, and the Deputy, ALJ, and Board of Review all were correct in awarding benefits in each of Appellants' claims. A brief survey of some of cases in which claimants have been held to have quit with good cause, and not disqualified from unemployment, will confirm that the hardships faced by the Appellants in these cases were considerably more arduous and dangerous than in several cases wherein benefits have been awarded.

In Glass v. Gatson, 200 W.Va. 181, 488 S.E.2d 456 (1997) (per curiam), the temporary reassignment of 1/3 of a deceased mail clerk's duties to an escrow clerk was held to constitute a substantial unilateral change in working conditions justifying her quitting. A 25% reduction in hours and requirement that an employee clean her employer's home as part of her job justified a quit in Wolford v. Gatson, 182 W.Va. 674, 391 S.E.2d 364 (1990) (per curiam). A unilateral change from working as an orderly to a nursing assistant, with newly-attendant patient care duties justified an employee in quitting in the case of Hunt v. Rutledge, 177 W.Va. 523, 354 S.E.2d 619 (1987) (per curiam). A reduction in pay of \$1.10 per hour and addition of janitorial duties to a night watchman's job was held to constitute good cause for a quit in Brewster v. Rutledge, 176 W.Va. 265, 342 S.E.2d 232 (1986).

A 20-mile relocation of a plant, and attendant commuting hardships, was held to constitute good cause for quitting in Ross v. Rutledge, 175 W.Va. 701, 338 S.E.2d 178 (1985). A wife of an enlisted military husband who "quit" her job on a military base when his assignment in the Philippines ended was held to have good cause for leaving in Rhodes v. Rutledge, 174 W.Va. 486, 327 S.E.2d 466 (1985). In Murray v. Rutledge,

174 W.Va. 423, 327 S.E.2d 403 (1985); an employer's misrepresentations about the terms of employment were recognized as providing good cause for a quit. Leaving an employer known to be going out of business was held not disqualifying in Lough v. Cole, 172 W.Va. 730, 310 S.E.2d 491 (1983). Nor was an employee disqualified who left work due to a serious back injury and later attempted to return to work, only to find that his employment had been terminated in his absence. Gibson v. Rutledge, 171 W.Va. 164, 298 S.E.2d 137 (1982). Surely the adversity faced by Appellants was as severe as that endured by the successful claimants in these cases.

As a final observation, this Court repeatedly has emphasized that the unemployment compensation statute, being remedial in nature, must be liberally construed to achieve the benign purposes intended to the full extent thereof. Syl. Pt. 6, Davis v. Hix, 140 W.Va. 398, 84 S.E.2d 404 (1954); Bailey v. Rutledge, 174 W.Va. 476, 327 S.E.2d 456 (1985); Perfin v. Cole, 174 W.Va. 417, 327 S.E.2d 396 (1985). With this legal standard in mind, the Appellants respectfully submit that they had more than ample cause to quit their jobs with the City of Hinton and its Sanitary Board.

VI. CONCLUSION

In accordance with the foregoing discussion, the Appellants respectfully request that the decision by the Circuit Court be reversed, and the prior decisions by the BOR, ALJ, and Deputy awarding benefits in each case, be reinstated.

CINDY L. ADKINS;
CYNTHIA S. COOPER;
and BILLIE J. GILL;
Appellants / Claimants,
By Counsel

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IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

CINDY L. ADKINS; CYNTHIA S. COOPER;
and BILLIE J. GILL,

Appellants,

v.

No. 041722

CATHY S. GATSON, Clerk of the Circuit
Court of Kanawha County; BOARD OF REVIEW,
WEST VIRGINIA BUREAU OF EMPLOYMENT PROGRAMS;
COMMISSIONER, BUREAU OF EMPLOYMENT P
PROGRAMS; CITY OF HINTON,

Respondents.

CERTIFICATE OF SERVICE

I, William D. Turner, counsel for the Appellants, Cindy L. Adkins, Cynthia S. Cooper,
and Billie J. Gill, do hereby certify that on this, the 2nd day of March 2005, a copy of the *Brief on
Behalf of Appellants, Cindy L. Adkins, Cynthia S. Cooper, and Billie J. Gill* has been sent to
counsel for the Respondents via United States, first class mail, postage prepaid from
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