STATE OF NEW YORK
UNEMPLOYMENT INSURANCE APPEAL BOARD
PO Box 15126
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DECISION OF THE BOARD

Mailed and Filed: SEPTEMBER 29, 2022

IN THE MATTER OF:
Appeal Board No. 623823

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determination, disqualifying the claimant from receiving benefits, effective April 29, 2021, on the basis that the claimant voluntarily separated from employment without good cause. The claimant requested a hearing.

The Administrative Law Judge held telephone conference hearings at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed May 16, 2022 (), the Administrative Law Judge granted the claimant's applications to reopen A.L.J. Case Nos. 022-01748 and 021-41901 and sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board, insofar as it sustained the initial determination.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant is a pharmacist with over twenty years of experience. She has worked, as of February 2019, for a pharmacy operated by a corporation owned by two brothers.

In March 2021, the employer noticed that the sales of narcotics were excessive at the claimant's assigned location. The employer reviewed invoices for narcotics ordered at the store and observed an unusual amount. The employer notified the police, its wholesaler, and the Drug Enforcement Agency (hereinafter "DEA"). The police and the DEA advised the employer to remain

silent about the investigation and to observe all its employees. The wholesaler suspended all narcotics deliveries. After reviewing security tapes from the business, the employer believed that a technician and a cashier were involved in the theft of narcotics.

In the days thereafter, the employer asked about the sale of narcotics for which the claimant normally signed. The claimant reviewed invoices and found an invoice from March 2021 for narcotics that bore her forged signature. She provided the invoice to the employer. She then spoke with an attorney who specialized in pharmacy licenses, who advised the claimant to resign to avoid the stigma associated with illegal narcotics' sales.

A few days later, on March 16, 2021, the claimant fell ill at work and passed out. She slept for over an hour at the pharmacy, only to wake up, still sick and sweating. Her coworkers arranged a ride for the claimant and sent the claimant home. The claimant has no memory of leaving work, of getting home, or of what happened that evening after work. She believes she was drugged at work. She did not see a doctor or seek emergency medical aid.

After the sale of narcotics was suspended at the pharmacy in March 2021, the employer could not fill customers' prescriptions. As a result, many customers become aggressive and confrontational. They would wait outside the store to yell at the claimant and/or the owners. When the customers spoke with the owner, he advised them of the suspension and urged them to move their prescriptions to another pharmacy. The claimant complained to the employer about such customers. The owners responded by working at the pharmacy daily to speak with such customers. Also, the employer continued to employ a security guard at that location.

On April 7, 2021, the employer apprised the claimant about the police and the DEA involvement and the continued police monitoring of two suspects - a technician and cashier. In response, the claimant notified the owner that she intended to resign as of April 21, 2021. The owner asked her to stay on to train a replacement. The claimant agreed to work through April 28, 2021. She also offered to work on an as-needed basis thereafter. The claimant did not return to work after April 28, 2021. Continuing work was available.

OPINION: The credible evidence establishes that the claimant resigned, effective April 28, 2021, after a narcotics' investigation occurred at her place of employment. Although the claimant contends that she resigned to

protect her pharmacy license and due to fears for her safety, her contentions are not persuasive.

In so determining, we note that the claimant did not resign in March 2021 when she saw that her signature had been forged on a narcotics order, nor on April 7, 2021 when she learned of law enforcement's involvement in the investigation. We note too, that the employer advised the claimant that she was not a suspect. We further note that despite her concerns about her pharmacy license, a resignation in the midst of an investigation would not have safeguarded her pharmacy license had she committed violations, nor would it have reduced any suspicions about her own conduct.

As to her concerns for her safety, the claimant did not resign after she believed she had been drugged on March 16. As to confrontational customers, the owners responded by being present in the store to speak with them while continuing to employ a security guard. Despite such purported concerns, the claimant continued to work through April 28, 2021, and even offered to fill in thereafter, as needed, at the same location.

Hence, we find that the claimant resigned while continuing work was available and failed to offer a definitive reason which would serve as good cause to excuse her resignation. Accordingly, we conclude that the claimant was separated from her employment under disqualifying circumstances.

DECISION: The decision of the Administrative Law Judge, insofar as appealed from, is affirmed.

The initial determination, disqualifying the claimant from receiving benefits, effective April 29, 2021, on the basis that the claimant voluntarily separated from employment without good cause, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

MICHAEL T. GREASON, MEMBER