

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-458

MARCH TERM, 2004

	} APPEALED FROM:
Barbara Reilly-Austin	}
	} Employment Security Board
v.	}
	} DOCKET NO. 05-03-197-06
Department of Employment and	}
Training and Religious Hospitallers of	}
St. Joseph= s	}
	}
	}

In the above-entitled cause, the Clerk will enter:

Claimant Barbara Reilly-Austin appeals pro se from an order of the Employment Security Board. She claims that the Board erred by finding that she left her job as a nurse assistant because of cancer treatments she was receiving that prevented her from discharging her duties. We affirm.

Although claimant= s pro se brief does not meet the requirements of V.R.A.P. 28, we have reviewed the record and find no basis for overturning the Board= s decision. Claimant= s last day of work at the Religious Hospitallers of St. Joseph= s was April 14, 2003. In December 2002, she began missing work because of her illness and its associated chemotherapy treatments. In early February 2003, the hospital agreed to give claimant one or two weeks off as her doctor recommended. Once she resumed employment, claimant was assigned fewer hours because the effects of her chemotherapy treatment made her availability for work unpredictable. Claimant worked only two of the six days she was scheduled to work at the end of March and beginning of April 2003. The record shows that claimant faithfully called in sick ahead of time to allow the hospital to fill her shift. Eventually, the hospital took her off the schedule because it became impossible for management to know when she would be able to resume her duties.

Claimant sought unemployment compensation and was denied benefits because of her medical condition. She appealed the determination to the appeals referee, who upheld the original denial. Following a telephone hearing, and based on a Social Security Administration decision finding claimant disabled as of February 2003, the referee found that claimant was not eligible for statutory unemployment benefits. See 21 V.S.A. ' 1344(a)(3) (claimant disqualified from benefits if the commissioner finds that claimant left employment because of a health condition that precludes the claimant from discharging duties inherent in the claimant= s job). This appeal followed the Board= s decision affirming the appeals referee= s decision.

Claimant generally contests the facts and conclusions supporting the Board= s determination that she was ineligible for unemployment compensation because her health precluded her from working regularly. The evidence in the record supports the findings on claimant= s disabling illness that made her unable to work. The findings in turn support the conclusion that claimant= s medical inability to discharge her duties as a nurse assistant rendered her ineligible for benefits under ' 1344(a)(3). See Davis v. Dep= t of Employment Sec., 140 Vt. 269, 275-76 (1981) (affirming denial of unemployment compensation to claimant whose health problems were so severe that they prevented her from performing her regular teaching duties even though her doctor stated that she could return to work). Because the Board= s decision is supported by the record, we find no basis to overturn it. Id.

It is important to emphasize that unemployment compensation is not intended to A provide sick benefits nor to

compensate those who cease working because of illness. @ Willard v. Unemployment Compensation Comm= n, 122 Vt. 398, 404 (1961). Rather, benefits are paid to workers who are able and available to work, but who are made jobless due to circumstances beyond their control. Id. at 404, 405. Having found no legal error in the Board= s decision below, we must affirm its decision to deny claimant= s application for benefits.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Paul L. Reiber, Associate Justice