

NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

20-P-332

FATOU ALASSANE FALL

vs.

DePUY SYNTHES PRODUCTS, INC.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

The plaintiff, Fatou Alassane Fall, was denied unemployment benefits by the Department of Unemployment Assistance (DUA). She unsuccessfully sought judicial review of her claim when a Superior Court judge allowed the motion of the defendant, DePuy Synthes Products, Inc. (DePuy), to dismiss pursuant to several provisions of Mass. R. Civ. P. 12 (b), 365 Mass. 754 (1974). She now appeals, and we affirm.

Background. Fall worked for DePuy as a supply planning analyst between March 2014 and July 2018. She reported feeling uncomfortable at work because she felt that two coworkers were following and watching her. In June 2018, she filed two complaints with DePuy's internal complaint system addressing these instances. Fall also reported that coworkers would cough and sneeze as she would walk by, ostensibly because of the scent

of her perfume. She thereafter gave a two-week notice of resignation, and her last day at work was on July 19, 2018.

On March 11, 2019, Fall filed a claim for unemployment insurance benefits. The DUA denied her claim, and she appealed to a review examiner. By written decision dated May 25, 2019, the examiner affirmed the denial of benefits, concluding first that Fall was not discharged from her employment and second that Fall had not established that she left her job for good cause attributable to DePuy. See G. L. c. 151A, § 25 (e) (1).

On August 8, 2019, Fall filed a complaint in the Superior Court against DePuy. DePuy then served Fall with a motion to dismiss, memorandum of law in support thereof, and affidavit. DePuy did not receive an opposition, see Rule 9A of the Rules of the Superior Court (2018); thus, DePuy filed the motion to dismiss unopposed. A judge allowed the motion and a judgment of dismissal entered. This appeal followed.

Discussion. In her brief, Fall claims that substantial evidence demonstrated a hostile work environment by way of harassment, intimidation, and slander. In response, DePuy claims, inter alia, that (1) the Superior Court was without subject matter jurisdiction because Fall filed her complaint in an improper venue, and (2) she failed to join an indispensable party. We agree that these procedural defects are fatal to Fall's appeal.

General Laws c. 151A, § 42, provides in relevant part that "any interested person aggrieved by any decision in any proceeding before the board of review may obtain judicial review of such decision by commencing within thirty days of the date of mailing of such decision, a civil action in the district court" (emphasis added). See Gillespie v. Northampton, 460 Mass. 148, 155 n.13 (2011). Here, Fall commenced this action in the Bristol County Superior Court. Although she tries to invoke jurisdiction under G. L. c. 212, § 3, by claiming damages in excess of \$25,000, that provision does not apply when the Legislature vested original jurisdiction in the District Court in G. L. c. 151A, § 42. See G. L. c. 212, § 4 ("The [superior] court shall have original jurisdiction of all civil actions, except those of which other courts have exclusive original jurisdiction"). Therefore, the Superior Court was without subject matter jurisdiction to entertain this action.

In addition, Fall was statutorily required to join the commissioner of the DUA as an indispensable party. See G. L. c. 151A, § 42 ("every other party to the proceeding before the board shall be made a defendant" and DUA commissioner "shall be deemed to have been a party to any such proceeding before the board"). Because Fall did not include the commissioner of the DUA as a defendant to this action, her complaint was properly

dismissed for failure to join an indispensable party.<sup>1</sup> See Mass. R. Civ. P. 12 (b) (7), 365 Mass. 754 (1974); Mass. R. Civ. P. 19 (a), 365 Mass. 765 (1974).

Assuming that, in the exercise of our discretion, we were to reach the merits of Fall's claim notwithstanding these defects, we would affirm because the examiner's decision was supported by substantial evidence and there was no error of law. See Silva v. Director of Div. of Employment Sec., 398 Mass. 609, 611 (1986). The examiner made extensive factual findings, including that Fall voluntarily left her position with DePuy and that she did not report any issues with coworkers intentionally coughing or sneezing. Furthermore, even if Fall's belief that her coworkers intentionally caused her departure was reasonable, she did not relay those concerns to her department director, who testified that he would have taken action if he was aware of them. These findings led to the conclusion that Fall left her position without good cause attributable to DePuy.

In examining Fall's arguments before us under the highly deferential standard of review we must apply, she has not sustained her burden of demonstrating error with the examiner's decision. See Lincoln Pharmacy of Milford, Inc. v. Commissioner

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<sup>1</sup> Despite her pro se status, Fall was required to comply with these procedural rules as if she was a practicing member of the bar. See Mains v. Commonwealth, 433 Mass. 30, 36 (2000).

of Div. of Unemployment Assistance, 74 Mass. App. Ct. 428, 431 (2009). To the extent she raises arguments or makes factual assertions that were not part of the administrative record, we decline to review them. See R.V.H., Third, Inc. v. State Lottery Comm'n, 47 Mass. App. Ct. 712, 716 n.5 (1999).

Judgment affirmed.

By the Court (Wolohojian,  
Neyman & Lemire, JJ.<sup>2</sup>),

*Joseph F. Stanton*

Clerk

Entered: November 20, 2020.

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<sup>2</sup> The panelists are listed in order of seniority.