ENTRY ORDER

SUPREME COURT DOCKET NO. 2009-046

SEPTEMBER TERM, 2009

David Bushika	}	APPEALED FROM:
	}	
v.	}	Employment Security Board
	}	
Department of Labor (North Branch Landscape, Employer)	}	DOCKET NO. 09-08-163-03

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

Claimant appeals from a decision of the Employment Security Board denying his claim for unemployment benefits. Claimant contends: (1) the Board's findings failed to resolve the issues before it or provide an adequate basis for review; and (2) the evidence failed to support the Board's conclusion that claimant left his job without good cause. We agree with the first claim, and therefore reverse and remand.

Claimant worked for employer as a landscape laborer and snow plow operator for about six months. Claimant testified that the incident which precipitated his departure occurred when employer started to "scream" at him about a prior day's assignment. Claimant stated that employer maintained a "verbal barrage on me for about 30 minute[s] straight" while standing within inches of claimant; that claimant attempted to walk away and that employer, in response, "blocked [his] path" thereby preventing him from leaving; and finally that employer told claimant "you can get out of here now." Employer is physically much larger than claimant, who testified that on several prior occasions employer had reprimanded him in a physically intimidating manner, standing over him and shouting at him for long periods. Claimant described employer on the date in question as "screaming at me right in the face, spitting all over me, just specifically trying to intimidate me, call[ing] me stupid . . . and I just couldn't take it any more." Claimaint testified that on earlier occasions he had felt "threatened" and "abused," and that during the incident which led to his departure he was "afraid," fearing that employer might hit him. Claimant stated that he had previously spoken to employer to "ask[] for his respect" but without effect.

Employer also testified, disputing claimant's version of the events in question. Employer stated that during the confrontation, he and claimant were about three feet apart, and that there were "raised voices" by "both parties." Employer denied blocking claimant's path or preventing him from leaving, however, and denied screaming at him or attempting to physically intimidate him.

Claimant asserted that employer's verbal abuse and physically intimidating behavior constituted good cause for claimant to leave the employment, and that he was therefore entitled

to unemployment benefits. See 21 V.S.A. § 1344(a)(2)(A) (disqualifying an individual from benefits if he or she "has left the employ of his last employing unit voluntarily without good cause attributable to such employing unit").

In his written decision, the hearing officer found that both claimant and employer had raised their voices during the incident in question, and that there had been "heated and loud arguments" between claimant and employer in the past. The hearing officer noted, however, that "[i]t is a particularly difficult burden to prove that such verbal abuse is so severe that an ordinary, reasonable person would feel compelled to quit," and concluded that claimant had failed to prove that "employer's behavior was so bad that it provided him with good cause to quit his job." The Board adopted the findings of the hearing officer and affirmed its conclusion that claimant failed to prove good cause for leaving his employment.

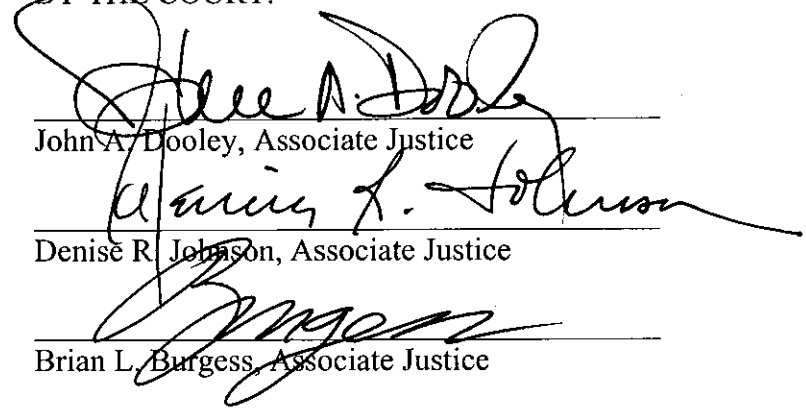
A voluntary termination is grounds for disqualification from employment benefits only if it is "without good cause attributable to the employer." 21 V.S.A. § 1344(a)(2)(A). In determining good cause, a court must examine each case according to a standard of what a reasonable person would do in the same situation. Shufelt v. Dep't of Employment & Training, 148 Vt. 163, 165 (1987). The claimant bears the burden of proving good cause. Skudlarek v. Dep't of Employment & Training, 160 Vt. 277, 280 (1993). We will not disturb the Board's factual findings if supported by credible evidence. Id. The Board's findings must, however, be sufficient to "dispose of the issues presented and make a clear statement of the trier's decision and the basis upon which that decision was made." Harrington v. Dep't of Employment Security, 142 Vt. 340, 344 (1982) (quotation omitted); see also Sec'y, Vt. Agency of Natural Res. v. Irish, 169 Vt. 407, 418 (1999) ("The trial court has a fundamental duty to make all findings necessary to supports its conclusions, resolve the issues before it, and provide an adequate basis for appellate review.").

Although we have reviewed with care the hearing officer's findings and conclusions we are unable to determine the precise basis of its decision or the Board's ruling based thereon. In concluding that employer's behavior was not "so bad" as to establish good cause for complainant to quit, it is unclear whether the hearing officer found that claimant's version of the facts was not credible, or that those facts did not rise to the level of good cause. Claimant did not deny raising his voice in response to employer's conduct, but did, as noted, claim that employer stood over him in a physically intimidating manner, screamed at him for twenty to thirty minutes, spat in his face, and physically blocked him from leaving. The hearing officer made no specific findings on these factual claims, which formed the basis of claimant's assertion of good cause based on verbal abuse and physical intimidation. Accordingly, we conclude that the matter must be remanded for further findings and conclusions on these critical issues.

We note one additional point on remand. The hearing officer here ventured that it is a "particularly difficult burden" to establish verbal abuse so severe that a reasonable person would feel compelled to quit. The burden to establish verbal abuse, however, is no different from—or more difficult to prove—than any other good cause basis for leaving one's employment. See, e.g., Miot v. Dade County Sch. Bd., 741 So. 2d 641, 641 (Fla. Dist. Ct. App 1999) (observing that "employees are not required to accept undue verbal abuse from employers" and reversing decision denying unemployment benefits) (quotation omitted); Partee v. Winco Mfg., Inc., 141 S.W.3d 34, 38 (Mo. Ct. App. 2004) ("An employee should not have to endure verbal abuse as a condition of employment.") (quotation omitted); In re Diolosa, 638 N.Y.S.2d 228, 228-29 (N.Y. App. Div. 1996) (upholding board's decision to award unemployment benefits where good cause was based on physical and verbal abuse from employer).

Reversed and remanded.

BY THE COURT:



John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Brian L. Burgess, Associate Justice