

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2017-183

OCTOBER TERM, 2017

Gary Francis	}	APPEALED FROM:
	}	
v.	}	Employment Security Board
	}	
Department of Labor	}	
(J & L Snack Shop Enterprises, Employer)	}	DOCKET NO. 01-17-064-12

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

Claimant appeals the Employment Security Board’s decision upholding the denial of unemployment compensation benefits based on its conclusion that claimant left his last job voluntarily without good cause attributable to his employer. We affirm.

The Board made the following findings, none of which claimant has challenged. For a little over six years, claimant was employed as an auto technician for the owner of J&L Snack Shop Enterprises. Due to the workload, claimant was becoming overwhelmed both mentally and physically with his job and had considered giving notice for some time. Claimant did not agree with the way the employer ran his business and further felt that he was not being compensated sufficiently for his work. Claimant helped the employer in the woods on weekends during maple sugaring season, but was not paid for that work. The employer believed that claimant enjoyed helping with the sugaring. Claimant never asked to be compensated for the weekend help. On December 15, 2016, claimant arrived late to work in a bad mood. After the employer confronted claimant about his behavior that morning, claimant told the employer that he had been used as much as he would allow and that he was done with it. The employer accepted his notice effective immediately and asked him to leave.

On the fact-finding form for claiming unemployment benefits, claimant indicated that he left his job because there was too much work and not enough staff. The claims adjudicator denied the claim for benefits, concluding that claimant had left his because he was unhappy with the employer, and accordingly left his job voluntarily without good cause attributable to the employer.

Claimant appealed the decision to the administrative law judge (ALJ), primarily citing the lack of staff, increasing workload, and unchanged compensation as the reason that he left his job. At the evidentiary hearing before the ALJ, when asked why he left his job, claimant explained that the job had “become excruciating” and that he “felt overwhelmed on a regular basis.” Claimant mostly referenced the physical and mental toll from the work, not only because of the nature of the work, but also because of insufficient staffing, poor compensation, and the lack of an opportunity for advancement. He also mentioned in passing that he had done “extracurricular” work on weekends without compensation.

The ALJ upheld the denial of benefits, concluding that claimant had left his job “due to his dissatisfaction with the way the employer was running the business,” which was within the employer’s prerogative. According to the ALJ, claimant’s feeling of being overwhelmed by the workload and his displeasure with respect to other work conditions did not amount to good cause attributable to his employer. See 21 V.S.A. § 1344(a)(2)(A) (providing that individual shall be disqualified from receiving unemployment compensation benefits if individual “has left the employ of his or her last employing unit voluntarily without good cause attributable to such employing unit”).

For his appeal to the Board, claimant hired an attorney, who focused his arguments on the sugaring work that claimant alleged he had done for his employer on weekends without compensation. In response to the arguments of claimant’s attorney concerning the allegedly unpaid weekend sugaring work, the employer attempted to testify about how claimant had been compensated for the work through a charge account at the store, but was cut short because the Board does not accept new evidence on review of the ALJ rulings.

The Board found the ALJ’s conclusions to be factually supported and legally correct. With respect to claimant’s argument that he left his job because his employer was forcing him to work without pay on weekends in the employer’s maple sugaring operation, the Board concluded as follows:

Had the employer forced claimant to provide unpaid help on the weekends during sugaring season, the claimant may well have had good cause attributable to the employer for quitting his job. However, the record does not support a finding that this was the case. The claimant himself testified that he never asked to be paid for his weekend work. The employer stated to this Board that he believed the claimant liked helping with the sugaring.

If the claimant truly felt he was being coerced into providing the employer with free labor, he had an obligation to bring his concerns to the employer’s attention prior to quitting. See Rushlow v. Department of Employment and Training, 144 Vt. 328 (1984). Instead, the claimant abruptly quit his job after an unrelated argument. Accordingly, we do not find the requisite cause attributable to the employer that would justify an award of unemployment benefits.

(Citation to record omitted.)

On appeal, claimant argues that the Board’s decision improperly imposed upon him an obligation to ask the employer to be compensated for work, an obligation that he asserts is not imposed under the Fair Labor Standards Act (FLSA). According to claimant, the obligation stated in Rushlow to bring work concerns to the employer’s attention before quitting applies only to working conditions and not in situations, as here, where the employer violated the employee’s legal right to be paid. Claimant further argues that even if the obligation in Rushlow is not restricted to working conditions, it is preempted as to FLSA violations.

We need not address claimant’s legal arguments, because we conclude that the Board rejected claimant’s underlying factual contention, and that the Board’s conclusion was supported by the record. The Board adopted the ALJ’s conclusion that claimant quit his job due to his dissatisfaction with the way the employer was running the business—a reason that does not amount

to good cause attributable to the employer. The Board specifically concluded that the record does not support claimant's contention that he quit his job because he was compelled to work without compensation. This is a matter on which claimant bore the burden of proof, and the Board's conclusion that claimant failed to meet this burden is supported by the evidence. See Demar v. Dep't of Labor, 2010 VT 69, ¶ 7, 188 Vt. 577 (mem.) (noting claimant's burden to demonstrate that separation was for good cause attributable to employer).

To the extent the Board's citation to Rushlow suggests that a claimant who is being forced to work without compensation must seek to remedy the situation with the employer before quitting, we do not adopt or even address that legal conclusion. We uphold the Board's determination instead because we understand the Board to have reasonably concluded that the record did not support the claim that claimant left his job because had been forced to work without pay.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Karen R. Carroll, Associate Justice