

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-270

JANUARY TERM, 2005

Dale Flynn	}	APPEALED FROM:
	}	
v.	}	Employment Security Board
	}	
Department of Employment and Training and ACC Operations, Inc., Employer	}	DOCKET NO. L-11-03-171-20
	}	
	}	
	}	
	}	

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

Dale Flynn appeals from a decision of the Vermont Employment Security Board upholding the appeals referee' s decision to deny Flynn unemployment compensation benefits. We affirm.

Flynn worked as a service technician for ACC Operations, Inc. In March 2003, Flynn received a warning about claiming time on his time sheets for periods he did not work. On August 16, 2003, Flynn left work one and one-half hours early without approval. His employer received three service calls during that time and was not able to contact Flynn. Flynn eventually attended to the calls after reporting to the dispatcher at 7:00 p.m. Flynn' s employer terminated him.

Flynn appealed the denial of his claim for unemployment benefits. At the Employment Security Board, Flynn asked for a remand to give him an opportunity to present additional evidence to the appeals referee. He contended that he was a whistleblower and that he should be given another opportunity to present his case. The Board denied Flynn' s appeal, concluding that he had not shown good cause for a remand and that the evidence fully supported the appeals referee' s findings and conclusions. This appeal followed.

Flynn' s argument on appeal consists of a list of statements from the record with which he disagrees. We construe the argument as a challenge to the findings, which we review under the clearly erroneous standard. We will let stand any finding that has evidentiary support even if conflicting evidence exists. Gilbert v. Davis, 144 Vt. 459, 461, 479 A.2d 159, 160 (1984). Conclusions will be affirmed if the findings support them. Lawson v. Brown' s Home Day Care, Inc., 2004 VT 61, ¶ 18, 861 A.2d 1048.

Here, Flynn has not shown that the Board' s decision lacks support in the evidentiary record. Nor has he demonstrated any unfairness in the proceeding. Flynn presented evidence and had an opportunity to question his employer' s witnesses. The Board' s apparent disagreement over how to view that evidence is not a proper basis for reversal or remand. Id.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Denise R. Johnson, Associate Justice

Frederic W. Allen, Chief Justice (Ret.),

Specially Assigned