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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2007-490

JUNE TERM, 2008

Stacy Hill	}	APPEALED FROM:
	}	
	}	
v.	}	Employment Security Board
	}	
	}	
Department of Labor	}	DOCKET NO. 09-07-108-11

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

Claimant Stacy Hill appeals pro se from a decision of the Employment Security Board finding that claimant was disqualified from receiving unemployment benefits because he was discharged from employment for gross misconduct. We affirm.

Claimant applied for unemployment benefits in late August 2007. The claims adjuster determined that claimant had been discharged from his last employing unit, JK Adams, Co., Inc., for gross misconduct connected with his work and therefore, under 21 V.S.A. § 1344(a)(2)(B), was disqualified from receiving benefits until he had earned wages in excess of six times his weekly benefit amount. Claimant appealed the ruling.

Although notified that a telephone conference before an administrative law judge (ALJ) would be conducted on October 27, 2007, and advised to provide a telephone number in order to be contacted for the hearing, claimant failed to provide a number and was therefore absent from the hearing. Claimant's supervisor testified that claimant had worked for the company for approximately two years as a finisher, and was discharged on August 22, 2007, due to multiple complaints of sexual harassment. The supervisor recounted that his predecessor had first spoken with claimant in October 2006 because of complaints from two young women employees that claimant had been whistling at them and making rude and suggestive comments in the backroom where they worked, to the point where the women felt intimidated and uncomfortable being alone with claimant. The supervisor informed claimant that his behavior was inappropriate. Thereafter, in May 2007, the same employees informed the new supervisor that claimant was again whistling, staring, and making suggestive comments. The supervisor again informed claimant that his behavior was inappropriate, directed that he not initiate contact with the employees in question, and warned claimant that another such incident would result in his

dismissal. A letter of reprimand was placed in claimant's file. According to the supervisor, claimant did not deny the allegations, but explained that he was not used to working around women.

In late August 2007, the supervisor was informed by one of the employees in question that claimant had again made suggestive remarks to her, had called her at work from an outside location, and had told her that he knew what kind of vehicle she drove and where her sister lived. The employee became frightened and refused to leave work unaccompanied. Claimant was discharged the following week.

Following the evidentiary hearing, the ALJ issued a written decision, concluding that claimant was discharged for gross misconduct and was therefore disqualified from receiving benefits. Claimant then appealed to the Board. He was notified of the date and place of the hearing but failed to appear, faxing a written argument with an explanation that he was concerned about an impending snow storm. Claimant did not request a continuance. Following the hearing, the Board issued a written decision, sustaining the findings and conclusions of the ALJ. This pro se appeal followed.

We review decisions of the Board "with a great degree of deference." Fleece on Earth v. Dep't of Employment & Training, 2007 VT 29, ¶ 4. Decisions within the Board's area of expertise are "presumed to be correct, valid, and reasonable" absent a "clear showing to the contrary." Bouchard v. Dep't of Employment & Training, 174 Vt. 588, 589 (2002) (mem.). We will affirm the Board's factual findings if supported by credible evidence, and its conclusions if fairly and reasonably supported by the findings. Id. We will defer to the Board's interpretation of a statutory provision which it is charged with executing "[a]bsent a compelling indication of error." In re Loyal Order of Moose, Inc., Lodge No. 1090, 2005 VT 31, ¶ 5, 178 Vt. 510 (mem.).

Appellant has filed a one-page brief that does not comport with any of the requirements of Vermont Rule of Appellate Procedure 28 for adequate briefing, argument, or citation to authority. Nevertheless, considered on their merits, claimant's contentions, however brief and unclear, are unavailing. First, claimant asserts that the supervisor's testimony was false and based on hearsay. Initially, we note that claimant failed to attend the hearing or raise any objection on this ground, and therefore waived any error on appeal. In re Smith, 169 Vt. 162, 173 (1999) (objection may not be raised for the first time on appeal absent preservation by a specific, timely objection during the proceeding). Furthermore, the ALJ was in the best position to judge the credibility and reliability of the testimony, and claimant has adduced no argument or evidence to undermine the reliability of the testimony or disturb the findings based thereon. Furthermore, the use of hearsay in Board proceedings is "acceptable practice" and is an adequate basis for a decision if it is sufficiently reliable. Bouchard, 174 Vt. at 590. The ALJ here plainly found the supervisor's testimony to be credible and reliable, and, as noted, claimant has offered no evidence or argument to undermine that conclusion. Lastly in this regard, claimant cites Vermont Rule of Evidence 806 and the hostile-witness rule. Under these provisions, the out-of-court declarants could have been called and subjected to cross-examination, but the point is moot inasmuch as claimant did not appear or present any evidence.

Claimant also asserts that his employer had failed to adopt a written policy against sexual harassment, as required by 21 V.S.A. § 495h. Claimant's argument is unclear. To the extent he

is asserting that his conduct could not be "gross misconduct" absent such a written policy, the claim patently lacks merit. We have described "gross misconduct" under 21 V.S.A. § 1344 as involving a "substantial disregard of the employer's interest, either willful or culpably negligent." Bouchard, 174 Vt. at 589. Vermont public policy expressly defines sexual harassment as "a form of sex discrimination," 21 V.S.A. § 495d(13), which in turn is an unlawful employment practice. Id. § 495. Sexual harassment in the workplace thus violates public policy, exposes an employer to substantial legal risk, and therefore plainly meets the definition of gross misconduct. To the extent that claimant is arguing he lacked notice that his misconduct violated a workplace rule, the record shows that his supervisor clearly communicated this fact to claimant and warned him that further misconduct would result in his termination. Accordingly, we find no basis to disturb the decision on this ground.

Claimant next appears to contend that he was denied due process because the Board failed to postpone the hearing when he was unable to attend due to inclement weather. The record shows that claimant faxed a letter stating his position and indicating that he would not attend because of an impending storm, but made no request for a continuance. Accordingly, any claim that the Board erred in failing to postpone the hearing was waived. Smith, 169 Vt. at 173.

Finally, claimant appears to claim that he was somehow denied due process because he was not provided a transcript of the administrative hearing before filing an appeal from the ALJ's decision. Nothing in the record suggests that claimant was unfairly denied notice of the employer's arguments before the Board, as he suggest, or denied an opportunity to fully respond to those arguments. Accordingly, we find no error.

Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice

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Brian L. Burgess, Associate Justice