ENTRY ORDER

SUPREME COURT DOCKET NO. 2008-449

APRIL TERM, 2009

Edward Coulstring	}	APPEALED FROM:
	}	
v.	}	Employment Security Board
	}	
	}	
Department of Labor	}	DOCKET NO. L-08-08-157-20
(Karl R. Johnson Trucking, Inc., Employer)	}	

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

Claimant appeals pro se from the denial of his claim for unemployment compensation benefits, based on the finding that claimant voluntarily quit his former employment. He argues that he presented sufficient evidence to show either that he was fired or that he quit with good cause attributable to his employer, and that in either case, he was entitled to benefits. We affirm.

Claimant's application for unemployment compensation benefits was denied in August 2008. Claimant appealed from this decision to an administrative law judge (ALJ), and following a hearing, the ALJ concluded that he was not entitled to receive unemployment compensation benefits. The ALJ made the following findings. Claimant worked as a truck driver for employer for over two years. In March 2008, claimant made travel reservations for his planned vacations during 2008. In April 2008, he provided his immediate supervisor with a list of dates that he planned to take as vacation days. Claimant asked his supervisor to pass this request along to another employee, Wendy Robinson, who apparently was in charge of coordinating the vacation requests for all of employer's drivers. In May 2008, Ms. Robinson informed claimant that he needed to revise his vacation schedule because he did not have enough paid vacation time to accommodate his request. Claimant did not directly respond to Ms. Robinson. Instead, he informed his supervisor that he had already made plans for the dates requested, and he asked if he could take the time off without pay. His supervisor replied that it was not his decision to make.

At issue before the ALJ were three vacation days that claimant had requested over Labor Day weekend. Claimant was informed in late July that he could take two of the three days that he requested, which was the total amount of paid leave that claimant had remaining. The ALJ found that claimant was told that he could not take a vacation day on August 29, a Friday, because there were already too many drivers who had been approved for vacation that day. Claimant became upset, raised his voice, and declared that he would take August 29 off no matter what. Claimant was directed to speak with Karl Johnson, the president of the company. On July 25, claimant spoke with Mr. Johnson by phone, and an argument ensued. Mr. Johnson

told claimant that he could not take a vacation day on August 29; claimant replied that he had already made arrangements for that weekend, and that he would either take the day off or quit. Mr. Johnson told claimant to return his truck and the keys, which claimant did.

Based on these and other findings, the ALJ concluded that claimant had initiated his separation from employment voluntarily, without good cause attributable to his employer, and that he was thus disqualified for benefits under 21 V.S.A. § 1344. Essentially, the ALJ explained, this case presented a credibility contest—claimant asserted that Mr. Johnson fired him in a fit of rage; employer argued that claimant quit when informed that he could not take the vacation days that he wanted. The ALJ found employer's version of the events more credible. He noted that claimant acted as though he was entitled to the requested vacation days and he even made vacation plans prior to gaining approval from his employer. When claimant was informed by another employee that he could not take August 29 off, claimant declared that he was planning to take that day off no matter what. Given this history, the ALJ found it more likely than not that claimant had also told Mr. Johnson that he would quit if he could not take a vacation day on August 29. The ALJ found this version of events confirmed by testimony from an employee who had overheard a portion of Mr. Johnson's telephone conversation with claimant. The ALJ next concluded that claimant lacked good cause for quitting. He reiterated that claimant had not received approval from his employer to take a vacation day on August 29, and that he had in fact been informed in early June that he did not have enough vacation time to accommodate his request. Thus, because claimant failed to meet his burden of proof, the ALJ determined that he was disqualified from receiving unemployment compensation benefits. Claimant appealed this decision to the Employment Security Board. Following a hearing, the Board adopted the ALJ's findings and agreed that claimant was disqualified from receiving unemployment compensation benefits. Claimant appealed.

Claimant argues that he presented sufficient evidence to show that he was fired. Even assuming that he quit, however, claimant asserts that he is entitled to receive unemployment compensation benefits because he had good cause for quitting. Claimant also complains that he was not allowed to question one of employer's witnesses to the extent that he would have liked, and he raises various other complaints about the way in which the hearing was conducted before the ALJ.

Our review of the Board's decision is deferential. Fleece on Earth v. Dep't of Employment & Training, 2007 VT 29, ¶ 4, 181 Vt. 458. We will affirm the Board's findings unless they are clearly erroneous, and we will affirm the Board's conclusions where they are supported by its findings. Bouchard v. Dep't of Employment & Training, 174 Vt. 588, 589 (2002) (mem.). We find no basis to disturb the Board's decision here.

As noted above, an individual is disqualified from receiving unemployment compensation benefits if he voluntarily terminates his employment "without good cause attributable to" his employer. 21 V.S.A. § 1344(a)(2)(A). This is a two-pronged standard that "requires a showing of a sufficient reason to justify the quit, and that the reason be 'attributable'" to the employer. Allen v. Dep't of Employment & Training, 159 Vt. 286, 289 (1992) (citation omitted). While claimant asserts that he did not quit but rather was fired, the Board found otherwise, and there is credible evidence in the record to support its finding. We do not restate

all of the Board's findings here. As reflected in its decision, the Board credited employer's version of events, and it is for the Board, not this Court, to assess the credibility of witnesses and weigh the evidence. Harrington v. Dep't of Employment Sec., 142 Vt. 340, 345 (1982). The Board's conclusion that claimant did not have good cause for quitting is similarly supported by the record. See Lynch v. Dep't of Employment & Training, 2005 VT 114, ¶ 4, 179 Vt. 542 (mem.) (stating that the question of whether an employee had good cause to quit "must be analyzed under the specific facts and circumstances of each individual case" in order "to determine whether the employee's decision was reasonable," and the employee bears the burden of showing good cause). Essentially, the Board found that claimant should not have made travel plans before confirming his vacation dates with his employer, and that employer had provided claimant with sufficient notice that he could not take a vacation day on August 29. These findings are supported by the record, and they support the Board's conclusion that claimant lacked good cause for terminating his employment attributable to employer.

Claimant next raises various challenges to the hearing procedure before the ALJ. He first argues that he was not provided with a sufficient opportunity to cross-examine one of employer's witnesses. He also asserts that the ALJ refused to allow him to ask this witness where her office was located in relation to Mr. Johnson's office, and he complains that he was not allowed to clarify the witness's response when she testified that she could not recall whether Mr. Johnson used an expletive while on the phone with claimant. The record indicates that claimant sought to ask this witness whether she had allowed drivers to change their logbooks unlawfully. The ALJ determined that this line of questioning was irrelevant because it had nothing to do with claimant's separation from employment. It did not err in so ruling. See 3 V.S.A. § 810(1) (providing that in a contested case proceeding, "[i]rrelevant, immaterial, or unduly repetitious evidence shall be excluded"). The record does not show that claimant sought to question this witness about the location of her office, nor did he seek to clarify the witness's response with respect to Mr. Johnson's use of an expletive. We do not address objections raised for the first time on appeal. Bull v. Pinkham Eng'g Assocs., 170 Vt. 450, 459 (2000).

Claimant next complains that Mr. Johnson did not personally appear at the hearing. The record shows that Mr. Johnson asked the ALJ for a continuance on the morning of the hearing due to a work emergency. The ALJ denied his request and conducted the hearing as scheduled. There is no requirement that the owner of a company appear personally before the ALJ, and the ALJ did not commit reversible error by holding the hearing in Mr. Johnson's absence, particularly given that several employees testified for employer, and that Mr. Johnson also provided a written account of his version of events.

Finally, we do not address claimant's reference to an internal investigation that allegedly occurred following the initial denial of his request for benefits, nor do we address claimant's assertion that he was denied his vacation time because he cooperated with a federal investigation into defendant's company and that he was fired in retaliation for his cooperation. This evidence was not presented to the ALJ, and the Board conducted an on-the-record review of the ALJ's decision. See 21 V.S.A. § 1349; Hoover v. Hoover, 171 Vt. 256, 258 (2000) (Supreme Court's review on appeal is confined to the record and evidence adduced at trial; Supreme Court cannot consider facts not in the record). We have considered all of the arguments raised by claimant, and we find them without merit.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice