

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

VERMONT SUPREME COURT
FILED IN CLERK'S OFFICE

ENTRY ORDER

SUPREME COURT DOCKET NO. 2009-335

APR 1 2010

MARCH TERM, 2010

Robert Veverka	}	APPEALED FROM:
	}	
	}	
v.	}	Employment Security Board
	}	
	}	
Department of Labor	}	DOCKET NO. 05-09-115-06
(U.S. Postal Service, Employer)	}	

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

Claimant appeals the Employment Security Board's decision upholding the denial of unemployment benefits based on its determination that he left his job voluntarily through no fault of his employer. We affirm.

Claimant worked as clerk for the United States Postal Service for thirty-five years before retiring on April 1, 2009, upon reaching the minimum retirement age of fifty-five. He filed a claim for unemployment benefits later that month. The claims adjudicator denied the request for benefits, finding that claimant left his job voluntarily without good cause attributable to his employer. See 21 V.S.A. § 1344(a)(2)(A) (employee who left job voluntarily without good cause attributable to employer shall be disqualified from receiving benefits). Claimant appealed the decision to an administrative law judge, who held a telephonic hearing on June 15. Claimant testified at that hearing that he retired when he did because his back was bothering him. The administrative law judge informed claimant that a claim for benefits could be based on leaving work because of a medical condition, see *id.* § 1344(a)(3), but noted that claimant had failed to file documentation from a health care provider certifying that his medical condition prevented him from doing his job. After some further discussion, the administrative law judge continued the hearing to give claimant an opportunity to present documentation in support of his claim that he retired, in part, because of his medical condition.


At the continued hearing on June 29, the administrative law judge refused to admit claimant's proffered documentation because he had failed to serve the documents on his employer, as required by rule and contained in the instructions in the letter sent to claimant. The administrative law judge also noted that claimant's documentation described medical problems from between March 2007 and March 2008, more than a year before claimant retired. Asked if there had been any change in his condition since then that made work impossible, claimant stated that there had been no change. Asked why he had retired when he did, claimant responded that he retired on the date that he became eligible to retire. The employer testified that claimant retired at the same time as his wife, who also worked at the postal service, a couple of days after he turned fifty-five. Following the hearing, the administrative law judge denied the claim for benefits, stating that while claimant had a health condition that made doing his job painful at

times, there had been no recent changes in his medical condition, and the proximate cause of his resignation was reaching the age at which he could retire. Claimant appealed to the Employment Security Board, which upheld the administrative law judge's decision after holding a hearing. At the hearing before the Board, claimant stated that he disagreed with the administrative law judge's decision because "one of the reasons" he retired was his medical condition.

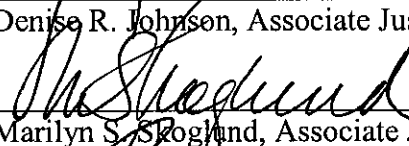
In his one-page brief to this Court, claimant states various facts and asserts that he had to retire because he could not do his physically demanding job any longer. Along with his brief, claimant attaches a letter from a doctor dated September 4, 2009—three weeks after the Board rendered its decision. We find no basis to overturn the Board's decision. The letter attached to claimant's brief was not part of the record below and thus, is not part of the record on appeal. The evidence submitted by claimant concerning his medical condition was not admitted and, in any case, was not current. Under these circumstances, the Board did not err in concluding that claimant left his job voluntarily without good cause attributable to his employer. See Skudlarek v. Dep't of Employment & Training, 160 Vt. 277, 280 (1993) (noting that in cases of voluntary separation, claimant bears burden of proving good cause); Cook v. Dep't of Employment & Training, 143 Vt. 497, 501 (1983) ("The question of whether a resignation is for good cause attributable to the employer is a matter within the special expertise of the Board, and its decision is entitled to great weight on appeal.").

Affirmed.

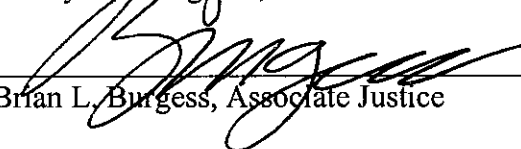
BY THE COURT:



Denise R. Johnson, Associate Justice



Marilyn S. Skoglund, Associate Justice



Brian L. Burgess, Associate Justice