

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2002-153

AUGUST TERM, 2002

	}	APPEALED FROM:
	}	
Scott A. Martin	}	Employment Security Board
	}	
v.	}	
	}	DOCKET NO. 12-01-006-01
Department of Employment &	}	
Training	}	
	}	
	}	

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

Scott Martin appeals pro se from an Employment Security Board decision denying unemployment benefits on the ground that he was discharged by his employer for misconduct connected with his work. 21 V.S.A. 1344(a)(1)(A). We affirm.

Martin was discharged from his employment with Bombardier Transit Corp. in October 2001. In November, he filed a claim for unemployment compensation benefits. The claims adjuster denied the claim on the ground that Martin was discharged for misconduct connected with his work. Following an evidentiary hearing, an appeals referee issued a written decision, affirming the adjuster's decision. Martin appealed to the Board, which issued a written decision sustaining the referee's ruling. This appeal followed.

The finding of misconduct was based on evidence that Martin was discharged for leaving work without discussing his reason for leaving, or reporting to his supervisor in advance, contrary to employment policy. Martin did not contend that the reason for his discharge was inadequate to establish misconduct. Rather, he challenged the evidentiary basis for the discharge, claiming at the hearing that he had called the security guard on the night in question to report the reason for his absence. The referee noted, however, that there was no record of such a call. Martin also claimed that he had left work after calling his doctor's office to report back pain and was told by the nurse to go home and wait for the doctor's call. The referee found, however, that there was credible evidence the nurse had not given Martin these instructions. Accordingly, the referee found that the employer had carried its burden of proving that Martin was discharged for misconduct, and the Board adopted the referee's findings and conclusion in this regard.

Although the employer has the burden of proof on the issue of misconduct, the measure of proof is the civil standard of preponderance of the evidence. Romeo v. Dep't of Employment & Training, 150 Vt. 591, 592 (1988). The Board's findings must be affirmed if supported by credible evidence, and its conclusions affirmed if supported by the findings. Id.; see also Harrington v. Dep't of Employment & Training, 152 Vt. 446, 449 (1989).

On appeal, Martin lists twenty-two separate "issues . . . to be reviewed." The first appears to claim that the referee failed to follow proper procedures in receiving certain records from the employer after the hearing had concluded. The record indicates, however, that Martin had requested that the records be produced. Moreover, no argument is made that the records were prejudicial, or that Martin was unfairly prejudiced by their late production. Accordingly, we discern no basis on which to disturb the decision. The second issue asserts that the claims adjuster's initial decision to deny benefits was made prior to Martin's submittal of a letter of rebuttal. The claim is unsubstantiated, but even if true, there is no

showing that Martin was prejudiced in his subsequent appeals to the referee and the Board, where the employer retained the burden of persuasion to establish misconduct.

Each of the remaining issues consists of one or two sentences challenging specific lines of testimony or hearing procedures. There is no argument or demonstration that any of these claims, alone or together, establish that Martin was denied a fair hearing, or that the evidence as a whole fails to credibly support the Board's findings and conclusions. Accordingly, we discern no basis for disturbing the judgment. Romeo, 150 Vt. at 592.

Affirmed.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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James L. Morse, Associate Justice

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Marilyn S. Skoglund, Associate Justice