

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-173

SEPTEMBER TERM, 2004

	}	APPEALED FROM:
	}	
Sandra Coursen	}	Employment Security Board
	}	
v.	}	DOCKET NO. 11-03-045-14
	}	
Department of Employment and	}	
Training	}	
	}	
	}	

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

Claimant appeals the Employment Security Board's decision disqualifying her from receiving unemployment benefits because she left her work voluntarily without good cause attributable to her employer. We affirm.

Claimant was working for the United States Postal Service as a sorting machine operator when she began having problems with a fellow employee. Claimant first reported the problems to her supervisor in December 2002. As a result, the other employee was moved to a different area. As time passed, claimant and the other employee were gradually given an opportunity to work together. In August 2003, claimant again complained to her supervisors about the employee, and the employee was moved again. By the following month, claimant and the other employee were being scheduled to work in the same area again. On September 13, 2003, claimant told her supervisors that she could not work with the other employee anymore. Claimant's supervisors assured her that she would not have to do so. The next day, when claimant came to work she saw that she was not scheduled to work with the employee. But when she arrived at her work station, the employee was there, and she discovered that the schedule had been changed. Without contacting a supervisor, claimant went home. When she spoke to a supervisor later that day from her home, the supervisor informed her that the employee had acted inappropriately in changing the schedule. The next day, claimant tendered her resignation.

Claimant sought but was denied unemployment benefits following her resignation because the claims adjudicator determined that she had left her employment without good cause attributable to her employer. Following hearings, both the appeals referee and the Board upheld that determination. Claimant now appeals to this Court, arguing that (1) she was forced to leave her job after enduring one year of harassment by a fellow employee; and (2) the appeals referee denied her a fair hearing by refusing to hear her witnesses.

A voluntary termination is grounds for denying unemployment benefits if it is without good cause attributable to the employer. 21 V.S.A. § 1344(a)(2)(A). Claimant bears the burden of demonstrating good cause by showing that (1) she had a sufficient reason to justify quitting her job; and (2) that reason is attributable to her employer. Skudlarek v. Dep't of Employment & Training, 160 Vt. 277, 280 (1993); Allen v. Dep't of Employment & Training, 159 Vt. 286, 289 (1992). " An employer who is harassed on the job by a coworker may have ' good cause' to quit," Allen, 159 Vt. at 289, but each case must be examined " according to a standard of reasonableness." Skudlarek, 160 Vt. at 280. " On review of the Board's determination, we will not disturb factual findings supported by credible evidence." Id.

Here, the record, including claimant's own testimony at hearings before the appeals referee and the Board, supports the determination that claimant failed to meet her burden of demonstrating that she left her employment for good cause attributable to her employer. The evidence indicates that claimant and the other employee had disagreements concerning

their work, and that claimant was frustrated by the other employee's attitude and work habits. The evidence also indicates that claimant's supervisors were responsive to claimant's complaints regarding the other employee, and that they made every effort to address the problem. Cf. Turco v. Dep't of Employment Security, 141 Vt. 135, 137-38 (1982) (affirming Board's grant of unemployment benefits where employer was aware of harassment by co-workers but failed to do anything about it). Claimant had been warned on a prior occasion that she was not to leave her work without checking in with a supervisor. Yet, she did so again on this occasion after wrongly assuming that one of the supervisors was responsible for scheduling her and the other employee to work together. Before the appeals referee, claimant testified that when she spoke to her supervisor after going home on the day in question, she told the supervisor that she could no longer work with the other employee, and the supervisor told her that she had no choice at that point. Assuming that the supervisor actually made this comment, claimant apparently made no effort to clarify what the supervisor meant. Instead, she assumed that the employer was not going to respond to her needs and, the next day, she sent in a letter of resignation. Claimant's passing testimony regarding one comment made by the supervisor during a conversation in which the supervisor indicated that the employer had not intended to have claimant and the other employee work together does not demonstrate that she quit her job for good cause attributable to her employer.

Further, we find unavailing claimant's argument that the appeals referee deprived her of a fair hearing by failing to hear her witnesses. At the beginning of the hearing, the referee explained to claimant that she would decide if she needed to hear other witnesses after hearing claimant's testimony. When claimant finished testifying, the appeals referee indicated that she did not need to hear from claimant's other witnesses because neither the employer nor anyone else was contesting claimant's version of the facts. We find no error. Claimant sought the testimony of other witnesses to verify her undisputed statement of facts that were insufficient to support her claim for unemployment benefits.

Affirmed.

BY THE COURT:

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

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

Specially Assigned