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

ENTRY ORDER

SUPREME COURT DOCKET NOS. 2009-239 & 2009-240

FEBRUARY TERM, 2010

Francis Dittman	}	APPEALED FROM:
	}	
v.	}	Employment Security Board
	}	
	}	DOCKET NO. 04-09-129-09
Department of Labor	}	
(Green Mountain Messenger, Employer)	}	
Betsy Dittman	}	
	}	
v.	}	
	}	
Department of Labor	}	
(Green Mountain Messenger, Employer)	}	DOCKET NO. 04-09-130-09

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

Claimants appeal from the denial of their claim for unemployment benefits. They argue that the Employment Security Board erred in concluding that they quit their jobs as opposed to being fired. We affirm.

Claimants are husband and wife. They were employed as delivery drivers by Green Mountain Messenger for approximately two years. In March 2009, claimants filed for unemployment benefits. A claims adjudicator found that both claimants had left their employment voluntarily without good cause attributable to their employer. Claimants appealed these decisions to an administrative law judge (ALJ), who reached a similar conclusion.

The ALJ in Ms. Dittman's case found as follows. On February 20, 2009, a Friday, Ms. Dittman learned that she would not be paid for a week of vacation time she had taken. Ms. Dittman was upset and contacted the vice president of the company, Mr. Kozlowski, to discuss the issue. Kozlowski reiterated to Ms. Dittman that she was not entitled to such pay. Ms. Dittman then told Kozlowski that she would likely be absent from work that day to address financial issues. Kozlowski warned Ms. Dittman that if she did not come in to work, her employment might be in jeopardy. Ms. Dittman later called back and stated that she definitely would not be coming in to work that day. Kozlowski again told Ms. Dittman that her decision might affect her employment. Ms. Dittman claimed that Kozlowski fired her during this phone conversation, but the ALJ did not credit her testimony. The ALJ instead credited Kozlowski's testimony that he said no such thing. Ms. Dittman was scheduled to work the following week but she did not show up for work nor did she contact employer. She came into work late on

Thursday, February 26, to return her uniform and pick up her final paycheck. Under these circumstances, the ALJ concluded that Ms. Dittman left her employment voluntarily without good cause attributable to her employer. It thus sustained the denial of her request for unemployment benefits.

A different ALJ similarly found that Mr. Dittman was not entitled to unemployment compensation because he, too, left his employment voluntarily without good cause attributable to his employer. According to Mr. Dittman, his wife told him, after speaking with Kozlowski, that they were both fired. The ALJ found that, even if this were true, Mr. Dittman did not contact Kozlowski to verify this information or to ask the reason for the purported firing, which he was obligated to do. Mr. Dittman was scheduled to work the following week but did not show up nor did he contact his employer. Like Ms. Dittman, he came into work late on Thursday February 26 to turn in his uniform and collect his final paycheck. The ALJ found that Mr. Dittman initiated his separation voluntarily and without good cause attributable to his employer. The ALJ acknowledged that the nature of the separation was disputed, but credited Kozlowski's version of events. He found Kozlowski's credibility supported by his statement dated March 10 and sent to the Department of Labor, which indicated that Mr. Dittman was fired on February 23 after being a "no call/no show" for his scheduled shift that day. The ALJ noted, moreover, that even though Kozlowski had used the word "fired" in his statement to the Department, it was for the Department, not the employer or the claimant, to determine the nature of the separation. Here, the evidence showed that Mr. Dittman had abandoned his job by failing to call or appear for his scheduled shifts, and such job abandonment was properly classified as a voluntary separation from employment. Mr. Dittman presented no evidence that he had good cause attributable to his employer for initiating the separation, thus, he was not entitled to unemployment benefits. The Employment Security Board subsequently held a hearing, and adopted the ALJs' findings and conclusions in both cases. The Dittmans appealed and their appeals were consolidated for our review.

On appeal, the Dittmans challenge the Board's assessment of the weight of the evidence. They assert that they did not quit their jobs but were in fact fired by employer. Ms. Dittman maintains that in reaching its conclusion, the Board failed to consider the employer's admissions that he fired her, and it erred in accepting the credibility assessments made by the ALJ because this assessment was based on irrelevant considerations. In a similar vein, Mr. Dittman argues that the ALJ overlooked key evidence in making its findings.

As we have often repeated, it is not the function of this Court to assess the credibility of witnesses or weigh the evidence. Favreau v. Dep't of Employment & Training, 156 Vt. 572, 577, 594 A.2d 440, 443 (1991). Our role is simply "to determine if the Board's findings and conclusions are supported by credible evidence." Id. (citation omitted). While the Dittmans assert that they were fired, the ALJ and the Board concluded otherwise. The Board's findings are supported by credible evidence, and the findings in turn support the Board's conclusions.

As the Board explained, "[a] person is disqualified from receiving unemployment benefits if [he or] she voluntarily terminates employment 'without good cause attributable to [the] employing unit.' " Allen v. Dep't of Employment & Training, 159 Vt. 286, 289, 618 A.2d 1317, 1319 (1992) (quoting 21 V.S.A. § 1344(a)(2)(A)). As recounted above, the Board found that Ms. Dittman was upset about not receiving vacation pay. She and her husband decided not

to go to work on Friday, and they did not go to work or contact their employer the following week except to turn in their uniforms and pick up their paychecks. By their conduct, they manifested their intent to voluntarily abandon their jobs. Contrary to claimants' assertion, the Board did not fail to resolve the "issue of discharge." It resolved this question by concluding that claimants voluntarily quit their employment. This conclusion was not implied, as claimants' assert; it was expressly stated in the Board's decision.

Moreover, as the ALJ explained, the employer's use of the word "fired" on a form submitted to the Department was not controlling—the nature of the discharge was a question for the Board to resolve. To hold otherwise would eliminate the Board's role, and this Court's role, in resolving disputes such as this one. See, e.g., Ladeau v. Dep't of Employment Sec., 134 Vt. 387, 388-89, 359 A.2d 648, 649-50 (1976) (although employee used the word "quit" when leaving job and testified that his actions could be construed as "quitting," Supreme Court concluded that he was in fact fired by employer). The ALJ, and the Board, did not believe Ms. Dittman's assertion that Kozlowski fired her. It was certainly reasonable for the ALJ to conclude that Ms. Dittman was not credible because she provided various versions of the events at issue. Aside from Ms. Dittman's testimony, there was no other evidence that Kozlowski ever told the Dittmans they were fired. We note that Kozlowski also testified that he was unaware of the legal significance of the words "fired" as opposed to "voluntarily quit," when he filled out a form for the Department of Labor, and he testified at the hearing that claimants' actions could be construed as both. In the end, the ALJ and Board credited employer's version of events—that the Dittmans voluntarily failed to show up for work—and it concluded that this represented an intentional abandonment of their employment without good cause attributable to their employer. We will not disturb this assessment on appeal. Given our conclusion, we reject claimants' remaining arguments, which are based on the legal standards applicable in cases where employees are fired.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice