



*Note: In the case title, an asterisk (\*) indicates an appellant and a double asterisk (\*\*) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

## **ENTRY ORDER**

OCTOBER TERM, 2021

Cindy Campney\* v. Department of Labor      } APPEALED FROM:  
(HBH Holdings, LLC)                                  }  
    } Employment Security Board  
    } CASE NO. 08-20-323-01

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

Claimant appeals a decision of the Employment Security Board concluding that she left her employment voluntarily without good cause attributable to her employer. We affirm.

Claimant worked for employer HBH LLC for nearly five years. Her last day of work was May 14, 2020. Claimant applied for unemployment compensation, stating that she quit because she was being sexually harassed at work and employer did not adequately respond to the complaint. The claims adjudicator determined that claimant had voluntarily quit and that she had good cause attributable to her employer because she was harassed by a coworker and employer failed to correct the situation.

Employer appealed to an Administrative Law Judge (ALJ). Claimant was notified about the hearing before the ALJ but did not attend. At the hearing, an owner and claimant's supervisor testified for employer. The owner testified that on several occasions during claimant's employment she had at times threatened to leave if employer did not discharge various other employees. Owner explained that for a few months before leaving, claimant had issues with a particular coworker, who was also her relative's neighbor. In May 2020, there was an incident in which claimant asserted that the coworker threw a putty knife at her. Employer disputed this version of events, alleging that the knife was thrown at the ground. In any event, in response to the incident, employer reprimanded the coworker and sent him home without pay. Employer discovered that claimant was video recording the coworker outside of work and the coworker reported that claimant called him names. On May 14, 2020, claimant informed her supervisor that she would quit if the coworker was not dismissed. Her supervisor stated that if claimant wished to leave, that was fine with him.

The ALJ reversed the adjudicator's decision, finding that much of the difficulty between claimant and her coworker arose due to claimant's behavior, particularly using inappropriate language toward him and video recording his actions outside of work. The ALJ found that claimant had not demonstrated that her working conditions were intolerable or that employer

failed to respond to her concerns in a reasonable manner, noting that employer had reprimanded the coworker after the knife incident.

Claimant appealed to the Board. The Board held a hearing which the owner attended. Claimant was not present. The Board adopted the findings of the ALJ and upheld the ALJ's decision that claimant left her employment voluntarily without good cause attributable to her employer. Claimant appeals.

On appeal, claimant first argues that the Board erred in finding that she voluntarily quit. She asserts that she did not walk off the job; rather, employer told her not to come back. Claimant argues that her employer made false accusations surrounding the facts related to her leaving and that she was dismissed because her employer was afraid that she would sue.

An employee is disqualified from unemployment benefits if the employee leaves voluntarily without good cause attributable to the employer. 21 V.S.A. § 1344(a)(2)(A). "In determining whether a separation from employment is a discharge or a voluntary quit, we look to the intent of the parties at the time of the separation." Kelley v. Dep't of Lab. (Maple Leaf Farm Ass'n, Inc.), 2014 VT 74, ¶ 10, 197 Vt. 155. Our review of the Board's decision is deferential and the Board's findings will be upheld "unless they are clearly erroneous." Id. ¶ 6. Here, the owner testified that claimant indicated that she would leave if her coworker was not terminated, then left the building and did not come back. Although claimant presents a different understanding of the facts, the Board did not err in crediting employer's version of events over claimant's. The facts support a finding that claimant's intent was to quit her employment.

Claimant also contends that she had good cause to quit because her coworker was sexually and verbally harassing her at work and employer did not adequately address the situation. Where the sole issue is whether there is good cause attributable to the employer, this Court gives great weight to the decision of the Board. Cook v. Dep't of Emp. & Training, 143 Vt. 497, 501 (1983). The burden of proving good cause attributable to the employer is on the employee. Skudlarek v. Dep't of Emp. & Training, 160 Vt. 277, 280 (1993). Good cause to quit is determined by considering "what a reasonable person would have done in the same circumstances." Isabelle v. Dep't of Emp. & Training, 150 Vt. 458, 460 (1988) (citation omitted). Before leaving, "an employee must make some effort to remedy alleged poor working conditions or demonstrate that such effort would be unavailing." Bombard v. Dep't of Lab. (Fisher Auto Parts, Inc., Emp.), 2010 VT 100, ¶ 10, 189 Vt. 528 (mem.).

Here, claimant has raised accusations in her filings to the Department and this Court about the behavior of other employees and the lack of response from employer, but she did not testify at the hearing before the ALJ and consequently the evidence of any harassment she experienced and the degree to which claimant notified employer of her coworkers' behavior was limited. To the extent that claimant's statements in her filings conflicted with employer's evidence, the Board did not abuse its discretion in crediting employer's version of events over claimant's. The evidence supported the Board's findings that claimant contributed to the poor relationship with her coworker by calling him names and video recording him outside of work, and that employer responded to claimant's complaints about her coworker when those issues were raised. These findings in turn support the Board's conclusions that claimant did not have good cause to quit on the basis that her work conditions were intolerable and her employer failed to respond to her concerns in a reasonable manner.

Claimant's final argument concerns the telephone hearing before the ALJ that was held on November 19, 2020. The Board found that all interested parties were provided notice of the

hearings before the ALJ and the Board. This finding is supported by the record, which includes the hearing notices for the ALJ and Board hearings that they were sent to all parties including claimant. The notice for the telephone hearing before the ALJ provided detail instructions on how to participate. Claimant concedes that she received the ALJ hearing notice, but argues that some other email communication she received implied that no additional hearing before the ALJ would take place. She also asserts that she was not contacted for the ALJ hearing, but it is unclear whether she followed the instructions in the hearing notice to ensure she would be called. Because claimant did not raise this issue on appeal to the Board, the record on this issue is limited, and we defer to the Board's determination. Because we conclude that claimant received notice of the hearing, and the record does not establish any facts that undermined that notice, we conclude claimant's due-process rights were satisfied. See Perry v. Dep't of Emp. Training, 147 Vt. 621, 624 (1987) (holding that procedural due process requires notice and opportunity to be heard before depriving claimant of unemployment benefits). To the extent that claimant was unsure of the process or purpose of the hearing, it was her responsibility to follow up with the Department. Claimant has failed to demonstrate that she followed the directions in the hearing notice and that her lack of participation was caused by the Department. Therefore, there are no grounds to reverse.

Affirmed.

BY THE COURT:

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Beth Robinson, Associate Justice

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Karen R. Carroll, Associate Justice

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William D. Cohen, Associate Justice