



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

Pagani Enterprises LLC* v. Department of Labor (Amber Wilson)	}	APPEALED FROM:
	}	
	}	Employment Security Board
	}	CASE NO. 08-20-177-01

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

Employer, Pagani Enterprises, LLC, appeals a decision of the Employment Security Board, concluding that claimant Amber Wilson quit based on good cause attributable to her employer. On appeal, employer argues that the facts do not support the Board's findings and that claimant did not have good cause to quit. We affirm.

Claimant worked for employer for about fifteen months as a store manager. On May 27, 2020, claimant submitted a handwritten letter resigning from her position. The letter cited several reasons for leaving, including that the managing member had provided her inadequate training, offered insufficient assistance, spoken to her in a condescending manner, and not properly stocked the store. She had previously raised these concerns with the managing member. At the time claimant left her employment, the U.S. Department of Labor was investigating employer for possible violations of child-labor laws. This investigation involved allegations that claimant's daughter had worked for employer before she was fifteen, had worked during school hours and for more hours than allowed under child-labor laws, and had used a meat slicer in violation of federal child safety standards.

Claimant filed for unemployment benefits. On her application, claimant indicated that her reason for leaving was that employer asked her to lie to the USDOL about her daughter's work for employer.

A claims adjudicator disqualified claimant from receiving benefits, finding that claimant quit without good cause attributable to the employer. The claims adjudicator concluded that being asked to lie did not amount to good cause because claimant quit without allowing employer to rectify the situation. Claimant appealed to an administrative law judge (ALJ). The ALJ reversed the claims adjudicator. The ALJ credited claimant's testimony over the managing member's, finding that the managing member pressured claimant to withhold information from the USDOL. The ALJ concluded that it was reasonable to choose unemployment to avoid being pressured to lie to a federal agency and therefore that claimant had good cause attributable to employer to quit. The Board upheld the ALJ's decision. Employer appeals.

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). Where the sole issue is whether there is good cause attributable to the employer, we give 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). "In determining good cause, we must examine each case according to a standard of reasonableness." Id.

On appeal, employer first argues that the facts do not support the following findings: (1) claimant left her employment because the managing member pressured her to withhold information, (2) claimant's daughter had performed work before she turned fifteen, and (3) the managing member pressured claimant to withhold information from the USDOL. On appeal, we will affirm the Board's factual findings if they are supported by credible evidence, "even if there is substantial evidence to the contrary." Cook, 143 at 501.

The following facts were presented at the hearing before the ALJ. Claimant testified that her daughter worked in the store before she was fifteen and that the managing member told her to lie to federal investigators about her daughter's start date and work hours. She asserted that the reason she left was because employer asked her to lie during the USDOL investigation. Claimant also submitted a handwritten letter from a former coworker in which the coworker stated that she overheard the managing member telling claimant to lie to the USDOL.

Employer contested claimant's version of events. Managing member Ed Poginy testified that there was a USDOL investigation into possible violation of child-labor laws, but he insisted that he did not instruct claimant to lie. He asserted that claimant's version of events was not credible because the initial investigation was about whether claimant's daughter was improperly using the meat slicer and the allegations related to her start date or hours did not surface until after claimant quit. He stated that if claimant's daughter was working before she was fifteen or working too many hours, it was without his knowledge and approval. He admitted that he told claimant to change her daughter's hours so that she was not working during school time. He asserted that the coworker's assertion in the letter was not truthful. Employer also presented testimony from the office manager, who began work a few days before claimant's employment ended. She testified that when the USDOL called, she instructed claimant to answer questions honestly. She further testified that she had been through employer's records and nothing was amiss.

Employer contends that claimant's testimony was not truthful and that the letter submitted by claimant from her coworker was not credible and should not have been considered. The Board is not bound by the rules of evidence and can rely on hearsay statements in adjudicating claims if the evidence has sufficient indicia of reliability. Bouchard v. Dep't of Emp. & Training, 174 Vt. 588, 590 (2002) (mem.). In this case, the letter had sufficient indicia of reliability in that it was handwritten by a third, disinterested party and corroborated claimant's testimony of what employer had told claimant. Therefore, the Board did not err in considering it.

Overall, the evidence is sufficient to support the Board's findings that employer pressured claimant to lie to the USDOL about her daughter's employment and that this was the reason claimant quit. Our role on appeal is not to reweigh the evidence. Harrington v. Dep't of Emp. Sec., 142 Vt. 340, 346 (1982) (explaining that Board is "in the best position to judge the credibility of the evidence before it"). We "construe the record in a manner most favorable to the Board's conclusions." Id. at 344. Although employer presented contradictory information,

claimant's testimony and the supporting letter were sufficient to support the findings on claimant's reason for quitting and there are no grounds to disturb them.

Employer also asserts that the evidence does not support a finding that claimant's daughter worked before her fifteenth birthday. We do not reach this question because whether claimant's daughter actually worked before her fifteenth birthday is not material to the case. The critical question is whether claimant had good cause to quit.

Finally, employer argues that even if claimant was asked to be untruthful to USDOL investigators, this was not good cause to quit because claimant did not have to comply with the request and could have just spoken honestly to the investigators. Employer asserts that any fear of retaliation was anticipatory and did not amount to good cause. 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). Claimant's resignation was a reasonable response to employer's direction to be untruthful during a federal investigation. Contrary to employer's assertion, claimant was not first required to defy employer's direction to lie and see if employer retaliated against her.

Affirmed.

BY THE COURT:

Beth Robinson, Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice