

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-431

FEBRUARY TERM, 2005

In re Appeal of Morgan Klarich	}	APPEALED FROM:
	}	
	}	
	}	Employment Security Board
	}	
	}	
	}	DOCKET NO. 04-04-086-11

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

Claimant appeals from an order of the Employment Security Board (ESB) upholding an appeals referee decision disqualifying claimant from unemployment compensation and requiring her to repay over \$9,000 in benefits she received. Claimant argues that she was denied due process and that the order lacks evidentiary support. We affirm.

For seven years, claimant worked as a caregiver and manager for Den of the Bear, Inc. where she provided 24-hour care, fourteen days per month, for a disabled man. In the summer of 2003, she notified her employer that she planned to attend college in the fall and would leave her job on September 1. She intended to work for the rest of the summer to earn money for school. Although claimant contends that she was fired after giving her notice, the appeals referee found that she left her employment voluntarily. After leaving her job, claimant applied for, and received, unemployment compensation. Sometime after leaving her job, claimant moved out of state.

Several months after claimant began receiving benefits, the new manager at Den of the Bear notified DET that claimant had quit her job. DET sent claimant a notice that it would convene a telephone hearing to ascertain the facts of claimant's departure from Den of the Bear. Claimant apparently did not receive the notice because it was sent to her Vermont address. She therefore did not participate in the telephone hearing. Following the hearing, DET entered findings against claimant, notified her that she was ineligible for benefits, and ordered her to repay the benefits she had already received. Claimant appealed the decision to the appeals referee.

The appeals referee scheduled a hearing on the appeal for May 10, 2004. A hearing notice dated April 30, 2004 was mailed to the parties. The notice included essential information about the appeals process, including a telephone number to call for assistance, a statement that claimant could ask the appeals referee to postpone and reschedule the hearing, and an explanation about how to obtain subpoenas for witnesses claimant wanted to testify on her behalf. Claimant did not request a continuance nor did she seek a subpoenas for any witness.

At the May 10 hearing, claimant testified as to her version of the events leading to her departure from Den of the Bear. Den of the Bear called its new manager and a brother of the disabled man to testify about the employer's view of claimant's departure. The parties have completely different versions of what happened on the day claimant left her employment. The appeals referee believed the employer's version and issued a written decision, concluding that claimant quit her job. The appeals referee also found that claimant misrepresented the reasons for her unemployment and ordered her to reimburse DET for the \$9,326 in benefits she had received. Claimant pursued an appeal to the ESB.

At the ESB, claimant contended that she was denied due process because the appeals referee gave her insufficient time in which to prepare her case. Claimant also alleged a violation of due process because the referee did not subpoena two witnesses who claimant said could corroborate her story about what happened. The ESB found no merit to those arguments. It explained that claimant did not tell the appeals referee that she needed additional time to prepare, did not request a continuance, and never asked the referee to subpoena any witnesses. The ESB reviewed the record and determined that the evidence supported the appeals referee's findings and conclusions. Claimant filed the present appeal.

In appeals from ESB decisions, the Court reviews the record in the light most favorable to the ESB's conclusions. Harrington v. Dep't of Employment Sec., 142 Vt. 340, 344 (1982). The Court will uphold the ESB's conclusions if the findings support them. Id. In turn, findings will be upheld on appeal if they are supported by the record evidence, even if substantial contrary evidence exists. Cook v. Dep't of Employment & Training, 143 Vt. 497, 501 (1983).

On appeal, claimant reasserts the due process argument she presented to the ESB. She claims that the ESB denied her due process by giving her only a few days to prepare for the evidentiary hearing before the appeals referee. That error was further aggravated by the appeals referee's failure to subpoena her witnesses before the hearing. We have no doubt that due process requirements apply to proceedings challenging an individual's receipt of unemployment compensation. Langlois v. Dep't of Employment & Training, 149 Vt. 498, 501 (1988). To fulfill the requirements of due process, the administrative proceeding must provide the claimant with a meaningful opportunity to be heard. Id. In this case, claimant participated in an evidentiary hearing before the appeals referee. She had the opportunity to present evidence and cross examine the employer's witnesses. At no time did claimant ask for more time to prepare. Nor did she ask the appeals referee to subpoena any witnesses. Under the circumstances, the appeals referee did not violate claimant's due process rights.

Claimant also alleges that the appeals referee's findings, which the ESB upheld, were not based on credible evidence. We find no merit to this argument. The finding that claimant quit her job is based the testimony of two witnesses for Den of the Bear. Claimant urges us to reverse the finding, arguing that the employer's witnesses lacked credibility. The trier of fact has exclusive authority to determine the credibility of witnesses. Kasnowski v. Dep't of Employment Sec., 137 Vt. 380, 381 (1979). Because we do not second-guess credibility determinations, the finding that claimant quit her job must be upheld.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

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

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