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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-372

MARCH TERM, 2007

Louis Colasanti	}	APPEALED FROM:
	}	
v.	}	Employment Security Board
	}	
Department of Labor	}	
(State of Vermont, Appellee)	}	DOCKET NO. 05-06-089-07

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

Claimant Louis Colasanti appeals pro se from the Employment Security Board's order denying his claim for unemployment compensation benefits. He argues that his employer's refusal to allow him to telecommute several days per week, as previously allowed, provided good cause for his resignation. We affirm.

Claimant was employed by the State of Vermont Court Administrator's Office as an Information Technology Specialist II. He resigned in December 2005, and filed a claim for unemployment benefits. His claim was denied based on a finding that claimant left his employment voluntarily without good cause attributable to his employer. An administrative law judge sustained this decision, as did the Employment Security Board.

The Board adopted the following findings of fact made by the ALJ. Claimant lives in Bristol, Vermont. When he was hired by the State in February 2003, his work station was at the Court Administrator's Office in Montpelier. In late 2003, the then-Director of Research & Information Services (RIS) agreed to allow claimant and several other employees to work at home or at a courthouse more convenient to their homes one day per week on a trial basis. At some point, permission was expanded to two days per week. In 2005, this arrangement was extended to three days per week for claimant. Throughout this time, claimant's official duty station remained Montpelier, and subsequently Berlin when the RIS office moved there in early 2005. Claimant's permission to work elsewhere was never formalized in any way.

When the RIS office moved to Berlin, the absence of IT staff became more noticeable and brought greater management attention to what had been essentially an informal arrangement between the previous director of RIS and his staff. When the then-RIS director retired and a replacement was named, employer revoked permission to work at home or at other locations, and required everyone, including claimant, to return to working in the central office. Claimant objected to this reversion to past practice. He believed that it would not improve his ability to do his job, and he also objected because of the time and expense associated with commuting. The new RIS director refused to rescind the decision, and claimant resigned.

Based on these facts, the Board concluded that claimant was disqualified from benefits because he "left the employ of his last employing unit voluntarily without good cause attributable to such employing unit." 21 V.S.A. § 1344(a)(2)(A). As the Board explained, claimant resigned because the renewed requirement that he work in the central office five days per week would greatly increase his commuting costs. Claimant argued that employer's decision constituted a detrimental change to the agreed conditions of employment. The Board concluded otherwise. It found that claimant was hired to work in the central office and his official work location was never changed from the main office. His permission to work elsewhere was never formalized and it varied over time. Given these factors, the Board reasoned, the permission to work at home was better viewed as a temporary allowance and any resulting cost savings should be seen as a type of bonus. The only real change to the agreed conditions of employment, the Board noted, was the relocation of the RIS office to Berlin, but it found that the difference in distance between Berlin and Montpelier insufficient to provide claimant with good cause for terminating his employment. The Board thus upheld the denial of claimant's application for benefits. This appeal followed.

Claimant argues that the Board erred in denying his claim. He challenges the Board's interpretation of his telecommuting agreement with employer and asserts that the agreement did not need not be in writing to be construed as valid, material, and enforceable. According to claimant, he reasonably relied on the arrangement and employer's decision significantly and adversely affected his working conditions because of the increased cost of commuting. Claimant also argues that the Board erred in concluding that the relocation of the RIS office to Berlin did not provide him good cause for his resigning. Finally, claimant asserts that the Board should have looked at other extenuating circumstances, such as increased gas prices, to determine if he left his job for good cause.

We find no basis to disturb the Board's decision. "The question of whether a resignation is for good cause attributable to the employer is a matter within the special expertise of the Board, and its decision is entitled to great weight on appeal." Cook v. Dep't of Employment & Training, 143 Vt. 497, 501 (1983). We will not disturb the Board's findings "if they are supported by credible evidence, even if there is substantial evidence to the contrary." Id. If the Board's findings support its determination, we will uphold its judgment on review. Allen v. Dep't of Employment & Training, 159 Vt. 286, 289 (1992).

In this case, as set forth above, the Board concluded that claimant's telecommuting arrangement was a temporary allowance, and thus, employer's decision to rescind the policy did not change the agreed-upon working conditions. The record supports this conclusion. There is no dispute that claimant was hired to work at the main RIS office and that his work station was never officially modified. Although employer allowed several employees to telecommute at their request, employees were informed at the outset that this arrangement was subject to change. The arrangement was never formalized, it varied over time, and when problems arose, the allowance was rescinded by employer. Claimant essentially asks us to look at these facts in a different light, and draw a conclusion opposite to that reached by the Board. This we will not do. It is for the Board, not this Court, to assess the "[w]eight, credibility, and persuasive effect" of the evidence. Cook, 143 Vt. at 501. As in Cook, the Board heard both claimant's and employer's versions of the parties' arrangement, and it made findings favorable to the employer. Because the Board's findings are

supported by evidence in the record, they must stand on appeal. The findings support the Board's conclusion that claimant did not resign for good cause attributable to his employer.

We similarly find no basis to disturb the Board's reasonable conclusion that the relocation of the main RIS office from Montpelier to Berlin did not provide claimant with good cause for resigning. Claimant chose to live in Bristol and he accepted a job that required him to commute to the main RIS office. Our cases hold that employees are responsible for arranging transportation to work absent a promise from employer to provide transportation for them. See, e.g., Stryszko v. Dep't of Employment & Training, 144 Vt. 198, 199 (1984) (mem.) (employer's failure to secure transportation for employee did not provide employee with good cause for resigning attributable to employer). It follows that claimant, not his employer, is responsible for the costs associated with commuting, and that an increase in commuting costs does not provide claimant with good cause for resigning attributable to his employer. See Morgan v. Bd. of Review, 185 A.2d 870, 873 (N.J. Super. Ct. App. Div. 1962) ("An employee's problem of commuting to and from his work may be considered a good personal reason for leaving his employment, but it is not ordinarily to be considered a cause that is connected with or attributable to the work. Commuting is usually considered a problem of the employee.").

Finally, the plain language of 21 V.S.A. § 1344(a)(2)(A) does not provide for the consideration of any factors other than good cause attributable to the employer. We thus do not address claimant's assertion that rising gas prices or other extenuating circumstances established good cause for his resignation. See Shufelt v. Dep't of Employment & Training, 148 Vt. 163, 165 (1987) ("When the meaning of a statute is plain on its face, we must enforce it according to its express terms.").

Affirmed.

BY THE COURT:

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A. Gregory Rainville, District Judge,
Specially Assigned

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Ernest W. Gibson III, Associate Justice (Ret.),
Specially Assigned

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Stephen B. Martin, Superior Judge (Ret.),
Specially Assigned