

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

**ENTRY ORDER**

VERMONT SUPREME COURT  
FILED IN CLERK'S OFFICE

SUPREME COURT DOCKET NO. 2009-337

APR 1 2010

MARCH TERM, 2010

John Boyer	}	APPEALED FROM:
	}	
v.	}	Employment Security Board
	}	
Department of Labor	}	DOCKET NO. 06-09-068-06
(Honeytree Foods, LLC Cheese Outlet/ Fresh Market, Employer)	}	

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

Claimant appeals pro se from the denial of his claim for unemployment benefits. We affirm.

The record indicates the following. Claimant was employed by the Fresh Market for approximately two years. He worked as the produce manager. Claimant quit in May 2009, and he applied for unemployment benefits. A claims adjudicator denied his request, finding that claimant left his employment voluntarily without good cause attributable to his employer. See Allen v. Dep't of Employment & Training, 159 Vt. 286, 289 (1992) ("A person is disqualified from receiving unemployment benefits if [he or] she voluntarily terminates employment 'without good cause attributable to [the] employing unit.' " (quoting 21 V.S.A. § 1344(a)(2)(A))).

Following a hearing, an administrative law judge (ALJ) sustained this decision. The ALJ found as follows. On the day he quit, claimant was informed by his employer that his job duties would shift from the produce department to the cash register. Employer was not pleased with claimant's handling of produce, but was satisfied with claimant's interactions with customers, and felt the change was in the company's best interests and also beneficial to claimant. Claimant was upset, and he decided that this change would mean that his hours would be changed to evenings and weekends. The owner did not discuss the hours with claimant, however, and the ALJ credited the owner's testimony that claimant's hours would have remained the same. Claimant was unwilling to accept the switch, and he quit. Based on these findings, the ALJ concluded that claimant left his employment without good cause attributable to his employer, and that he was statutorily disqualified from receiving benefits.

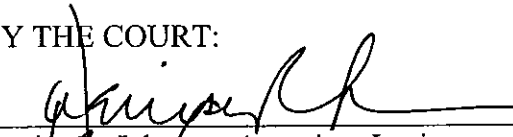
Following a hearing, the Employment Security Board adopted the ALJ's findings and conclusions, finding the ALJ's conclusions factually supported and legally correct. The Board rejected claimant's assertion that the ALJ erred by not giving any evidentiary weight to the exhibits he proffered. Like the ALJ, the Board found that these exhibits had no evidentiary value in determining whether employer told him that he would be changing his work hours. The Board

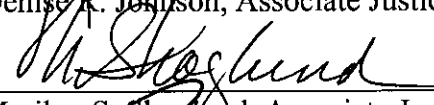
deferred to the ALJ's determination that employer's testimony was more credible, and it thus agreed that claimant was disqualified from receiving benefits. This appeal followed.

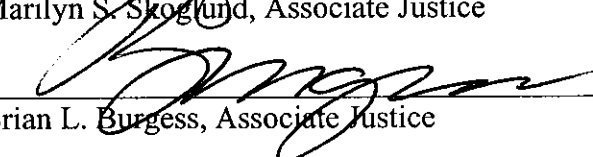
Claimant offers no compelling ground for reversing the Board's decision. As an initial matter, we do not consider any evidence that was not presented below, and thus we do not discuss the "new issues" identified by claimant in his brief. See Hoover v. Hoover, 171 Vt. 256, 258 (2000) (Supreme Court's review on appeal is confined to the record and evidence adduced at trial; Court cannot consider facts not in the record). The majority of claimant's remaining arguments rest on his assertion that employer was dishonest. The ALJ was charged with assessing the credibility of witnesses, however, and she credited employer's version of the events. We will not re-weigh the evidence on appeal. Favreau v. Dep't of Employment & Training, 156 Vt. 572, 577 (1991). Our role is simply "to determine if the Board's findings and conclusions are supported by credible evidence." Id. (citation omitted); see also Johnson v. Dep't of Employment Sec., 138 Vt. 554, 555 (1980) (per curiam) (Supreme Court will not disturb the findings of the Employment Security Board unless they are "clearly unsupported by the evidence"). The Board's finding that claimant lacked good cause for quitting attributable to his employer is supported by the record here. We have considered all of the remaining arguments set forth by claimant, including his concerns about the quality of the transcription of the hearing, and none persuade us that the Board erred in reaching its conclusion.

Affirmed.

BY THE COURT:

  
Denise R. Johnson, Associate Justice

  
Marilyn S. Skoglund, Associate Justice

  
Brian L. Burgess, Associate Justice