

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

VERMONT SUPREME COURT  
FILED IN CLERK'S OFFICE

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2009-372

APR 1 2010

MARCH TERM, 2010

David Benoit	}	APPEALED FROM:
	}	
	}	
v.	}	Employment Security Board
	}	
	}	
Department of Labor	}	DOCKET NO. 06-09-048-13
(Joatmon Enterprises, LLC, Employer)	}	

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

Claimant appeals the denial of his request for unemployment benefits. On appeal, he argues that he had good cause to quit his job, and that the Employment Security Board's findings and conclusions otherwise are not supported by the record. We affirm.

The basic facts are as follows. Claimant was hired in March 2009 by employer, Joatmon Enterprises, LLC, d/b/a Roto Rooter. Claimant had previously worked for employer from January to August 2008. Claimant is not a licensed plumber, and was hired as a sewer and drain technician. The parties dispute whether as part of his job claimant performed unsupervised plumbing work. Claimant alleges that during his employment he had a conversation with a retired state plumbing inspector and learned that he could be fined for performing unsupervised plumbing work without a license. According to claimant, he was performing unsupervised plumbing work and until that time did not realize that it was illegal. Claimant alleges that he confronted his manager and the manager told him not to "draw any attention to it." After this discussion, claimant left the company van at his employer's premises and stopped showing up for work.

Claimant filed for unemployment benefits, and his claim was denied. Following claimant's appeal, at a hearing before the referee, employer testified that claimant did not perform plumbing work without supervision by a licensed plumber. Claimant's manager further denied that claimant informed him of his conversation with the plumbing inspector, or that claimant ever communicated his concerns about performing illegal plumbing. According to employer, claimant simply left the company van at work and stopped coming to work. The referee denied claimant's request to admit additional evidence to support claimant's assertion that he was performing unsupervised plumbing work because the evidence pertained to claimant's prior period of employment with employer not his employment in 2009. Based on the evidence, the referee concluded that claimant did primarily drain cleaning, and, to the extent claimant engaged in plumbing, he was properly supervised. The referee also found employer's

testimony credible that claimant did not approach employer about his concerns. The referee denied the claim, and claimant appealed to the Board.

The Board accepted the findings of the administrative law judge, and concluded that claimant quit without good cause attributable to his employer. The Board concluded that it lacked the expertise to decide whether claimant was properly supervised as required by plumbing regulations. Nonetheless, the Board concluded that claimant lacked good cause to quit because (1) claimant did not make a real attempt to discuss his concern about allegedly illegal work with his employer, and (2) to the extent there was any work involved contrary to plumbing regulation claimant knew about it in advance and therefore could not use this as grounds for quitting. Therefore, the Board denied benefits to claimant. Claimant appeals.

An employee is disqualified from unemployment benefits if the employee voluntary leaves 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 Employment & Training, 143 Vt. 497, 501, 468 A.2d 569, 571 (1983). The burden of proving good cause attributable to the employer is on the employee. Skudlarek v. Dep't of Employment & Training, 160 Vt. 277, 280, 627 A.2d 340, 342 (1993). "In determining good cause, we must examine each case according to a standard of reasonableness." Id.


Claimant first argues that the Board's determination of good cause is faulty because its factual findings are not supported by the record. On appeal, we will affirm the Board's factual findings as long as they are supported by credible evidence, "even if there is substantial evidence to the contrary." Cook, 143 at 501, 468 A.2d at 571. Claimant challenges two specific findings: (1) that claimant made no attempt to discuss the allegedly illegal work with his employer, and (2) having worked in the plumbing field for fifteen years, claimant should have known the requirements of the plumbing code. We conclude that the first finding is supported by the record and provides a sufficient basis for denial of benefits to claimant. Prior to leaving employment, an employee has a duty to attempt to resolve any workplace grievance. Rushlow v. Dep't of Employment & Training, 144 Vt. 328, 331 476 A.2d 139, 141 (1984). In this case, the record supports the Board's finding that claimant failed to make a meaningful effort to discuss the scope of his work with his employer prior to quitting. Employer testified that claimant did not approach him about a conversation with the plumbing inspector or about claimant's concern that he might be fined for performing unsupervised plumbing work. Although claimant disputes employer's testimony, the Board found employer's version of events more credible than claimant's, and we defer to the Board's determination of credibility. See Cook, 143 Vt. at 501, 468 A.2d 571 (explaining that weight, credibility, and persuasive effect are for the Board to decide).

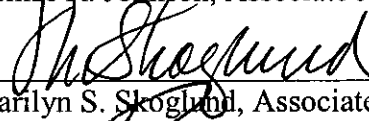
Because claimant did not make a reasonable effort to discuss his concerns with employer prior to quitting, we need not reach claimant's additional argument that the Board improperly concluded that claimant knew he would be required to perform unsupervised plumbing work and therefore could not use this as grounds for separation. Even accepting claimant's assertion that he did not know about the plumbing regulations in advance of his employment, he still had an obligation to discuss his concerns with his employer once he learned about the problem. Having failed to do so, the Board properly denied benefits.

Finally, claimant argues that the referee erred in denying his request to present additional evidence supporting claimant's allegation that he was engaged in illegal plumbing work. Because neither witness could testify to the key question of whether claimant discussed his concerns with his employer prior to quitting, we conclude that any error was harmless.

Affirmed.

BY THE COURT:

  
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Denise R. Johnson, Associate Justice

  
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Marilyn S. Skoglund, Associate Justice

  
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Brian L. Burgess, Associate Justice