VERMONT SUPREME COURT
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Case No. 23-AP-327

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

JUNE TERM, 2024

Normand Frechette* v. Department of Labor (Green Mountain Transit Authority)	}	APPEALED FROM:
	}	
	}	Employment Security Board
	}	CASE NO. 05-23-064-01

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

Claimant appeals from the Employment Security Board's denial of his application for unemployment compensation benefits. We affirm.

Claimant worked for employer in various capacities for over twenty years. His final position was as a bus driver. In late December 2022, at his request, claimant moved from a full-time to a part-time position. Claimant left his employment on February 1, 2023, and sought unemployment benefits. A claims adjudicator denied his request, finding that claimant left his employment voluntarily without good cause attributable to his employer. Claimant appealed to an administrative law judge (ALJ), who reached the same conclusion.

The ALJ made the following findings after a hearing. Claimant allegedly told employer numerous times that he was bothered by marijuana smoke coming from the bus platform and the smell of marijuana emanating from passengers. His supervisor said that employer had no policy that prevented passengers from consuming before boarding the bus or smelling of marijuana. The supervisor suggested that claimant open the windows to air out the bus.

Claimant alleged that he had been struggling with the issue for several years. He did not produce any documentation from his medical provider, however, that substantiated a connection between marijuana and his reported symptoms, which included dizziness, confusion, and impaired driving.

Claimant primarily resided in Island Pond, Vermont, but he was working in Burlington. Up to the date of his separation from employment, he was either sleeping in his car or staying with acquaintances to avoid exorbitant hotel fees.

Based on these findings, the ALJ disqualified claimant from receiving benefits. First, the ALJ concluded that claimant failed to produce any medical documentation substantiating a certified health condition that might have precluded the discharge of his duties for employer. Thus, there was no basis to find a health separation. See 21 V.S.A. § 1344(a)(3) (providing for

shorter disqualification period "if the Commissioner finds that the individual has left the employ of the individual's last employing unit without good cause attributable to the employing unit because of a health condition, as certified by a health care provider, as defined in 18 V.S.A. § 9432(9), that precludes the discharge of duties inherent in such employment"). The ALJ determined that claimant voluntarily separated from his employment and failed to prove that he had a sufficient reason to quit attributable to employer.

In reaching his conclusion, the ALJ deemed claimant's testimony "questionable at best." He noted that claimant reported struggling with marijuana odor for several years while working full-time but employer had few records documenting any complaints during that timeframe. The ALJ found this to be a significant period of time in which to be dealing with an issue that claimant asserted led him to resign. The ALJ credited employer's position that there was little decisive action it could take with respect to the problem. He found it very unlikely that employer could successfully enforce a rule that prohibited passengers from smelling like marijuana. The ALJ further found that claimant was living precariously in Burlington throughout his final days of employment and had reduced his hours to part-time. The ALJ believed these factors played a significant role in claimant's decision to resign. While claimant had valid personal and subjective reasons for leaving his employment, those reasons were not attributable to his employer or its business practices. The ALJ thus concluded that claimant was disqualified from receiving benefits.

Claimant appealed to the Board, which adopted the ALJ's findings and conclusions. The Board added that claimant did not introduce evidence of any diagnosis or opinion of a healthcare provider that claimant's work environment was detrimental to a diagnosed condition or his health generally. While claimant testified that he might have some variety of allergy to cannabis that left him feeling intoxicated by the odor coming from passengers, he did not provide any medical documentation to support this assertion. Claimant did not allege that passengers were smoking on the bus, moreover, only that the odor coming from them made him sick. The Board agreed with the ALJ that employer could not effectively prevent members of the public from smelling like cannabis or fully isolate claimant from odors in the cabin of the bus. Like the ALJ, the Board concluded that while claimant might have had sound personal reasons to resign from his position, those reasons did not constitute good cause attributable to his employer. Claimant appealed.

Claimant argues that the Board failed to liberally construe the law in his favor. He asserts that employer did not try to solve the problem he brought to its attention. He reasons that he was exposed to cannabis in his employment and therefore it is his employer's fault that he had to leave his employment to avoid this exposure. Claimant asserts that he did not need to provide any medical support to show that he was affected in a negative way by the cannabis. He contends that employer's suggestion that he open the windows did not meet its obligation to rectify the problem within its capacity to do so. He suggests that employer should have provided him with respiratory or other supplies.

At issue is whether, under the facts found by the Board, claimant left his "last employing unit voluntarily without good cause attributable to the employing unit." 21 V.S.A. § 1344(a)(2)(A). We analyze this question "under the specific facts and circumstances" of claimant's case "to determine if [claimant's] decision was reasonable." Lynch v. Dep't of Emp. & Training, 2005 VT 114, ¶ 4, 179 Vt. 542 (citations omitted). Claimant "has the burden to prove good cause for quitting," id., which is assessed under a "reasonable person" standard, Isabelle v. Dep't of Emp. & Training, 150 Vt. 458, 460 (1982). On review, we "will uphold the Board's factual findings unless clearly erroneous, and its conclusions of law if fairly and

reasonably supported by those findings of fact." Bouchard v. Dep't of Emp. & Training, 174 Vt. 588, 589 (2002) (mem.) (quotation omitted). It is for the Board, rather than this Court, to assess the weight and credibility of the evidence. Ellis v. Dep't of Emp. Sec., 133 Vt. 533, 536 (1975). "[W]hether 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." Allen v. Dep't of Emp. Sec., 141 Vt. 132, 134 (1982).

We find no error here. The Board's findings are supported by the record and the findings support the Board's conclusions. In reaching its decision, the Board did not err in its interpretation or application of the law. It did not unfairly deny claimant a remedy. The Board found that claimant failed to establish that his health issues were caused by his working conditions. To establish a health separation, the law requires certification of a health condition by a health care provider. See 21 V.S.A. § 1344(a)(3). The Board further determined that employer had no ability to ensure that passengers on the bus did not smell like marijuana. While claimant argues that employer should have taken additional steps, there is no evidence to show that claimant took the step proposed by employer of opening the windows to air out the bus. Essentially, claimant wars with the Board's assessment of the weight of the evidence and this Court does not reweigh the evidence on appeal. The Board's conclusion that claimant failed to show good cause for resigning attributable to his employer is supported by the record.

Affirmed.

BY THE COURT:

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Harold E. Eaton, Jr., Associate Justice

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Karen R. Carroll, Associate Justice

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Nancy J. Waples, Associate Justice