

No. 1-10-0763

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e) (1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

KEITH M. SHAVERS, JR.,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	
)	No. 09 L 51677
THE ILLINOIS DEPARTMENT OF EMPLOYMENT)	
SECURITY; DIRECTOR, ILLINOIS DEPARTMENT)	
DEPARTMENT OF SECURITY; BOARD OF REVIEW;)	
and COMCAST OF CHICAGO,)	Honorable
)	James C. Murray, Jr.,
Defendants-Appellees.)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hall and Justice Lampkin concurred in judgment.

O R D E R

HELD: Plaintiff's failure to show good cause attributable to his employer for his voluntary resignation from the work force rendered him ineligible for unemployment benefits; the trial court's ruling is affirmed.

Plaintiff, Keith Shavers, *pro se*, appeals from an order of the circuit court of Cook County, affirming the ruling of defendant, the Illinois Department of Employment Security Board of Review (IDES), that plaintiff was ineligible for unemployment benefits from defendant, Comcast of Chicago (Comcast), under section 601(A) of the Illinois Unemployment Insurance Act (Act) (820 ILCS 405/601(A) (West 2009)) because he voluntarily left work without good cause attributable to his employer. On appeal, plaintiff contends his deficient wage rate and his employer's denial of reimbursement for educational expenses constituted

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good cause under the Act.

The record shows plaintiff was employed with Comcast from November 28, 1999, until he resigned effective June 6, 2008, as a full-time, level-three construction technician. At the time of his resignation he earned an hourly wage of \$18.63. In his resignation notice, plaintiff stated it had become obvious to him that Comcast did not intend to address his concerns as to wages and educational reimbursement.

In September 2008, plaintiff filed a claim for unemployment benefits which was granted. His employer objected and requested a hearing. During the hearing plaintiff testified that in late 2007, he learned from co-workers that he was being paid less per hour than a level-three network technician and a level-three communications technician who were in different departments and had less experience. Plaintiff testified that prior to his resignation, his job responsibilities were mostly administrative, in that he requested capital for construction projects and performed quality control. He further stated that the duties of the other technicians were different than his own. In March 2008, plaintiff received an increase in pay to his final earning wage of \$18.63 per hour. When plaintiff addressed the pay disparity with his supervisors, he was told Comcast had decided his department would not be increasing wages beyond their March 2008 rates.

Plaintiff also explained that he resigned, in part, because his tuition was not reimbursed for two courses, one in November 2006 and one in February 2008, paid for by him to the National Cable Television Institute. Plaintiff explained he received preapproval for the courses from Comcast for reimbursement, but when he requested reimbursement, it was denied because Comcast had ceased reimbursement for courses with the

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National Cable Television Institute. Plaintiff's unreimbursed tuition expenses totalled \$790.00. Robert Jackson, a Comcast employee, testified that he was reimbursed through February 2007 for courses he took with the same institute, including the same courses plaintiff took.

Carletta Jones testified on behalf of Comcast. She stated that wages for employees were determined by assigned duties and the level of proficiency of the employee. Specific to plaintiff, Jones testified that the employees he compared himself to had broader job responsibilities and worked with more products and a broader customer base. She further explained that Comcast published a communication sometime in 2007 stating they would no longer be reimbursing employees for courses taken with the National Cable Television Institute. Jones testified that had plaintiff not resigned, his position would have remained available to him. Following the hearing, a claims adjudicator ruled that plaintiff left his position voluntarily without good cause, and was therefore ineligible for benefits.

Plaintiff appealed that decision to IDES. IDES confirmed the decision of the adjudicator and found plaintiff was ineligible for benefits, where he voluntarily left his position without good cause. Specifically, IDES found Jones' testimony credible regarding the justification for different pay rates, where plaintiff's position and responsibilities were different than the network and communications technicians. IDES further found that the employer's decision not to reimburse plaintiff was not so significant as to rise to the level of good cause to resign, where the cost of the courses constituted 2% of his annual gross compensation, and reimbursement was not an ongoing concern. Plaintiff appealed IDES's decision to the circuit court of Cook County,

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which, in a written order, confirmed the decision.

Plaintiff now appeals that order. Plaintiff maintains he proved unfair wage practices by Comcast which constituted good cause for his resignation. Defendants respond that IDES's decision should be affirmed, where defendant's pay was justifiably different from other employees in different departments with distinct responsibilities, and the tuition expenses were not a central or substantial aspect of plaintiff's employment. This court reviews the decision of IDES rather than the circuit court of Cook County or the adjudicator. *Sudzus v. Dept. of Employment Sec.*, 393 Ill. App. 3d 814, 819 (2009).

An employee who voluntarily resigns from his employment must establish good cause for leaving, attributable to his employer, in order to qualify for unemployment benefits. 820 ILCS 405/601(A) (West 2009); *Jenkins v. Dept. of Employment Sec.*, 346 Ill. App. 3d 408, 411 (2004). A substantial reduction in pay or a unilateral change in employment, which renders the position unsuitable may constitute good cause for leaving. *Acevedo v. Dept. of Employment Sec.*, 324 Ill. App. 3d 768, 772 (2001).

The question of whether an employee left work without good cause is a mixed question of law and fact to which we apply the "clearly erroneous" standard of review. *AFM Messenger Service, Inc. v. Dept. of Employment Sec.*, 198 Ill. 2d 380, 395 (2001). An agency decision will be deemed clearly erroneous where a review of the record leaves the court with a definite and firm conviction that a mistake occurred. *AFM Messenger Service, Inc.*, 198 Ill. 2d at 395.

Here, plaintiff did not suffer a substantial reduction in wages. To the contrary, he received an increase in pay in March 2008.

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Thereafter, plaintiff maintained his displeasure with his wages, as compared to employees with separate job titles and responsibilities. However, IDES found Comcast presented credible evidence for the difference in pay between plaintiff and the level-three technicians in other departments. It is not our role to second guess such credibility determinations. Therefore, the record belies plaintiff's contention that his wages were unsuitable or reduced. We find that IDES's decision as to the wages does not leave this court with a definite and firm conviction that a mistake occurred. *White v. Dept. of Employment Sec.*, 376 Ill. App. 3d 668, 671 (2007).

This court has previously held, where a plaintiff voluntarily leaves work due to dissatisfaction with wages, absent other factors, it does not constitute good cause attributable to his employer. *Collier v. Illinois Dept. of Employment Sec.*, 157 Ill. App. 3d 988, 994-95 (1987). In *Collier*, this court held that a reduction in earnings, due to a reduction in hours, did not constitute good cause. *Collier*, 157 Ill. App. 3d at 994-95. Here, plaintiff suffered no reduction of any kind, and actually received an increase in his pay three months before he resigned. Under these circumstances, we find the wage disparity was not good cause.

Comcast's decision not to reimburse plaintiff for educational expenses also does not amount to good cause to leave his employment. There was no evidence that there was a negative impact on plaintiff's employment due to the lack of tuition reimbursement. To the contrary, plaintiff took one class in 2006 and one in 2007 and continued working without issue through 2008. Nothing in the record indicates plaintiff experienced a substantial and unilateral change in his work activities, or that his work was unsuitable, as compared to what he was originally

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hired to do. *Collier*, 157 Ill. App. 3d at 992. Furthermore, the unreimbursed educational expenses constituted less than 2% of plaintiff's earnings. Thus, we do not find a substantial reduction in pay because of the failure to reimburse tuition. *Collier*, 157 Ill. App. 3d at 994-95; *Keystone Steel & Wire Division v. Dept. of Labor*, 37 Ill. App. 3d 704, 706-07 (1976).

Accordingly, we affirm the decision of the circuit court of Cook County.

Affirmed.