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2011 IL App (3d) 110125-U

Order filed November 15, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2011

KEVAL MEHTA,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Plaintiff-Appellant,	)	Will County, Illinois,
	)	
v.	)	Appeal No. 3-11-0125
	)	Circuit No. 10-MR-952
ILLINOIS DEPARTMENT OF EMPLOYMENT	)	
SECURITY, DIRECTOR OF ILLINOIS	)	
DEPARTMENT OF EMPLOYMENT	)	
SECURITY, BOARD OF REVIEW, and ALL	)	
PETS HOSPITAL,	)	Honorable
	)	Barbara Petrungaro,
Defendants-Appellees.	)	Judge, Presiding

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JUSTICE O'BRIEN delivered the judgment of the court.  
Justices Holdridge and Schmidt concurred int the judgment.

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**ORDER**

- ¶1 *Held:* Decision by Illinois Department of Employment Security to deny plaintiff unemployment benefits was not clearly erroneous where plaintiff voluntarily left position without good cause attributable to employer.
- ¶2 Plaintiff Keval Mehta was denied unemployment benefits from his employer after voluntarily leaving his employment at All Pets Hospital. Defendant Illinois Department of Employment Security (IDES) determined that Mehta left without good cause and was not eligible for unemployment

benefits. We affirm.

¶ 3

### **FACTS**

¶ 4 Plaintiff Keval Mehta began working at All Pets Hospital as a kennel worker in September 2009. On January 11, 2010, Mehta applied for unemployment benefits. He submitted that he was discharged by All Pets' significant reduction in his work hours. Mehta claimed his hours were reduced to four hours per week due to a lack of work. He applied for benefits immediately upon being informed that his hours were reduced. He did not return to work or return messages from All Pets because he had applied for benefits. All Pets timely protested Mehta's benefits claim. On February 20, 2010, an IDES claims adjudicator approved benefits for Mehta, finding that he voluntarily left his job for good cause based on his reduced hours.

¶ 5 All Pets appealed the approval on March 5, 2010. It submitted that Mehta had received a written warning on January 5, 2010, for sleeping on the job and for falsifying his timecard. his building key was revoked. As a result of Mehta's misconduct, his building key was revoked, necessitating a change in his work hours. According to All Pets, Mehta did not show up for his January 16, 2010, shift and did not contact All Pets with a reason for his absence. All Pets called Mehta on January 16, 18, and 22, and left messages for him to return the phone calls. He did not respond. Mehta called All Pets on January 26, 2010, to inquire about his paycheck. The February schedule was posted with Mehta's shifts readjusted to other employees.

¶ 6 A telephone hearing took place on All Pets' appeal. Miranda Woodhouse, manager at All Pets, said Mehta was a part-time worker, meaning anything less than 36 hours per week. He failed to appear for his scheduled shifts after January 16 and did not respond to phone calls. Denise Federighi, Mehta's supervisor, testified that work hours are scheduled a month in advance. A kennel

worker assigned to an “a.m.” or “p.m.” shift would work three or four hours a day, depending on the work load. Mehta never informed her that he would not be returning to work. She left an unreturned message with someone at Mehta’s home. She denied Mehta was being punished for sleeping on the job. She described that Mehta was not fired but that “he just didn’t show up and we \*\*\* never knew what happened to him because he never returned our calls.” Evidence submitted by All Pets demonstrated that Mehta was scheduled to work 15 days between January 10 and January 30, 2010: a.m. shifts on January 10, 16, 17, 23, 24, and 30; p.m. shifts on January 13, 20, and 27; an 8 to noon shift on January 12, 19, and 26; and a 3 to 8 shift on January 13, 15, 22, and 29.

¶ 7 Mehta admitted that he was scheduled to work on January 16, 2010, but did not call to say he would not be there. He had worked 22 to 26 hours a week before his hours were cut after he received the written warning. He traveled 15 to 20 miles to All Pets and did not believe it was worthwhile to go to work for only three hours per week. He did not check his schedule after January 16 because he had applied for unemployment benefits. After he applied for benefits, he called Federighi and told her he would not be returning to work. Mehta testified that he never received any messages from All Pets. He accused All Pets of modifying the schedule before it was submitted to the hearing referee. Although he said his copy of the schedule showed he was only scheduled for three hours per week, he did not provide the record.

¶ 8 The hearing referee determined that Mehta was not eligible for benefits because he had voluntarily left his job without good cause attributable to All Pets. The referee found Mehta was scheduled for work but failed to show up or contact All Pets regarding his absence. Mehta appealed. The Board of Review affirmed the referee’s decision denying Mehta benefits. The Board did not consider Mehta’s written arguments attached to his appeal because he did not serve them on All Pets

as required, although it stated that it considered the reasons he advanced on appeal. See 56 Ill. Admin. Code 2720.315 (2011). Mehta filed an amended complaint for administrative review in the trial court, which was argued and denied. The trial court determined that the evidence demonstrated that Mehta was scheduled to work but failed to show up or to contact All Pets. The court found that Mehta voluntarily left work without good cause and affirmed the denial of his benefits. Mehta filed a motion to reconsider, which the trial court denied. He appealed.

¶ 9

### ANALYSIS

¶ 10 The issue on appeal is whether the Board of Review properly determined that Mehta voluntarily left his position at All Pets without good cause attributable to his employer. Mehta argues that the denial of his benefits based on a finding that he voluntarily left his position without good cause was clearly erroneous.

¶ 11 As an initial matter, we address Mehta's assertion that All Pets failed to timely file its appeal challenging the initial eligibility determination. He points to the February 20, 2010, decision date of the hearing officer, granting him benefits and maintains that All Pets did not timely appeal the decision. According to Mehta, he received a package by certified mail on June 16, 2010, which was beyond the 30-day period for All Pets to appeal. Mehta misconstrues the notice requirements and the facts at issue. A party must appeal an initial eligibility decision within 30 days after the decision is delivered. 820 ILCS 405/800 (2010). All Pets faxed an appeal letter to IDES on March 5, 2010, within the 30-day appeal period. The package he received by notified mail on June 16, 2010, consisted on additional documents All Pets was submitting as exhibits to IDES. We find that the record demonstrates that All Pets timely appealed the initial eligibility determination.

¶ 12 We turn to Mehta's claim that he was improperly denied unemployment benefits based on

IDES's finding that he voluntarily quit his position without good cause. Whether an employee left work without good cause attributable to his employer involves a mixed question of law and fact. *Childress v. Department of Employment Security*, 405 Ill. App. 3d 939, 942 (2010). The standard of review is whether the decision was clearly erroneous. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 211-12 (2008). The clearly erroneous standard is deferential, based on the Board of Review's experience and expertise. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 394 (2001). Under the clearly erroneous standard, a review board's decision should be upheld unless, based on the entire record, the reviewing court is "left with a definite and firm conviction that a mistake has been committed." *AFM Messenger Service, Inc.*, 198 Ill. 2d at 395 (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)).

¶ 13 The Unemployment Insurance Act (Act) provides, in part, that "[a]n individual shall be ineligible for benefits for the week in which he or she has left work voluntarily without good cause attributable to the employing unit and, thereafter." 820 ILCS 405/601(A) (West 2010). The purpose of the Act is to provide monetary benefits to involuntarily unemployed workers. *Jaime v. Director, Department of Employment Security*, 301 Ill. App. 3d 930, 933 (1998); 820 ILCS 405/100 (2010). The Act is intended to benefit workers who do not cause their unemployment. *White v. Department of Employment Security*, 376 Ill. App. 3d 668, 671 (2007). When determining whether the employee had good cause to leave, it is the employer's conduct, not the employee's conduct, that should be considered. *Pearson v. Board of Review*, 194 Ill. App. 3d 1064, 1069 (1990). Good cause results from circumstances producing real and substantial pressure to terminate employment and would induce a reasonable person to act similarly. *Childress*, 405 Ill. App. 3d at 943. The claimant has the

burden of proving his eligibility for unemployment benefits. *White*, 376 Ill. App. 3d at 671.

¶ 14 The record establishes that Mehta was scheduled for multiple shifts during the month of January 2010. He did not report for any shifts after January 16. His employer testified that Mehta did not call to inform All Pets that he would not be covering his shifts or to explain his absence. Although Mehta stated that he did in fact call All Pets, he also stated that All Pets submitted a modified schedule to the hearing referee indicating more hours than he was actually scheduled. Mehta offered to supply his copy of the schedule but failed to do so. The credibility of his testimony and actions are questionable and he offers no tangible support for his claims. All Pets presented its version of Mehta's departure, which outlined that it continued to schedule Mehta for shifts, including into the February schedule, and that several calls were made to Mehta's residence and messages left, which were not returned. According to All Pets, Mehta "just stopped showing up" for work. While it does appear that Mehta's hours were, or were scheduled to be reduced, he failed to demonstrate that any reduction in work hours would cause a reasonable person in his position to simply stop reporting for assigned shifts. Mehta failed to carry his burden that he voluntarily quit his position with good cause attributable to All Pets. Under these facts, we conclude that decision of the referee and Board of Review that Mehta voluntarily left work without good cause attributable to All Pets was not clearly erroneous. We affirm the denial of his unemployment benefits.

¶ 15 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 16 Affirmed.