

FIRST DIVISION
JANUARY 14, 2013

1-11-3569

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

GARDELL COUNCIL,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	
)	
ILLINOIS DEPARTMENT OF EMPLOYMENT)	No. 11 L 50880
SECURITY; DIRECTOR, ILLINOIS DEPARTMENT)	
OF EMPLOYMENT SECURITY; BOARD OF REVIEW)	
and VILLAGE OF DOLTON,)	Honorable
)	Robert Lopez Cepero,
Defendants-Appellants.)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Hoffman and Justice Delort concurred in the judgment.

ORDER

- ¶ 1 *Held:* When an employee voluntarily left work without good cause attributable to his employer, he was ineligible for unemployment benefits upon termination from his employment.
- ¶ 2 Plaintiff Gardell Council (Council) filed a complaint for administrative review in the circuit court of Cook County, seeking to reverse a decision by the Board of Review of the Department of Employment Security (Board) that he was ineligible to receive unemployment compensation benefits because he voluntarily left work without good cause attributable to his employer. See 820 ILCS 405/601(A) (West 2010). The circuit court reversed the Board's decision.

¶ 3 Defendants, the Department of Employment Security (Department), the Director of the Department, and the Board, now appeal contending that Council voluntarily left work without good cause attributable to his employer when he failed to obtain a commercial driver's license (CDL) within one year of the date of his employment, as required by the relevant collective bargaining agreement. We reverse the circuit court's ruling.

¶ 4 The record reveals that Council was employed by the Village of Dolton (Village) from January 2010 until January 2011. He then applied for unemployment benefits. The Village objected. Council was deemed ineligible for unemployment benefits because he was terminated based upon a violation of the relevant collective bargaining agreement in that he did not obtain a CDL when it was within his control to do so. The relevant portion of the collective bargaining agreement included in the record indicates that after the agreement's effective date, all newly hired drivers shall possess a "CDL Operator's License" as a qualification of employment and that all "other new hires" shall obtain a CDL Operator's License within one year of the date of hire.

¶ 5 Council then filed an administrative appeal, and on February 24, 2011, a Department referee conducted a telephone hearing during which Council and the Village's assistant personnel director CaSandra Bracy (Bracy) testified. Bracy testified that Council was employed as a laborer in the Village's public works department. He was hired on January 7, 2010, and terminated on January 10, 2011. Pursuant to the relevant collective bargaining agreement, employees have one year from the date of hire to obtain a CDL. When Council was hired, he was informed of this requirement. Although he obtained a CDL instruction permit by the one-year anniversary of his employment, he did not obtain a CDL and, consequently, was terminated.

¶ 6 During cross-examination by Council, Bracy testified that to her knowledge and per "the contract," the Village did not have to train employees for a CDL; rather, it was up to each individual to obtain a CDL. Bracy was not sure whether other Village employees had obtained a CDL by using a Village-owned vehicle. She reiterated that there was nothing in the collective bargaining

agreement indicating that the Village had to train employees who needed to obtain a CDL.

¶ 7 Council testified that he was not aware that he needed a CDL until five months after his hiring date when he obtained a "contract book." He explained that, after completing a three-month probationary period, he received a union contract book which indicated that he needed to obtain a CDL within one year of his date of hire. However, it did not say how to obtain a CDL. Council indicated that "[a]ccording to the union," employees obtained a CDL through training from the Village in a Village-owned vehicle. On December 7, 2010, Council obtained a CDL instruction permit and gave it to the Village. However, he was not able to use a Village-owned vehicle for training purposes. When he asked to use the Village's vehicle, he was told that he was assigned to a "water break crew," and that it was where the Village needed him the most. Although the collective bargaining agreement did not indicate that the Village was required to train employees, Council asserted that historically, the Village had a training program. He asserted that he did not own a commercial truck, and thus, training in a Village-owned truck was the only way to obtain a CDL.

¶ 8 In closing, Council asserted that if he had been allowed to train in a Village-owned truck, he was sure that he would have passed the examination. He also stated that the real reason he was terminated was because he had filed a police report after an altercation with a coworker. He was told by his immediate supervisor that he would be terminated if he pressed charges against this coworker. Two weeks later, Council was informed of his termination. The referee then asked Bracy whether she wished to cross-examine Council regarding these allegations. She declined and characterized them as hearsay. Although Council then argued that the details of the incident appeared in the newspaper, the referee indicated that he could only use information that was properly before him when making a ruling.

¶ 9 Ultimately, the referee found that Council had obtained a CDL instruction permit and made reasonable efforts to take the test in time to meet the requirement to obtain a CDL within one year

of his date of hire. Therefore, he was not disqualified from unemployment benefits under section 601(A) of the Illinois Unemployment Insurance Act (the Act). See 820 ILCS 405/601(A) (West 2010). The Village then appealed to the Board.

¶ 10 On review, the Board noted that Council worked for the Village from January 7, 2010 through January 10, 2011, and was discharged because he did not obtain a CDL. Per the relevant collective bargaining agreement, all employees in the Village's public works department were required to obtain a CDL by the one-year anniversary of being hired. Although this requirement was explained to Council when he was hired, he did not obtain the relevant CDL instruction permit until December 2010, and failed to obtain a CDL by the deadline.

¶ 11 The Board then determined that when an employee fails to obtain or maintain an occupational license required to practice his trade and it was within the employee's sole control to obtain and maintain the licence, the resulting work separation is a voluntary leaving. The Board disagreed with the referee's determination that Council had made a reasonable effort to obtain a CDL because Council's 11-month delay before obtaining a CDL instruction permit prevented him from meeting a deadline of which he was aware. Consequently, the Board found Council ineligible for unemployment benefits pursuant to section 601(A) of the Act in that he left work voluntarily without good cause attributable to his employer.

¶ 12 Council then filed a *pro se* complaint for administrative review in the circuit court. The circuit court subsequently reversed the Board's decision.

¶ 13 Although Council has not filed an appellee's brief, we may consider this appeal under the standards set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128 (1976).

¶ 14 This court reviews the decision of the Board, rather than that of the circuit court. *Sudzus v. Department of Employment Security*, 393 Ill. App. 3d 814, 819 (2009). The Board is the trier of fact in cases evaluating unemployment benefits claims, and its findings of fact are considered *prima facie*

true and correct. *Acevedo v. Department of Employment Security*, 324 Ill. App. 3d 768, 771 (2001). When reviewing the Board's factual findings, this court must determine whether they are against the manifest weight of the evidence, the fact that an opposite conclusion may be reasonable is insufficient grounds to reverse. *Id.* at 771-72. The Board's decision regarding an employee's eligibility for unemployment benefits is reviewed using a manifest weight of the evidence standard. *Grafner v. Department of Employment Security*, 393 Ill. App. 3d 791, 797 (2009).

¶ 15 The question of whether an employee left work for good cause attributable to his employer involves a mixed question of law and fact to which this court applies a "clearly erroneous" standard of review. *Childress v. Department of Employment Security*, 405 Ill. App. 3d 939, 942 (2010). An agency's decision is reversed as clearly erroneous only when a review of the record leaves this court with a definite and firm conviction that a mistake has been made. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 395 (2001).

¶ 16 Pursuant to section 601(A) of the Act, a person is ineligible for unemployment benefits if he voluntarily left work without good cause attributable to the employer. "Good cause" results from circumstances that create real and substantial pressure to terminate employment that would compel a reasonable person, in the same circumstances, to act in the same way. *Childress*, 405 Ill. App. 3d at 943; *Acevedo*, 324 Ill. App. 3d at 772 (good cause justifies an employee leaving "the ranks of the employed"). An employee has good cause to leave a position when, for example, a unilateral change in the terms and conditions of employment renders the job unsuitable. *Childress*, 405 Ill. App. 3d at 943.

¶ 17 Here, the record reveals that Council knew that he was required to obtain a CDL within one year of his hire date, and that he failed to do so in violation of the relevant collective bargaining agreement. Under these circumstances, the Board's determination that Council voluntarily left his job without good cause attributable to the employer is not clearly erroneous. *Id.* at 942-43.

¶ 18 *Hawkins v. Department of Employment Security*, 268 Ill. App. 3d 927 (1994), is instructive.

There, the plaintiff was a bus driver who was terminated for failing to obtain a CDL by a certain date. *Id.* at 929. Despite being informed of the requirement two years before the deadline, plaintiff first took the CDL examination eight days prior to the deadline. *Id.* He failed the examination and was subsequently terminated. *Id.* After the plaintiff was denied unemployment benefits, he requested a hearing. *Id.* At the hearing, he testified that although he had been aware of the CDL requirement for two years, he did not take the test earlier because it was, among other things, difficult and administered at inconvenient locations. *Id.* The referee affirmed the denial of unemployment benefits, finding, in pertinent part, that employees whose positions require annual or periodic renewal of licenses in order to maintain their employment have the responsibility to maintain a valid license. *Id.* at 929-30. Therefore, an employee's failure to maintain such a license which results in a loss of employment is a voluntary leaving attributable to the employee and serves to disqualify him from benefits under section 601(A) of the Act. *Id.* at 929-30. The Board affirmed the decision of the referee. *Id.* at 930.

¶ 19 On appeal, the *Hawkins* court affirmed the Board's denial of unemployment benefits because the plaintiff's failure to obtain the required license was attributable to his own inaction. *Id.* at 931. In other words, as the purpose of the Act is to provide monetary benefits to persons who become involuntarily unemployed, an employee who is discharged based upon his failure to obtain a required license is not eligible for benefits because it was his own inaction that led to his termination, rather than any action attributable to the employer. *Id.* at 930-31.

¶ 20 Here, Council was terminated because he failed to obtain a CDL by the one-year anniversary of his date of employment, in violation of the relevant collective bargaining agreement. As Council was terminated due to his own inaction, rather than any action attributable to the Village, he left his job without good cause attributable to his employer. Therefore, he is ineligible for unemployment insurance benefits. See *id.* This court's review of the record has not left us with the conviction that the Board made a mistake when it determined that Council left work without good cause attributable

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to his employer. See *Childress*, 405 Ill. App. 3d at 942-43. Therefore, because the Board's determination that Council was ineligible for unemployment benefits was not against the manifest weight of the evidence (*Grafner*, 393 Ill. App. 3d at 797), we reverse the decision of the circuit court of Cook County and reinstate the order of the Board.

¶ 21 Reversed.