

FOURTH DIVISION
May 14, 2015

No. 1-14-1088

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

FRANK L. JENDO,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 97 CR
)	
ILLINOIS DEPARTMENT OF EMPLOYMENT)	
SECURITY; DIRECTOR, ILLINOIS DEPARTMENT)	
OF EMPLOYMENT SECURITY; BOARD OF REVIEW,)	No. 13 L 50772
)	
Defendants-Appellants,)	
)	
and)	
)	
COSTCO WHOLESALE CORPORATION)	
c/o UC EXPRESS,)	Honorable
)	Robert Lopez Cepero,
Defendant.)	Judge Presiding.

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Howse concurred in the judgment.

O R D E R

¶ 1 *Held:* Circuit court's reversal of the Board of Review's decision finding plaintiff ineligible for unemployment benefits because he voluntarily left his employment without good cause attributable to his employer, reversed; Board's decision reinstated.

¶ 2 Plaintiff Frank Jendo filed a complaint for administrative review seeking reversal of the decision of the Board of Review of the Illinois Department of Employment Security (Board) that he was ineligible to receive unemployment benefits under the Illinois Unemployment Insurance Act (Act) 820 ILCS 405/100 *et seq* (West 2012) because he voluntarily left his employment without good cause attributable to his employer. The circuit court of Cook County found the Board's ruling clearly erroneous and reversed its decision.

¶ 3 The Board now appeals that ruling claiming that its administrative decision was correct and that the court erred in reversing it. Plaintiff has not filed an appellee's brief; however, we may address the merits of the appeal filed by the Board. *Greenlaw v. Department of Employment Security*, 299 Ill. App. 3d 446, 447 (1998), citing *First Capital Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 4 The record shows that plaintiff was employed by Costco Wholesale Corporation (Costco) from October 2010 to December 2012 as a vault clerk and an auditor. The record also indicates that he had prior managerial experience and aspired to a supervisory position. After failing to be promoted, he resigned on December 1, 2012, and applied for unemployment benefits under Section 601(A) of the Act (820 ILCS 405/601(A) (West 2012)).

¶ 5 Plaintiff was then interviewed by a claims adjudicator and asserted that his unemployment was the result of a "constructive discharge" because of the favoritism showed by his manager, Tony Rea, in the promotion process. He stated that other employees, who were less qualified than himself were promoted to supervisor positions, and that he had even offered to transfer to another location to facilitate a promotion. Plaintiff also submitted a copy of his letter of resignation and the email he sent to Rea, where he expressed his displeasure at being passed

over for the supervisory positions. In both documents, plaintiff asserted that two of his applications had been denied by a manager named Abdullah, who had also wrongly accused him of stealing \$20 that was eventually returned to the store.

¶ 6 The claims adjudicator determined that plaintiff voluntarily left Costco because he was passed over for promotions. The adjudicator also found that plaintiff's leaving was not attributable to his employer under the Act because he did not exhaust reasonable alternatives in an effort to correct the situation prior to leaving, and that he was ineligible for unemployment benefits.

¶ 7 Following the denial of his request for reconsideration of that decision, plaintiff filed an administrative appeal. A telephone hearing was scheduled before a department referee, and in that proceeding, plaintiff reiterated many of the allegations he made in his previous interview, but added that he believed the reason he was not promoted was because Abdullah, who was Muslim, did not like him because he was Christian. Plaintiff testified that Abdullah would comment on his religion and refer to his cross. Plaintiff also testified that he made verbal complaints to Rea about Abdullah's behavior, and filed a human rights complaint with the Illinois Human Rights Commission against him. When asked by the referee, he admitted that he did not know the religions of any of the other employees who had been promoted to supervisor.

¶ 8 Rea testified on behalf of Costco that he never promised plaintiff a promotion. He stated that two non-seasonal supervisor positions were filled by employees with ten and eight years' experience, respectively, and the temporary, seasonal supervisor positions were filled just before plaintiff resigned. He testified that plaintiff would have been considered for one of the temporary, seasonal supervisor positions that started in December, but plaintiff had previously

expressed his desire to leave Costco if he were not promoted. Thus, when plaintiff turned in his letter of resignation, Rea did not wish to talk him out of leaving again. Rea also disputed plaintiff's claim that he verbally complained about religious discrimination by Abdullah, and stated that plaintiff never filed a formal complaint. In any event, he asserted that he would never make a promotion decision based on a protected status. Finally, he added that plaintiff left Costco in good standing and was eligible to be rehired.

¶ 9 The referee found that plaintiff was ineligible for unemployment benefits under section 601(A) of the Act because he voluntarily left his employment without good cause attributable to his employer. The referee determined that there was no evidence in the record to support the conclusion that he was not promoted because of his religion, but that employees with considerably more experience were promoted instead. The referee also found that plaintiff was never promised a promotion to a specific position, but was only offered an opportunity to be considered for a promotion at some future time. The referee thus concluded that plaintiff voluntarily left his job because he "was just too impatient." Plaintiff filed an administrative appeal to the Board, which affirmed the referee's decision, finding that it was supported by the record and the law.

¶ 10 Plaintiff then filed a complaint for administrative review of the Board's decision in the circuit court of Cook County. Plaintiff appeared *pro se* and argument was presented. The court entered a written opinion reversing the Board's decision finding that it had failed to support its conclusion that plaintiff voluntarily left his employment because he was "too impatient" with Costco's promotion process. In finding the Board's factual determinations to be against the manifest weight of the evidence, the court noted that plaintiff did everything that was required of

him to become a supervisor, but Rea continued to promote other employees instead. The court also found a significant basis for plaintiff's claim of religious discrimination based on his testimony regarding Abdullah's behavior toward him. This appeal followed.

¶ 11 In an administrative proceeding, our review is limited to the propriety of the Board's decision, and not that of the circuit court. *Odie v. Department of Employment Security*, 377 Ill. App. 3d 710, 713 (2007). The factual findings of the administrative agency are presumed to be true and correct, and we will not reweigh the evidence or substitute our judgment for that of the administrative agency. *Lojek v. Department of Employment Security*, 2013 IL App (1st) 120679 ¶ 31 [citations.].

¶ 12 The question of whether an individual left his employment without good cause attributable to the employer is a mixed question of fact and law, which we examine under the "clearly erroneous" standard of review. *Childress v. Department of Employment Security*, 405 Ill. App. 3d 939, 942 (2010). The reviewing court will deem the Board's decision clearly erroneous only if, after reviewing the record, the court is left with a definite and firm conviction that a mistake has been made. *Sudzus v. Department of Employment Security*, 393 Ill. App. 3d 814, 820 (2009). Although the Act is to be liberally construed to favor the awarding of benefits (*Acevedo v. Department of Employment Security*, 324 Ill. App. 3d 768, 771 (2001)), the receipt of benefits is conditioned on eligibility under the Act, and plaintiff has the burden of proving eligibility (*Childress*, 405 Ill. App. 3d at 943).

¶ 13 In this case, the Board found that plaintiff voluntarily left his employment without good cause attributable to the employer and was therefore ineligible for unemployment benefits. 820 ILCS 405/601(A) (West 2012). "Good cause" exists where there is a substantial change in the

circumstances at work such that a reasonable person would feel compelled to end his employment. 56 Ill. Admin. Code § 2840.101(b). One example is a unilateral change in the terms and conditions of employment that renders the job unsuitable. *Childress*, 405 Ill. App. 3d at 943. However, an employee's dissatisfaction with work hours and wages generally does not constitute good cause for leaving employment. *Lojek*, 2013 IL App (1st) 120679 at ¶ 37. Moreover, the employee must make a reasonable effort to resolve the cause for leaving when possible. *Id.* at ¶ 36.

¶ 14 In finding plaintiff ineligible for benefits, the Board adopted the findings of the referee who determined that plaintiff was not promoted because employees who were more experienced received the promotions instead, and further, that there was no evidence in the record to support plaintiff's claim of religious discrimination. In addition, the referee determined that plaintiff had not been promised a promotion to a specific position, but was only offered the opportunity to be considered for a promotion at some point in the future.

¶ 15 We defer to the Board's factual findings unless they are against the manifest weight of the evidence (*Manning v. Department of Employment Security*, 365 Ill. App. 3d 553, 556 (2006)), *i.e.*, the opposite conclusion is clearly evident (*City of Belvidere v. Illinois State Labor Regulations Board*, 181 Ill. 2d 191, 205 (1998)). Here, there is sufficient evidence in the record to support the Board's finding that plaintiff resigned because he was "too impatient" with Costco's promotion process. Rea testified that plaintiff had previously expressed his intention to leave Costco if he was not promoted, and did so when more experienced employees were given the available supervisory positions. There is no evidence in the record to suggest that Rea or anyone else promised plaintiff that he would be promoted to a specific position, or before other

employees who had been employed at Costco longer. Accordingly, we cannot say that the Board's factual findings are against the manifest weight of the evidence.

¶ 16 The same is true with regard to plaintiff's claim of religious discrimination. This contention arises from plaintiff's vague remarks during the telephone hearing that Abdullah would comment on his religion and refer to his cross. Plaintiff testified that he complained of Abdullah's behavior, but Rea denied that he did, or that any promotion decisions would be made based on a protected class. Furthermore, neither Rea, nor plaintiff, were able to indicate the religion of any of the other employees who had been promoted to supervisor positions.

¶ 17 Plaintiff thus failed to show "good cause" as defined in the Act, attributable to Costco that would justify his resignation and establish his eligibility for benefits. *Lojek*, 2013 IL App (1st) 120679 ¶ 40.

¶ 18 Accordingly, we reverse the order of the circuit court of Cook County and reinstate the decision of the Board finding plaintiff ineligible for benefits under the Act. *Lojek*, 2013 IL App (1st) 120679 at ¶ 48.

¶ 19 Reversed.