

No. 1-15-3088

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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ALI M. SHILWA,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	
	)	
ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY;	)	No. 15 L 50527
DIRECTOR, ILLINOIS DEPARTMENT OF EMPLOYMENT	)	
SECURITY; BOARD OF REVIEW; and DRIVERS	)	
MANAGEMENT, LLC,	)	Honorable
	)	Kay M. Hanlon,
Defendants-Appellees.	)	Judge Presiding.

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JUSTICE HYMAN delivered the judgment of the court.  
Presiding Justice Pierce and Justice Simon concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where employee seeking unemployment benefits did not return to work after a leave of absence and refused to communicate with his manager during leave of absence, the claimant left his employment voluntarily without good cause attributable to his employer, and the denial of unemployment benefits is affirmed.

¶ 2 Plaintiff Ali M. Shilwa appeals *pro se* the order of the circuit court affirming the decision of the Board of Review of the Illinois Department of Employment Security which denied Shilwa unemployment benefits. On appeal, Shilwa seeks reversal of that decision, asserting that he was

fired after his employer denied his request for time off. We agree with Shilwa that his getting a commercial driver's license is indeed an achievement of which he and his family rightly should be proud; however, under the facts presented, we are compelled to agree with the Board that Shilwa voluntarily left his job as a truck driver trainee without good cause attributable to his employer, and hold that the Board's decision denying unemployment insurance benefits was not clearly erroneous.

¶ 3 Background

¶ 4 The following facts are not disputed. Shilwa began paid employment with Drivers Management LLC in Indianapolis, Indiana, as a student truck driver on June 16, 2014. On August 1, 2014, Shilwa requested time off to see his family in Chicago. Drivers Management granted Shilwa 30 days of leave under its personal leave of absence policy. That written policy, which is included in the company's handbook, concludes: "If you do not return from a personal leave within 30 days, the Company will assume that you have quit your job and your records will reflect that you have voluntarily quit."

¶ 5 Shilwa sought unemployment insurance benefits from Drivers Management. The company responded that Shilwa's last day of employment was August 1, 2014, because he did not return from his 30-day leave period, and thus "voluntarily quit for personal reasons."

¶ 6 Thereafter, a claims adjudicator conducted a telephone interview with Shilwa. According to the claims adjudicator's summary, Shilwa stated that after his eight week training, he was told he would get a week off but did not receive that time when requested. Shilwa said he "decided not to return when they expected me to continue working" but acknowledged that he had the option to remain employed. He further claimed Drivers Management failed to honor the terms of its contract regarding his pay and other reimbursements. The claims adjudicator held Shilwa

voluntarily left his employment but with good cause attributable to his employer, and thus, was eligible for unemployment benefits. The adjudicator stated that Shilwa had not been paid a bonus or been compensated for mileage, tuition, or his transportation back to Chicago after the training.

¶ 7 Drivers Management appealed that determination, claiming Shilwa took 30 days off and did not return, which company policy considered a voluntarily termination. As to Shilwa's statements that he was owed money, Drivers Management stated that Shilwa took advances from the company and actually owed the company more than \$4,000.

¶ 8 Next, an Illinois Department of Employment Security referee conducted a telephone hearing. Shilwa testified he had been "laid off" from the company and did not quit. He said that on August 1, he asked for one week off and was told by his manager, Justin, that he had to drive the truck and make a delivery before he could go home. Justin told Shilwa that if Shilwa went home without meeting that requirement, "you never gonna come back and work. And the company doesn't need you." Shilwa also was told he would receive a \$500 bonus for his eight weeks of training, which he did not receive. Shilwa was not contacted by the employer after he left.

¶ 9 Ashley Coleman, a freight assignment coordinator at the employer's Indianapolis terminal, testified that from June 16 to August 1, 2014, Shilwa was a paid driver trainee. On graduating from training on August 1, Shilwa told Coleman he needed to go home to see his family for a week. Coleman explained the leave of absence policy and placed him on leave. When asked if all new drivers got a week off after training, Coleman said they did not, explaining, "A lot of them would want one but they have to get a truck and do their first load. Then they're allowed to go home." Coleman said that new drivers like Shilwa have the option to take a leave of absence but do not receive a \$500 bonus unless they transport a first load of cargo

before taking leave. Coleman said that Shilwa did not contact her or return to work after his absence.

¶ 11 The Department referee ruled against Shilwa on the basis that Shilwa left his employment voluntarily “for personal reasons” and not for good cause attributable to the employer. The referee found Shilwa did not contact his employer about returning to pick up a load of cargo after his leave of absence. The referee also determined that continuing work was available to Shilwa.

¶ 12 Shilwa appealed to the Board, which remanded the matter to the Department with instructions to provide an interpreter. The case was fully reheard by a Department referee with an interpreter. Shilwa testified that his employment with Drivers Management was terminated because he did not want to work until he took a week off to see his family. Shilwa stated that when he went home, “they stopped me from using their app[lication] on the computer” and he claims the company owes him \$850.

¶ 13 Shilwa stated he understood he would get a week off to see his family in Chicago after completing his training but was instead told he would be assigned a truck and must first transport a load. He said he “refused to sign” for a truck because “we didn’t agree on that.” Shilwa stated he would “sign later” when he returned from his time off.

¶ 14 Coleman testified that Shilwa was a paid driver trainee until August 1, 2014, when he asked for a week off. She said Shilwa performed in a satisfactory manner during his training. Coleman explained that when a driver employee takes voluntary leave, the driver pays for his or her bus ticket home but the company pays for the return ticket to Indianapolis. Coleman issued a confirmation number to Shilwa for his return ticket.

¶ 15 Coleman testified that Shilwa told her he would return in one week, and she told him he had 30 days to return to work. Shilwa’s manager tried to contact him on August 19, but Shilwa

hung up the phone. When he did not return from his leave, the company no longer considered Shilwa employed. According to Coleman, had Shilwa attempted to return, he would have been able to do so. As to Shilwa's claim to compensation, Coleman stated the \$500 bonus was "with a stipulation of you taking a truck and returning a [] load," after which Shilwa could receive that money and take a week of vacation.

¶ 16 The Department referee denied Shilwa unemployment benefits because he left his job voluntarily without good cause attributable to the employer. The referee concluded that Shilwa "abandoned his job without notice" and without voicing any complaint to Coleman other than his desire to take time off.

¶ 17 The Board affirmed the referee's determination. The Board found Shilwa did not contact his employer again and denied that anyone from the company contacted him. The Board further found Shilwa requested a leave that Coleman approved and that a manager called Shilwa on August 19, 2014, and Shilwa hung up the phone. The Board concluded that Shilwa likely misunderstood the conditions of the bonus but both his manager, Justin, and Coleman had told him that to receive the bonus, he had to transport a load before going home. The Board determined that Shilwa was "obviously upset about not receiving the bonus" but that he "chose to leave the job rather than discussing it further."

¶ 18 Shilwa then filed a complaint for administrative review in the circuit court, which affirmed the Board's decision. Shilwa now appeals that ruling.

¶ 19 Analysis

¶ 20 Initially, we note that Shilwa's *pro se* brief consists entirely of an extended recitation of facts and lacks argument based on the law. Courts hold *pro se* litigants to the same pleading and practice standards as a litigant represented by counsel, (*In re Estate of Pellico*, 394 Ill. App. 3d

1052, 1067 (2009), and so the fact-based nature of Shilwa's brief, and failure to cite any supporting legal authority, violates Illinois Supreme Court Rules 341(h)(6) and (h)(7) (eff. Jan. 1, 2016). These rule violations, however, do not hinder our review, and we proceed to consider his appeal.

¶ 21 Shilwa contends the denial of unemployment benefits should be reversed because he was "fired for refusing to work without a contract." Elsewhere in his brief, Shilwa asserts he was told that after completing eight weeks of training, he would receive a bonus and be allowed to take the following week off "as stated in the contract."

¶ 22 Shilwa contends his manager refused to let him travel home and told him he would have to deliver a load or be fired, and he responded he was going to take the week off and then was fired by Justin. Shilwa further claims he was not given the opportunity to "correctly explain and defend my side of the story" and refers to his need for an interpreter.

¶ 23 This court reviews the findings of the Board, not of the Department referee or the circuit court. *Abbott Industries, Inc. v. Department of Employment Security*, 2011 IL App (2d) 100610, ¶ 15. Whether an employee left his or her job without good cause attributable to the employer presents a mixed question of law and fact, and the Board's determination of that issue will be reversed only if it is clearly erroneous. *Childress v. Department of Employment Security*, 405 Ill. App. 3d 939, 942 (2010). The clearly erroneous standard is "significantly deferential to an agency's experience in construing and applying the statutes that it administers." *Elementary School District 159 v. Schiller*, 221 Ill. 2d 130, 143 (2006). To find clearly erroneous, the reviewing court, based on the entire record, must have "the definite and firm conviction that a mistake has been committed." (Internal quotation marks omitted.) *Petrovic v. Department of Employment Security*, 2016 IL 118562, ¶ 21, quoting *United States v. United States Gypsum Co.*,

333 U.S. 364, 395 (1948). In addition, the Board retains the responsibility for weighing the evidence, evaluating the credibility of the witnesses, and resolving conflicts in the testimony. This court may reverse the Board's factual findings only where those findings are contrary to the manifest weight of the evidence. *Pesoli v. Department of Employment Security*, 2012 IL App (1st) 111835, ¶ 20, 26.

¶ 24 The Unemployment Insurance Act relieves the economic insecurity and hardship caused by an involuntary loss of employment, and benefits individuals who become unemployed through no fault of their own. 820 IILCS 405/100 (West 2012); *Messer & Stilp, Ltd. v. Department of Employment Security*, 392 Ill. App. 3d 849, 856 (2009). Because receiving unemployment benefits is a conditional right, the claimant has the burden of proving eligibility for the benefits. *Moss v. Department of Employment Security*, 357 Ill. App. 3d 980, 985 (2005).

¶ 25 Under section 601(A), an individual shall be ineligible for unemployment benefits if he or she has left work voluntarily without good cause attributable to the employer. 820 ILCS 405/601(A) (West 2012). "Good cause" to voluntarily leave one's employment "results from circumstances which produce pressure to terminate employment that is both real and substantial, and which would compel a reasonable person under the circumstances to act in the same manner." *Lojek v. Department of Employment Security*, 2013 IL App (1st) 120679, ¶ 36.

¶ 26 When analyzing whether an employee left a position for good cause attributable to the employer, the focus is on the employer's conduct. *Walls v. Department of Employment Security*, 2013 IL App (5th) 130069, ¶ 15. But, the employer need not have been at fault, and it is enough if the employer's act was one cause of the termination. *Grant v. Department of Employment Security*, 200 Ill. App. 3d 732, 735 (1990). Moreover, an employee must make "a reasonable effort to resolve the cause" of the departure "when such effort is possible." *Lojek*, 2013 IL App

(1st) 120679, ¶ 36 (citing 56 Ill. Adm. Code 2840.101(b) (2010)). That factor looks at the employee's actions. *Walls*, 2013 IL App (5th) 130069, ¶ 17.

¶ 27 The Board heard evidence that Drivers Management had a written policy considering failure to return from a period of personal leave to constitute a voluntary termination of employment. The Board further found that two of Shilwa's supervisors informed him that he could not take a week of time off until he delivered his first load of freight. The Board's findings of fact were supported by the manifest weight of the evidence. *Pesoli*, 2012 IL App (1st) 111835, ¶ 20, 26.

¶ 28 The Board did not err in concluding that Shilwa did not qualify for unemployment benefits. Shilwa was unhappy with a company policy. Under that policy, his act of failing to return at the end of his leave constituted a voluntary termination of employment. When faced with the requirement of dropping off one load of cargo before taking his week of vacation, Shilwa stated to the claims adjudicator in his initial interview that he "decided not to return." See *Grant*, 200 Ill. App. 3d at 735 (employee left work voluntarily for reasons unrelated to employer where she did not return to work after her maternity leave and when work was available to her). Although Shilwa stated his disagreement with the "one-load" policy to his managers, he does not dispute that was the applicable policy. Shilwa also does not dispute being told he would be fired if he did not comply with that policy. An employee's dissatisfaction with work regulations does not, in and of itself, constitute good cause to leave that is attributable to the employer for purposes of receiving benefits. *Lojek*, 2013 IL App (1st) 120679, ¶ 37.

¶ 29 Shilwa chose to depart and not return at the end of his scheduled 30-day leave. Shilwa's intent to permanently leave the employ of Drivers Management and not return to the company after 30 days is supported by the fact that he filed for unemployment benefits. Moreover, Shilwa



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made no effort to resolve his departure, having hung up the phone when contacted by a manager. Where an employee has a means to resolve the dispute with his or her employer but chooses not to do so, the Board's decision to deny unemployment benefits is not clearly erroneous. *Walls*, 2013 IL App (5th) 130069, ¶ 15 (denial of benefits affirmed where coal miner quit job week after refusing to go into mine without proper safety equipment; other options were available to miner to resolve safety concerns).

¶ 30 Further, the record indicates Shilwa was provided an interpreter at the April 16, 2015, hearing. This contradicts Shilwa's argument that he was not allowed to present his contentions.

¶ 31 Affirmed.