

No. 1-12-2516

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

DWIGHT PAYNE,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	
)	
THE ILLINOIS DEPARTMENT OF EMPLOYMENT)	No. 12 L 50669
SECURITY; DIRECTOR OF THE ILLINOIS DEPART-)	
MENT OF EMPLOYMENT SECURITY; THE BOARD)	
OF REVIEW; and NORTHWESTERN MEMORIAL)	
HOSPITAL c/o MCHC,)	The Honorable
)	Margaret A. Brennan,
Defendants-Appellees.)	Judge Presiding.

PRESIDING JUSTICE LAVIN delivered the judgment of the court.
Justices Fitzgerald Smith and Epstein concurred in the judgment.

ORDER

¶ 1 *Held:* The finding of the Board of Review that plaintiff was ineligible for unemployment benefits affirmed where he voluntarily left his employment without cause attributable to his employer.

¶ 2 Plaintiff, Dwight Payne, *pro se*, appeals from an order of the circuit court affirming the final administrative decision by defendant, the Board of Review of the Illinois Department of Employment Security (Board), that he voluntarily left his job without good cause attributable to his employer, and was thus ineligible to receive unemployment benefits under section 601A of the Illinois Unemployment Insurance Act (Act) (820 ILCS 405/601A (West 2010)). Plaintiff seeks reversal of that ruling, and reconsideration of his eligibility for unemployment benefits.

¶ 3 The record shows that plaintiff was employed as an operating room assistant at Northwestern Memorial Hospital (employer) from December 15, 1981, until he resigned on November 22, 2011. Plaintiff subsequently filed a claim for unemployment benefits contending that he quit as a result of stress due to newly imposed rotating shifts. He asserted that the rotating shifts violated his employment contract, and that under the circumstances, he had no choice to remain employed.

¶ 4 The employer challenged plaintiff's eligibility for benefits, contending that he voluntarily resigned. In support, the employer submitted plaintiff's resignation letter, in which he stated in pertinent part: "I no longer at this time can give service to the department because of my mother's deteriorating health and responsibilities to her as a caregiver[.]" The employer also submitted a letter from the social worker who evaluated plaintiff after he had complained to his doctor about "back aches and other physical pain." The social worker concluded that plaintiff "has considerable somatic symptoms related to the increased level of stress he is currently experiencing[.]" and stated that he would continue to be "seen for stress to *** increase his coping skills."

¶ 5 On December 10, 2011, a claims adjudicator concluded that plaintiff was eligible for unemployment benefits because he quit for good cause attributable to the employer. The adjudicator found that defendant resigned as a result of debilitating stress caused by the employer's rotating shifts which interfered with his care of his mother.

¶ 6 The employer appealed and on February 6, 2012, a department referee conducted a telephone hearing. Plaintiff testified therein that he left work because he was suffering from health problems due to stress on the job, and because he was responsible for the care of his mother who was in a nursing home. He visited a doctor who told him he was "under a lot of

stress" and advised him to see a psychiatrist or social worker; however, the doctor did not tell him that he should quit his job. Plaintiff provided the social worker's letter in support of his contentions.

¶ 7 Plaintiff further testified that he generally had a consistent schedule, but before his resignation, the employer started scheduling rotating shifts. He explained that when employees would call in on vacation, the employees would get "pulled." There were five men and one woman who were on the schedule, but he claimed that only the men would have do the "covering" and "rotating." He asserted that the employer was required to give four weeks' notice to employees when having a "deviated schedule[.]" but acknowledged that he had been required to work rotating shifts in the past. Plaintiff also testified that the summer prior to his resignation, the employer began scheduling 13 hour shifts. He complained to the union and to the employer, and the employer stopped scheduling those shifts before plaintiff left employment.

¶ 8 The employer presented the testimony of Pringle Jackson, who was the business manager of surgical services. She testified that, if possible, the employer tried to provide a "set *** schedule" for employees, and plaintiff predominately worked shifts Monday through Friday from 7 a.m. to 3 p.m. However, employees were sometimes required to work rotating shifts based on patient care needs. Jackson disagreed with plaintiff's contention that four weeks' notice was required for a schedule deviation, and contended that if the change in scheduling was based on patient care needs, no such notice was required. On November 9, 2011, the employer held a meeting to inform employees that, because an employee had transferred out of the department, they would have to rotate shifts temporarily until the staff shortage was filled. The schedule would become effective November 13, 2011. After the meeting, plaintiff called in sick for several days, and Jackson told plaintiff that if he needed medical leave, he could apply for it. He

put in an application, but quit before the process was finalized.

¶ 9 Mary Christmas, resource coordinator for the employer, testified that the rotation at issue lasted approximately three weeks until the employer was able to hire new staff members to fill the shortage. She also asserted that rotating schedules were not "new" to plaintiff, and that he had previously worked a similar rotation without a problem for over one year.

¶ 10 The referee set aside the adjudicator's determination, finding that the evidence established that the employer's policy allowed for rotating shifts, plaintiff was aware that the employer could dictate such shifts based on patient need, and the shifts were not a substantial change to the hiring agreement. The referee also noted that plaintiff provided documentation from a social worker indicating that he was suffering from stress, but he did not provide evidence from a licensed physician to support his contention that he left due to his responsibilities to care for his mother or his own illness. The referee thus concluded that plaintiff left work voluntarily and without good cause attributable to the employer, and was therefore disqualified for benefits under section 601A of the Act.

¶ 11 Plaintiff filed a notice of appeal to the Board, to which he attached a copy of a doctor's evaluation dated February 28, 2012, and a one-page time detail for the period of November 9, 2011, through November 22, 2011. The Board noted that plaintiff was seeking to add evidence that he had not previously presented without providing an explanation as to why the evidence was unavailable for the previous hearing as required by section 2720.315(b)(1) of the Illinois Administrative Code (eff. Aug. 1, 2009). The Board further observed that the import of the time detail was unclear, and the doctor's evaluation was of little or no relevance because it was generated almost a month after the hearing. The Board then found that the competent credible evidence established that plaintiff left when he and others in his department were told they

would have to rotate shifts temporarily until the staff shortage was filled. Plaintiff was aware that the employer was authorized to establish rotating shifts based on patient need, and therefore, the schedule rotations were not a substantial change to the hiring agreement and did not constitute good cause attributable to the employer under the Act. The Board thus concluded that plaintiff was ineligible for benefits.

¶ 12 Plaintiff subsequently filed a *pro se* complaint for administrative review of the Board's decision. The circuit court affirmed the Board's decision, and plaintiff now challenges the propriety of that judgment on appeal.

¶ 13 As a preliminary matter, defendant contends that plaintiff's brief should be stricken because he failed to comply with the supreme court rules governing appellate briefs. We note that plaintiff's handwritten brief fails to comply in most respects with the form requirements set forth in Illinois Supreme Court Rule 341(a) (eff. July 1, 2008), and that he has failed to articulate an organized and cohesive legal argument with citation to legal authority and to the record (Ill. Sup. Ct. R. 341(h) (eff. July 1, 2008)). Under these circumstances, plaintiff's appeal is subject to dismissal (*Marzano v. Department of Employment Security*, 339 Ill. App. 3d 858, 861 (2003)); however, because the issue is apparent, and we have the benefit of a cogent appellee's brief (*Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 511 (2001)), we may consider the appeal.

¶ 14 That said, our review is limited to the propriety of the decision of the Board, not that of the circuit court. *Sudzus v. Department of Employment Security*, 393 Ill. App. 3d 814, 819 (2009). Here, the Board determined that plaintiff was disqualified from benefits because he did not leave work for reasons which would be considered good cause attributable to the employer.

¶ 15 The question of whether plaintiff voluntarily left work without good cause attributable to

his employer involves a mixed question of law and fact to which we apply the "clearly erroneous" standard of review. *Childress v. Department of Employment Security*, 405 Ill. App. 3d 939, 942 (2010), citing *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 395 (2001). Under this deferential standard, an agency decision may be deemed clearly erroneous only where a review of the record leaves the reviewing court with a definite and firm conviction that a mistake has been made. *AFM Messenger Service Inc.*, 198 Ill. 2d at 395. For the reasons that follow, we do not find this to be such a case.

¶ 16 Receipt of unemployment benefits is conditioned on eligibility under the Act, and the burden of proving eligibility rests with the claimant. *Grigoleit Co. v. Department of Employment Security*, 282 Ill. App. 3d 64, 68 (1996); *Collier v. Department of Employment Security*, 157 Ill. App. 3d 988, 991 (1987). Under section 601(A) of the Act, a former employee is disqualified from receiving unemployment benefits if he left work voluntarily without good cause attributable to his employer. *Childress*, 405 Ill. App. 3d at 943.

¶ 17 In this case, plaintiff claimed that he quit due to stress associated with the rotating schedules and 13 hour shifts, which had a negative impact on his health and ability to care for his mother. The record shows, however, that the employer stopped scheduling 13 hour shifts prior to plaintiff's resignation, that the employer was authorized to implement rotating schedules based on patient care needs, and that, before the rotation at issue, the employer informed the staff that it would be temporary until a staff shortage could be filled. Plaintiff conceded that he had previously been required to work rotating shifts in the course of his employment, and a witness for the employer testified that he had worked rotating shifts for over a year in the past without any problems. Based on this evidence, the Board determined that plaintiff did not establish that he left his employment for good cause attributable to the employer, and was thus ineligible for

benefits.

¶ 18 The evidence before the Board established that plaintiff did not leave his job for good cause attributable to his employer, and thus, he failed to meet his burden of proving his eligibility under the Act. *Childress*, 405 Ill. App. 3d at 944. We therefore conclude that the Board's determination that plaintiff was ineligible for unemployment benefits was not clearly erroneous (*AFM Messenger Service, Inc.*, 198 Ill. 2d at 391), and we affirm the Board's decision to that effect.

¶ 19 Affirmed.