

No. 1-11-1060

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

LARRY BENFORD,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 10 L 51788
)	
ILLINOIS DEPARTMENT OF EMPLOYMENT)	
SECURITY, DIRECTOR OF ILLINOIS DEPARTMENT)	
OF EMPLOYMENT SECURITY, BOARD OF REVIEW,)	
and ADVOCATE HOME CARE PRODUCTS, INC.,)	
c/o UC EXPRESS,)	Honorable
)	Alexander P. White,
Defendants-Appellees.)	Judge Presiding.

JUSTICE STERBA delivered the judgment of the court.
Presiding Justice Lavin and Justice Pucinski concurred in the judgment.

ORDER

¶ 1 *Held:* Where the record shows that plaintiff failed to maintain a valid driver's license required for his job, his work separation constituted a constructive voluntary leaving without good cause attributable to his employer, and the Board of Review's final administrative decision denying him unemployment insurance benefits is affirmed.

¶ 2 *Pro se* plaintiff Larry Benford appeals from an order of the circuit court dismissing his action for administrative review for want of prosecution. Defendant, the Board of Review of the Illinois Department of Employment Security (the Board), found that plaintiff left work voluntarily without good cause attributable to his employer when he failed to maintain a valid

driver's license, which was required for his job as a driver. Consequently, the Board issued a final administrative decision finding plaintiff ineligible for unemployment insurance benefits. On appeal, plaintiff challenges the Board's finding. We affirm.

¶ 3 The record shows that plaintiff was employed as a driver for Advocate Home Care Products (Advocate) from April 4, 2005, until June 21, 2010, when he was terminated because his commercial driver's license (CDL), which was required for his job, was suspended after he was charged with driving under the influence of alcohol (DUI). Plaintiff applied to the Illinois Department of Employment Security (IDES) for unemployment insurance benefits. Advocate protested plaintiff's claim for benefits, stating that plaintiff was discharged for violating its policy regarding expectations of transportation employees because his CDL was suspended due to DUI.

¶ 4 Plaintiff informed IDES claims adjudicator Ralph Almanza that he was discharged because he did not have a valid CDL, which was suspended on June 9, 2010, due to a DUI charge. Plaintiff acknowledged that he was aware of the company's policy that lack of a valid CDL would result in his immediate termination. Plaintiff stated that the policy was published in the employee handbook, and he received a verbal warning for similar conduct in October 2007. Almanza found that plaintiff was discharged for misconduct connected to his work because he violated a known and reasonable company policy. Therefore, plaintiff was ineligible for unemployment insurance benefits.

¶ 5 Plaintiff appealed that decision, stating that his CDL was reinstated on June 24, 2010, and thus, he now possessed a valid license. Plaintiff argued that he needed his unemployment benefits because he was in debt, and offered to provide documentation of the treatment and counseling he received.

¶ 6 At a telephone hearing, Kathleen Fife, vice president of human resources for Advocate, testified that plaintiff was terminated because his job as a driver required him to maintain a valid

CDL, and the suspension of his license violated Advocate's transportation policy. Plaintiff had notified his supervisor, Freddy Newman, that his license was suspended due to DUI. When he was hired, plaintiff was informed that a valid CDL was a requirement for the position.

¶ 7 Plaintiff testified that his license was suspended on June 9, 2010. At that time, plaintiff was employed by Advocate, but had been on medical leave since April 14, 2010. Plaintiff returned to work on June 21, 2010. Plaintiff acknowledged that when he returned to work, he did not have a valid driver's license, and he knew a valid license was required for his job. Plaintiff testified that his license was previously suspended for six months in 2007, but he was not terminated then because he was considered a valuable employee. Based on that incident, plaintiff expected Advocate would retain him again. In addition, Advocate gave him an opportunity to receive treatment, and he believed that after receiving such treatment, he would be retained as an employee.

¶ 8 The appeals hearing referee issued a written decision finding plaintiff disqualified from receiving benefits, not for misconduct, but because he left work voluntarily without good cause attributable to his employer. The referee explained that when an occupational license is within an employee's control to obtain, a work separation that occurs as the result of not obtaining that license is a constructive voluntary leaving, not a discharge from employment. The referee found that Advocate had continuing work available to plaintiff, but plaintiff no longer had a valid driver's license to enable him to drive for Advocate. Consequently, plaintiff constructively left his job for personal reasons not attributable to his employer, and therefore, was not eligible for unemployment benefits.

¶ 9 Plaintiff appealed the referee's decision to the Board, claiming that he had additional documentation from the Secretary of State's office "to support being qualified." Plaintiff asserted that he never signed or received anything in writing stating he was terminated for not having a

valid license. Plaintiff questioned why he was not terminated when his license was previously suspended for six months. He stated that he was currently attending vocational school full time, and had been diagnosed with chronic hepatitis C, hypertension and bi-polar disorder. Plaintiff stated that he had worked his entire life and paid his way, and questioned why he was being denied the much-needed assistance. He further claimed that he was unable to introduce this evidence at the telephone hearing through no fault of his own. Plaintiff attached several documents to his appeal detailing the medical treatment he received for alcohol and cocaine dependence. The Board expressly commended plaintiff's efforts in addressing his personal matters, but found that his personal circumstances did not change the fact that he did not have a valid CDL at the time of separation from his employment. The Board found the referee's decision supported by the record and the law, and affirmed the denial of unemployment benefits. Plaintiff appealed the Board's ruling to the circuit court of Cook County, which dismissed the case for want of prosecution. Plaintiff now appeals.

¶ 10 Initially, we observe that plaintiff's *pro se* brief fails to conform with the requirements stated in Supreme Court Rules 341(h) (eff. July 1, 2008) and 342 (eff. Jan. 1, 2005). Most notably, plaintiff has failed to articulate an organized and cohesive legal argument, and his brief is completely devoid of any citation to legal authority. Based upon plaintiff's noncompliance with these rules, his 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 (see *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 511 (2001)), we choose to entertain the appeal (see *Harvey v. Carponelli*, 117 Ill. App. 3d 448, 451 (1983)).

¶ 11 Plaintiff asks this court to reverse the Board's decision denying him unemployment benefits. He argues that he did not act with deliberate and wilful misconduct, but instead, that he

was sick from alcoholism. Plaintiff claims that after receiving treatment, he was deemed a high risk and targeted for termination. Plaintiff states that he missed his court date in the circuit court because he had "respiratory flu with chronic coughing."

¶ 12 As a threshold matter, we note that plaintiff has attached notices from the Secretary of State's office and letters regarding his approval for disability to his appellate brief that are not in the record on appeal. It is well established that our review is confined to the issues, arguments and evidence that were presented before the Board. *Texaco-Cities Service Pipeline Co. v. McGaw*, 182 Ill. 2d 262, 278-79 (1998). Consequently, such attachments are not properly before this court and cannot be used to supplement the record. *Revolution Portfolio, LLC v. Beals*, 341 Ill. App. 3d 1021, 1024 (2003). We, therefore, give no consideration to this documentation.

¶ 13 Pursuant to section 601(A) of the Unemployment Insurance Act (820 ILCS 405/601(A) (West 2010)), a person who leaves his job voluntarily and without good cause attributable to his employer is not eligible for unemployment insurance benefits. *Nykaza v. Department of Employment Security*, 364 Ill. App. 3d 624, 625 (2006). Here, plaintiff has acknowledged that he knew a valid CDL was required for his job as a driver, and his license was suspended when he was charged with DUI. Plaintiff further acknowledged that he was aware that loss of his CDL was a violation of Advocate's policy, and that such violation could result in the termination of his employment. The Board agreed with the referee's factual findings that Advocate had work available for plaintiff, and that plaintiff's failure to maintain a valid CDL constituted a constructive voluntary leaving, rather than a discharge from his employment. Considering the Board's findings as *prima facie* true and correct (*Horton v. Department of Employment Security*, 335 Ill. App. 3d 537, 540 (2002)), we find that the Board's determination that plaintiff was ineligible for unemployment benefits was not clearly erroneous (see *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 391 (2001)).

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¶ 14 For these reasons, we affirm the final administrative decision of the Board of Review.

¶ 15 Affirmed.