FIRST DIVISION
DATE June 25, 2012

No. 1-11-1844

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

JOSE M. SORIANO,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	
	)	No. 11 L 50201
ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY;	)	
DIRECTOR ILLINOIS DEPARTMENT OF EMPLOYMENT	)	
SECURITY; BOARD OF REVIEW; and PANHANDLERS,	)	
INC., THE ORIGINAL PANCAKE HOUSE,	)	Honorable
	)	Elmer James Tolmaire, III,
Defendants-Appellees.	)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Justices KARNEZIS and ROCHFORD concurred in the judgment.

O R D E R

¶ 1 *Held*: Where plaintiff voluntarily resigned without good cause attributable to the employer and was disqualified from receiving unemployment benefits, the circuit court's judgment was affirmed.

¶ 2 Plaintiff Jose Soriano appeals *pro se* from the circuit court's order that affirmed the decision of the Board of Review of the Illinois Department of Employment Security (Board), finding that he voluntarily left work and was thus ineligible to receive unemployment benefits

under section 601A of the Illinois Unemployment Insurance Act (Act). 820 ILCS 405/601A (West 2010). On appeal, plaintiff contends that he did not voluntarily leave work, but was fired after returning from vacation. We affirm.

¶ 3 The record shows that plaintiff worked as a waiter from February 2, 2005, to July 18, 2010, for Panhandlers, Inc. d/b/a The Original Pancake House, which was located at 106 South Northwest Highway in Park Ridge. After reporting to work on July 18, 2010, plaintiff did not show up for work again until four to five weeks later. Upon his return, plaintiff was told that he no longer had a position with Panhandlers. Plaintiff applied for unemployment benefits with the Department, and the employer objected claiming that he left the company and went to Mexico. On October 2, 2010, a claims adjudicator found plaintiff ineligible for benefits from August 29, 2010, through September 11, 2010. The claims adjudicator specifically held that plaintiff left his employment for personal reasons, and because Panhandlers did not have the ability to control such conditions, plaintiff left work voluntarily without good cause. Plaintiff applied for reconsideration of the claims adjudicator's determination, but the decision was affirmed.

¶ 4 Plaintiff appealed, and on November 5, 2010, a telephone hearing was conducted by a Department referee. At this hearing, Dale Eisenberg, the owner/operator of the restaurant in question, testified that plaintiff worked as a waiter from February 2005 to July 18, 2010. After working on July 18, plaintiff stopped coming to work and Eisenberg did not hear from him again until about five weeks later. Eisenberg testified that had plaintiff continued to report to work after July 18, he would have continued his employment with Panhandlers. According to Eisenberg, if employees cannot report to work, it is their responsibility to contact the store and try to find co-workers to take their shifts. Eisenberg had no policies for vacation or sick time, and if employees leave without their shifts being covered, there will not be a position for them at the restaurant.

¶ 5 Plaintiff testified that he told Eisenberg he was going on vacation and that he would be back to work in three to four weeks. Eisenberg told him that employees cannot take that much time off of work and expect to continue their employment at Panhandlers. After working on July 18, plaintiff went to visit his family in Mexico. While he was in Mexico, plaintiff called Panhandlers and stated that he would not be back on his return date because he was being treated for a mouth infection. Plaintiff stayed in Mexico for about four to five weeks, and when he returned to work, he was informed that he was no longer an employee because he was late getting back to work. He called Eisenberg, but never received a call in return.

¶ 6 The referee found that although plaintiff may have had good cause to leave his job to go to Mexico for vacation, this cause was not attributable to the employer. Therefore, the referee held that plaintiff was not eligible for unemployment benefits under Section 601A of the Act.

¶ 7 Plaintiff appealed the referee's decision to the Board, which found that the referee's decision was supported by the record and the law. The Board incorporated the referee's decision as part of its decision and affirmed the denial of plaintiff's benefits. Plaintiff filed a complaint for administrative review of the Board's decision in the circuit court. On May 24, 2011, the circuit court affirmed the Board's decision. This appeal follows.

¶ 8 We initially note that plaintiff's *pro se* brief clearly fails to comply with Supreme Court Rule 341(h) (eff. July 1, 2008), which governs appellate briefs, and that such failure may be cause for dismissal. *Roberts v. Dow Chemical Co.*, 244 Ill. App. 3d 253, 256 (1993). His two-page brief only recites his account of the circumstances and considers it unfair. Plaintiff's *pro se* status does not relieve him of the duty to comply with these rules. *First Illinois Bank and Trust v. Galuska*, 255 Ill. App. 3d 86, 94 (1993). Plaintiff's failure to comply with Rule 341(h) aside, the Board's decision was proper.

¶ 9 Under the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2010), 820 ILCS 405/1100 (West 2010)), we review the final decision of the administrative agency and not the decision of the circuit court. *Village Discount Outlet v. Department of Employment Security*, 384 Ill. App. 3d 522, 524-25 (2008). The applicable standard of review, which determines the deference that will be given to the agency's decision, depends upon whether the question presented is one of fact, law, or a mixed question of both fact and law. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 390 (2001).

¶ 10 In this case, the Board was called upon to determine whether the circumstances surrounding plaintiff's departure, as set forth in the record, supported the conclusion that he was disqualified from unemployment benefits pursuant to section 601A of the Act. Here, because plaintiff is challenging the Board's factual finding that he left his job voluntarily, we review the Board's decision to determine if it was against the manifest weight of the evidence. See *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 210 (2008) (stating that the Board's findings of fact are governed by the manifest weight of the evidence standard). An agency's decision may be deemed against the manifest weight of the evidence only when an opposite conclusion is clearly evident from a review of the record. *Cinkus*, 228 Ill. 2d at 210. For the reasons which follow, we find that the agency's decision in this case was not against the manifest weight of the evidence.

¶ 11 Section 601A of the Act provides in relevant part:

> "An individual shall be ineligible for benefits for the week in which he or she has left work voluntarily without good cause attributable to the employing unit ***." 820 ILCS 405/601A (West 2010).

Whether good cause is attributable to the employer focuses on the conduct of the employer (*Grant v. Board of Review*, 200 Ill. App. 3d 732, 734 (1990)), and a cause is attributable to the employer if it is produced or created by the employer's actions or inactions (*Jaime v. Director, Department of Employment Security*, 301 Ill. App. 3d 930, 936 (1998)).

¶ 12 At the hearing, the evidence showed that after working on July 18, 2010, plaintiff stopped coming to work and went to Mexico for four to five weeks. Eisenberg specifically testified that he had no policies for vacation or sick time, and if employees left without their shifts being covered, they would be fired. Eisenberg further testified that had plaintiff not left for vacation, he would have remained employed. Plaintiff's testimony was consistent with Eisenberg's statements regarding the vacation policy at the restaurant. Plaintiff specifically testified that he told Eisenberg he was going on vacation for three to four weeks, Eisenberg responded that employees cannot take that much time off of work and expect to continue their employment, and, when plaintiff returned from his vacation, he was informed that he was no longer on the work schedule. The record is thus clear that plaintiff voluntarily left work without good cause attributable to the employer.

¶ 13 Nevertheless, in his brief, plaintiff describes the working conditions at Panhandlers as stressful. He specifically states that he had to be at the restaurant by 6 a.m., the employer had strict requirements for how he should perform his job, the employees were afraid of the owner, he was not allowed to speak Spanish, and the employer denied his previous request for vacation time. Plaintiff further claimed that the stress from his job caused him to need heart surgery. Despite these complaints about his job, plaintiff does not claim that he left work for these reasons. Instead, plaintiff asserted that he left work because he wanted to see his family in Mexico, which is not a cause attributable to his employer. See *Grant*, 200 Ill. App. 3d at 735 (finding that the plaintiff was ineligible for benefits under Section 601A of the Act where she left

work voluntarily for personal reasons unrelated to her employer). Moreover, plaintiff's claim that he was unable to return to work as expected due to a gum infection is immaterial where Eisenberg told him that if he took three to four weeks of vacation, he would not have a job waiting for him upon his return. We therefore find that the Board's determination that plaintiff voluntarily left his employment without good cause attributable to Panhandlers was not against the manifest weight of the evidence.

¶ 14 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 15 Affirmed.