

No. 1-12-3401

**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

---

EDWARD WHITE,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County, Illinois,
	)	County Department, Law
	)	Division
v.	)	
	)	
ILLINOIS DEPARTMENT OF EMPLOYMENT	)	No. 12 L 50904
SECURITY, DIRECTOR OF THE ILLINOIS	)	
DEPARTMENT OF EMPLOYMENT SECURITY, and	)	
BOARD OF REVIEW,	)	Honorable
Defendants-Appellees.	)	Daniel T. Gillespie, Judge Presiding.

---

JUSTICE REYES delivered the judgment of the court.  
Presiding Justice Rochford and Justice Lampkin concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The denial of unemployment insurance benefits to plaintiff is affirmed, as plaintiff left his employment voluntarily without good cause attributable to his employer and plaintiff was not denied due process of law.
- ¶ 2 Plaintiff, Edward White (White), brings this action *pro se* for review of the order of the

circuit court affirming the decision of the Board of Review (Board) of the Illinois Department of Employment Security (IDES), finding him ineligible for unemployment insurance benefits under section 601(A) of the Illinois Unemployment Insurance Act (Act) (820 ILCS 405/601(A) (West 2010)). White was an IDES employee. The Board affirmed the IDES referee's recommendation, concluding there was insufficient evidence to establish White left work with good cause attributable to IDES. The Board noted White had resigned voluntarily and he could have continued to work had he not resigned. The circuit court affirmed the Board's decision, finding it not clearly erroneous. On appeal, White contends he established good cause to support his eligibility for unemployment insurance benefits, and that substantial errors occurred in the administrative proceeding denying him due process. For the following reasons, we affirm.

¶ 3

#### BACKGROUND

¶ 4 On June 28, 2012, White filed a *pro se* complaint for administrative review of the Board's decision denying his claim for unemployment insurance benefits. White alleged the Board erred in finding there was insufficient evidence to establish that he left work with good cause attributable to the employer, and denied him due process in the administrative proceeding.

¶ 5

#### A. Underlying Facts Regarding White's Charges

¶ 6 On December 18, 2008, White began working for IDES as an intermittent employment security program representative. On December 15, 2009, White filed a grievance with the Illinois Department of Central Management Services (CMS) against IDES in which he complained he had been passed over for a promotion based on discrimination of his age, gender, and race.<sup>1</sup> White's last day of work was on March 17, 2011, when he was shot in the leg outside of his workplace while on a break. After receiving medical leave for his injury, White did not return to work.

---

<sup>1</sup> The record does not reveal what resulted from the grievance.

¶ 7 Thereafter, White filed a claim for workers' compensation benefits for his injuries. On March 22, 2011, IDES forwarded White a general information packet on applying for disability leave. In a letter dated April 22, 2011, IDES noted White's absences from work since March 17, 2011. The letter further indicated White had provided a doctor's note confirming his need to remain on medical leave only until April 7, 2011, and thus, his absences as of April 8, 2011, were considered unauthorized, subjecting him to disciplinary action. The letter advised that if White's continued absences were due to a medical problem, he was required to submit a physician's statement to confirm his condition.

¶ 8 In a follow-up letter dated May 4, 2011, IDES noted White had still not provided any documentation explaining his absences as of April 8, 2011, subjecting him to disciplinary action. The letter refers to a phone conversation between IDES and White on April 26, 2011, but the record does not reveal what transpired in the conversation. In another follow-up letter dated May 18, 2011, IDES notified White that a predisciplinary meeting had been set for May 25, 2011, due to his unauthorized absences. The record does not reveal what transpired at that meeting, or whether it took place. In a following letter dated June 7, 2011, IDES stated it had received a document from the Department of Veterans Affairs on May 19, 2011, advising a medical diagnosis revealed White could not return to his job. The letter further indicated, however, that IDES still required verification from a physician to legally justify placing White on disability leave.

¶ 9 In a letter dated June 9, 2011, the Risk Management Division of CMS notified White that his workers' compensation claim had been denied, as White's injuries did not arise out of the course or scope of his employment. In a letter dated June 21, 2011, IDES informed White his workers' compensation claim had been denied.

¶ 10 On July 5, 2011, IDES received a physician's statement verifying White's medical condition. In a letter dated July 11, 2011, IDES authorized White's absences from March 18, 2011, through July 27, 2011. In a memorandum dated July 12, 2011, IDES requested White disregard the letter dated June 21, 2011, informing him of the denial of his workers' compensation claim, as it was sent in error.

¶ 11 On July 20, 2011, White submitted a letter of resignation, generally alleging ongoing acts of discrimination and harassment. White stated he was forced to resign "as it relates to the unconscionable position the agency has taken after [he was] shot while at work." In an attached affidavit, White alleged IDES intended to mislead him into accepting other forms of benefits and, thus, abandon his workers' compensation claim, by not informing him when his claim was denied. White asserted IDES's request for him to disregard the letter dated June 21, 2011, which informed him that his workers' compensation claim had been denied, demonstrated IDES's intent.

¶ 12 On July 24, 2011, White filed a claim for unemployment insurance benefits with IDES, in which he indicated he voluntarily left his job. After an IDES claims adjudicator conducted a telephone interview with White, IDES denied White's claim on August 11, 2011, noting White had voluntarily resigned.

¶ 13 First Hearing

¶ 14 White requested reconsideration of the IDES claims adjudicator's determination, and on September 9, 2011, an IDES referee conducted a telephone hearing. White requested two witnesses be subpoenaed to testify regarding the shooting and the alleged discrimination. The IDES referee stated she "did not have any jurisdiction to subpoena" the witnesses requested by White. The IDES referee further stated that testimony about the shooting was irrelevant to

White's unemployment insurance benefits claim, and White could testify about the alleged incidents of harassment and discrimination himself.

¶ 15 On September 21, 2011, the IDES referee upheld IDES's denial of unemployment insurance benefits because White had left his job voluntarily without good cause attributable to IDES. White appealed the IDES referee's decision to the Board. On January 25, 2012, the Board found the IDES referee had erred in concluding she lacked jurisdiction to issue subpoenas. The Board remanded the matter to another IDES referee for a new hearing, limiting consideration to evidence presented only at the second hearing.

¶ 16 Second Hearing

¶ 17 On February 23, 2012, a second telephone hearing was held. A new IDES referee questioned White as to each of his requests to subpoena 14 IDES employees to testify. After consideration of White's arguments, the IDES referee made determinations that the testimony of an alleged witness to the shooting would not support White's unemployment insurance benefits claim. The IDES referee also noted the potential testimony of five of the IDES employees were cumulative. The IDES referee reasoned the testimony from these five witnesses would only have established a fact IDES had already admitted at this hearing, i.e., that the promotion White unsuccessfully applied for did not require Spanish speaking ability. The IDES referee also denied a subpoena for an employee for his alleged knowledge that White had unsuccessfully sought assistance from the union on several occasions. The IDES referee denied this request because the employee's testimony would have been irrelevant as the union steward, and not IDES or any IDES employee, had denied union assistance to White. The IDES referee denied all but one of the remaining requests, that for Judy Garcia (Garcia) who testified at this hearing, as sufficient detail of the potential testimonies was lacking.

¶ 18 White testified he “voluntarily left [his] position” and gave one week’s notice to the office manager. White stated he submitted a resignation letter indicating he was leaving his job due to continued discrimination and harassment. White maintained that the discrimination and harassment included: (1) IDES harassing him to sign documents for disability leave applications and threatening him with disciplinary action because of his workers’ compensation filing; (2) denial of his workers’ compensation claim without notice; (3) the premature letter from IDES informing him his workers’ compensation claim had been denied, and another letter instructing him to disregard the first letter as it had been sent by mistake; (4) the promotion he did not receive; and (5) the program manager for unemployment programs requiring him to keep special records when he sought overtime. White acknowledged he could have returned to his job had he not resigned.

¶ 19 Three witnesses testified regarding White’s discrimination claims. Joyce Barr (Barr), an IDES human resources employee, testified she forwarded White information on how to file a workers’ compensation claim in March 2011 at his request. Barr testified CMS, and not IDES, considered workers’ compensation requests. Barr stated White’s workers’ compensation claim was denied and the denial letter was sent “prematurely,” requiring a second letter asking White to disregard the initial mailing.

¶ 20 Garcia, an IDES human resources employee, testified she was in charge of recruitment and selection for IDES and filled employment vacancies. Garcia further testified the promotion White sought went to a candidate with greater seniority. Garcia testified that under a collective bargaining agreement, when fewer than three “A grade” applicants sought a position, a candidate in the “B grade” with greater seniority would get the job. As White had been the only “A grade” applicant for the job, it was awarded to a “B grade” worker with greater seniority.

¶ 21 Rochelle Bedford (Bedford), the program manager over unemployment programs at IDES, testified she never ordered White to keep any special records when he worked overtime.

¶ 22 The letters including, White's resignation letter dated July 20, 2011, IDES's letter dated June 21, 2011, informing White that his workers' compensation claim was denied, and IDES's second letter dated July 12, 2011, asking White to disregard the denial letter, were admitted into evidence.

¶ 23 B. Decisions of the Referee and the Board

¶ 24 On February 28, 2012, the IDES referee affirmed the IDES claims adjudicator's determination and concluded White was ineligible for unemployment insurance benefits under section 601(A) of the Act because he voluntarily left his position for personal reasons. The IDES referee found White "failed to offer competent and compelling evidence in order to show [IDES] discriminated against and harassed him." On March 9, 2012, White appealed to the Board.

¶ 25 On May 31, 2012, the Board affirmed the IDES referee's determination. The Board stated the evidence was insufficient to establish White left work with good cause attributable to IDES. The Board noted White had resigned voluntarily and "[c]ontinuing work was still available" had he not resigned.

¶ 26 On June 28, 2012, White filed his *pro se* complaint for administrative review of the Board's decision in the circuit court, naming IDES, its director, and the Board as defendants. The circuit court issued an order, affirming the Board's decision, finding it not clearly erroneous. On October 31, 2012, the circuit court denied White's motion for reconsideration.

¶ 27 On November 20, 2012, White filed this appeal, pursuant to Illinois Supreme Court Rule 301.

¶ 28

## ANALYSIS

¶ 29 Initially, we note that White's *pro se* brief violates Illinois Supreme Court Rule 341(h)(6), as the statement of facts contains statements that are not accurately and fairly presented without argument or comment. Ill. S. Ct. R. 341(h)(6) (eff. Feb. 6, 2013).

Additionally, White raised new issues in his reply brief in violation of Illinois Supreme Court Rule 341(h)(7). Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). When violations of supreme court rules hinder or preclude review, we will strike a brief. *Department of Central Management Services v. Illinois Labor Relations Board*, 2011 IL App (4th) 090966, ¶ 16. We find, however, that White's violations of the Illinois Supreme Court Rules do not hinder our review and, therefore, we will consider the issues he raises on appeal.

¶ 30 In reviewing a decision by an administrative agency, we must review the final decision of that agency. *Abbott Industries, Inc. v. Department of Employment Security*, 2011 IL App (2d) 100610, ¶ 15 (2011). Thus, we review the decision by the Board, which made IDES's final determination regarding White's claim, and not the decision of the IDES referee or the circuit court. *Sudzus v. Department of Employment Security*, 393 Ill. App. 3d 814, 819 (2009).

¶ 31 When reviewing administrative agency decisions, we apply differing standards of review depending on the type of issue for which review is sought. *Abbott Industries, Inc.*, 2011 IL App (2d) 100610, ¶ 15. When we review factual findings of the board of review, we deem those findings *prima facie* correct and will reverse only if they are against the manifest weight of the evidence. *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 205 (1998). The weight of the evidence and credibility of the witnesses is within the province of the board of review. *Jackson v. Department of Labor, Board of Review*, 168 Ill. App. 3d 494, 499 (1988). Where, on the other hand, the issue is the correctness of the agency's conclusions of law, our

review is *de novo*. *City of Belvidere*, 181 Ill. 2d at 205. Finally, where the determination is a mixed question of fact and law, we apply the “clearly erroneous” standard. *Abbott Industries, Inc.*, 2011 IL App (2d) 100610, ¶ 15. A clearly erroneous standard is “significantly deferential” to an agency’s decision. *Elementary School District 159 v. Schiller*, 221 Ill. 2d 130, 143 (2006). An agency’s decision is reversed only if the reviewing court definitely and firmly believes that a mistake has occurred based on the entire record. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 395 (2001).

¶ 32 I. Good Cause for Leaving Employment

¶ 33 On appeal, White contends he presented sufficient grounds for discrimination and harassment by IDES, to establish good cause attributable to IDES for his voluntary resignation under section 601(A) of the Act. 820 ILCS 405/601(A) (West 2010).

¶ 34 IDES asserts the Board’s determination was correct because White failed to satisfy his burden of proof that he left his employment for good cause attributable to IDES. In particular, IDES contends none of the instances White has presented to prove discrimination and harassment by IDES constitute good cause.

¶ 35 A. Standard of Review

¶ 36 The question of whether an employee left work for good cause attributable to his employer involves a mixed question of law and fact to which we apply the “clearly erroneous” standard of review. See *Childress v. Department of Employment Security*, 405 Ill. App. 3d 939, 942 (2010) (citing *AFM Messenger Service, Inc.*, 198 Ill. 2d at 395).

¶ 37 B. Discussion

¶ 38 White contends he established good cause for his voluntary resignation in presenting instances of discrimination and harassment by IDES. IDES argues White failed to satisfy his

burden of establishing that he left his employment for good cause attributable to IDES.

¶ 39 An employee who voluntarily resigns from his employment must establish “good cause” for leaving, “attributable to his employer,” in order to qualify for unemployment insurance benefits. 820 ILCS 405/601(A) (West 2010); *Childress*, 405 Ill. App. 3d at 943 (2010). The purpose of the Act is to alleviate economic insecurity and hardship for individuals who are not at fault for their unemployment. *Lojek v. Department of Employment Security*, 2013 IL App (1st) 120679, ¶ 34 (citing *Messer & Stilp, Ltd. v. Department of Employment Security*, 392 Ill. App. 3d 849, 856 (2009)). “Good cause” results from circumstances producing pressure to terminate employment that is both real and substantial and would compel a reasonable person under the circumstances to act in the same manner. *Walls v. Department of Employment Security*, 2013 IL App (5th) 130069, ¶ 15. Whether good cause is attributable to the employer focuses on the conduct of the employer, and the cause is attributable to the employer if it is produced or created by the employer’s actions or inactions. *Id.*; *Jaime v. Department of Employment Security*, 301 Ill. App. 3d 930, 936 (1998). It is the employee’s burden to establish his eligibility for unemployment insurance benefits. *White v. Illinois Department of Employment Security*, 376 Ill. App. 3d 668, 671 (2007). Additionally, the employee must make “a reasonable effort to resolve the cause” of his leaving when such effort is possible. 56 Ill. Adm. Code 2840.101(b) (2010); see *Lojek*, 2013 IL App (1st) 120679, ¶¶ 39-40.

¶ 40 In the present case, the record does not establish White’s alleged reasons for resigning constituted “good cause.” First, the record does not indicate IDES harassed White to sign documents for disability leave applications or threatened him with disciplinary action because of his workers’ compensation filing. Instead, the record discloses IDES merely provided White with information on disability benefits, and advised he could avoid disciplinary action by

submitting an explanation for his absences. Second, the record fails to support IDES sent the premature letter about the denial of White's workers' compensation claim in a malicious, discriminatory, or harassing manner. Third, the record demonstrates IDES was required to deny the promotion White sought under the collective bargaining agreement. Under the collective bargaining agreement, when fewer than three candidates apply for an "A grade" position, the "B grade" candidate with greater seniority is awarded the position. As White was the only "A grade" applicant, IDES was required to give the promotion to another applicant in the "B grade" with greater seniority than White. Fourth, the Board found Bedford's testimony that she never ordered White to keep any special records when he worked overtime to be credible, as evidenced by its decision. The Board's findings and conclusions on such factual questions are deemed *prima facie* true and correct; this court will not reweigh the evidence presented to the administrative agency. See 735 ILCS 5/3-110 (West 2010); *Horton v. Department of Employment Security*, 335 Ill. App. 3d 537, 540 (2002). Further, White does not reference any facts in the record that would contradict the Board's findings. White has thus failed to demonstrate how his alleged reasons for leaving his job produced real and substantial pressure to terminate his employment. *Walls*, 2013 IL App (5th) 130069, ¶ 15.

¶ 41 Even assuming for the sake of argument that White could establish good cause, he cannot prove it was "attributable to the employer." In considering whether White left his job due to a cause attributable to IDES, the salient question is whether the conduct of the employer caused the termination of employment. *Jaime*, 301 Ill. App. 3d at 936; *Grant v. Board of Review of Illinois Department of Employment Security*, 200 Ill. App. 3d 732, 734 (1990). Focusing on IDES's actions, the record indicates that when White inquired about workers' compensation claims, IDES sent him information on how to file one. When White's absences continued

beyond his authorized date, IDES provided him with information on disability leave. After White failed to apply for disability leave, IDES again informed White that if his absences were due to a medical condition, he was required to submit a physician's statement to prevent disciplinary action. When IDES received information from the Department of Veterans Affairs indicating White's condition, IDES contacted White again to emphasize he had to secure a physician's statement to avoid disciplinary action. When White finally sent IDES a physician's statement confirming his condition on July 5, 2011, IDES authorized his absences until July 27, 2011. The record also indicates IDES took no part in denying White's workers' compensation claim, as CMS, and not IDES, considered and denied his claim.

¶ 42 With respect to White's actions, the record demonstrates he failed to submit documentation explaining his absences for three months from April 8, 2011, through July 5, 2011, despite IDES's advice. Moreover, White admitted he voluntarily left his job and could have returned had he not resigned.

¶ 43 Based on the entire record, this court does not believe the Board was mistaken in rejecting White's claims of discrimination and harassment. Rather, the record indicates White failed to make a reasonable effort to resolve employment conflicts before voluntarily leaving and seeking unemployment insurance benefits. When IDES extended his authorized absence to July 27, 2011, White was given even more time to resolve issues he was concerned about. Instead, he submitted a letter of resignation. Therefore, the Board's decision to deny White unemployment insurance benefits is not clearly erroneous. *Walls*, 2013 IL App (5th) 130069, ¶ 17 (Board's decision to deny unemployment benefits was not clearly erroneous where employee had "reasonable options, other than quitting, to resolve the issues about which he was concerned").

¶ 44

## II. Denial of Due Process

¶ 45 White further argues he was denied due process of law because substantial errors occurred during the adjudication of his claim before the Board. IDES asserts the alleged errors are not a basis for reversal because they did not prejudice White. IDES also argues the second IDES referee did not abuse her discretion in denying White’s subpoena requests because the testimonies White sought were either irrelevant or unnecessary.

¶ 46 A. Standard of Review

¶ 47 Whether a claimant was denied a full and fair opportunity to be heard in conformance with the fundamental requirements of due process is reviewed under a *de novo* standard. *Sudzus*, 393 Ill. App. 3d at 824. Because White also asserts the second IDES referee erred in the admission of evidence, we review this contention under an abuse of discretion standard. *Shachter v. City of Chicago*, 2011 IL App (1st) 103582, ¶ 52 (“[a]n administrative agency's decision regarding \* \* \* the admission of evidence is governed by an abuse of discretion standard and is subject to reversal only if there is demonstrable prejudice to the complaining party.”). That occurs only where a ruling is so arbitrary or fanciful that no reasonable person would agree with it. *Parikh v. Division of Professional Regulation of the Department of Financial & Professional Regulation*, 2012 IL App (1st) 121226, ¶ 24. We will not consider White’s arguments regarding the alleged trial court errors, as our review of this administrative proceeding is limited to the findings of the Board and not that of the circuit court. *Abbott Industries, Inc.*, 2011 IL App (2d) 100610, ¶ 15.

¶ 48 B. Discussion

¶ 49 While administrative hearings are governed by the fundamental principles and requirements of due process of law, due process is a flexible concept and requires only procedural protections as fundamental principles of justice and situation demand. *Abrahamson*

*v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 92 (1992). In an administrative hearing, due process does not require a full judicial proceeding. *Id.* Rather, “[a] fair hearing \* \* \* includes the opportunity to be heard, the right to cross-examine adverse witnesses, and impartiality in ruling upon the evidence.” *Id.* at 95. A claim of a due process violation can be reversed only upon a showing of prejudice in the proceeding. *Sudzus*, 393 Ill. App. 3d at 825.

¶ 50 In the present case, many of White’s claims of error refer to the first hearing, which was rendered a nullity when the Board remanded the case for a second hearing. Accordingly, we decline to consider White’s claims of error regarding the first hearing.

¶ 51 As to the second hearing, the record establishes that after the IDES referee explained the hearing procedures, White was permitted to testify. Thereafter, IDES’s attorney cross-examined White and IDES’s three witnesses were permitted to testify. White was permitted to cross-examine all three witnesses and present additional testimony after which both parties presented closing arguments. As to both hearings, the record establishes White was afforded a full opportunity to present his testimony and cross-examine IDES’s witnesses in compliance with due process. *Abrahamson*, 153 Ill. 2d at 95; *Booker v. Department of Employment Security*, 216 Ill. App. 3d 320, 322 (1991).

¶ 52 The record also establishes the IDES referee heard and considered each of White’s 14 subpoena requests in the second hearing. The IDES referee did not abuse her discretion in denying the testimony of five of those witnesses as cumulative, as their testimony would have established a fact already admitted by IDES, that the promotion White unsuccessfully applied for did not require Spanish speaking ability. The IDES referee’s denial of White’s request to subpoena a witness to the shooting also did not constitute an abuse of discretion. It was undisputed that White’s injury resulted from the shooting, and the shooting itself had no bearing

on White's claim for unemployment insurance benefits. Additional subpoena requests for potential witnesses to testify as to White's workers' compensation claim were properly denied as irrelevant because the requests lacked sufficient detail of the potential testimony. Our review of the record reveals White has not demonstrated how the exclusion of these potential witnesses prevented him from establishing good cause to voluntarily leave his job. Thus, White's due process claims fail. See *Shachter*, 2011 IL App (1st) 103582, ¶ 52 (no abuse of discretion where administrative law officer denied plaintiff's request for a subpoena after having considered plaintiff's arguments).

¶ 53 In sum, the Board's decision to deny White unemployment insurance benefits was not clearly erroneous. Additionally, White received due process and the IDES referee did not abuse her discretion in denying White's subpoena requests at the second hearing.

¶ 54

#### CONCLUSION

¶ 55 For the reasons stated, we affirm the judgment of the Board.

¶ 56 Affirmed.