

No. 1-15-2911

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SALEH K. SUHAIL,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	
)	
ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY,)	
DIRECTOR OF ILLINOIS DEPARTMENT OF)	
EMPLOYMENT SECURITY, and BOARD OF REVIEW,)	
)	No. 15 L 50455
Defendants-Appellants)	
)	
and)	
)	
ED NAPLETON OAK LAWN IMPORTS, INC.)	
c/o SEDGWICK BRUCE KIJEWski,)	Honorable
)	Robert L. Cepero,
Defendant.)	Judge Presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice David Ellis and Justice Howse concurred in the judgment.

O R D E R

¶ 1 *Held:* The circuit court's administrative review judgment reversed where the IDES Board of Review decision, that plaintiff was ineligible for unemployment benefits because he voluntarily left his employment without good cause attributable to the employer and without exhausting reasonable means of remaining employed, was not clearly erroneous.

¶ 2 Defendants, Illinois Department of Employment Security (IDES), its Director, and the Department's Board of Review (Board) appeal from a circuit court order reversing a decision of the Board that plaintiff, Saleh K. Suhail, left his employment voluntarily without good cause attributable to his employer and was ineligible for employment benefits. On appeal, defendants contend the Board's decision was supported by the record and the law, based on a factual finding that was not against the weight of the evidence, and should not have been reversed. We reverse the circuit court's reversal of the Board's decision.

¶ 3 Plaintiff has not filed an appellee's brief in response to defendants' contentions. However, we will decide the merits on appeal because the record is simple and the issue is such that we do not need the aid of an appellee's brief. *Trutin v. Adam*, 2016 IL App (1st) 142853, ¶ 19, citing *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 4 Plaintiff was employed as a salesperson by a car dealership, Ed Napleton Oak Lawn Imports, Inc. (employer), from April 2013 to January 12, 2015, when he left his employment. Plaintiff later filed a claim for unemployment insurance benefits, claiming that on January 12, 2015, the employer presented the employees with a new commission rate that was clearly a pay cut. Plaintiff alleged that on that date, he sold three cars and was supposed to be awarded \$200 under the old pay plan, but the employer refused to pay him. IDES sent a notice of plaintiff's claim for benefits, and the employer's representative responded that plaintiff, a full-time employee earning commissions, had quit voluntarily because he was dissatisfied with the employer's new pay plan. The employer's representative further contended that plaintiff did not attempt to try working with the new plan, that he had the opportunity to remain employed, and that he was under no threat of discharge. An IDES claims adjudicator determined that plaintiff

was eligible for benefits after voluntarily leaving his employment because the employer had substantially reduced plaintiff's rate of pay. The employer appealed that determination.

¶ 5 On March 26, 2015, a Department referee conducted an evidentiary hearing by telephone with plaintiff and with employer representative Faye Scales and employees Lisa Hurst and Steve Ignowski. Plaintiff testified that he had been employed full-time as a sales consultant from April 2013 until he quit at the end of the day on January 12, 2015. Plaintiff's employer was supposed to pay employees \$300 if they sold three cars in one day. Plaintiff had done so on January 12 but never received the \$300. He admitted he told his superiors that he was going to quit, but when he returned on Tuesday, they told him they were going to pay him. He waited on Friday for them to pay him. Plaintiff testified:

"[T]hey refused to pay me on it after I asked them that night. He refused to pay me on it, so I didn't come back. I came back the next day to clean out my desk. And they told me not to quit, they would pay me for it, but they never paid me for it because when I went back on Friday to get my last check, I actually was waiting for them to pay me for it and they didn't."

¶ 6 The referee asked plaintiff why he did not return to work on the 13th, 14th, 15th, or 16th, but instead just came in to pick up his check. Plaintiff replied that he was supposed to be paid the bonus "in cash at the window." Consequently, "when they told me they were going to pay me on it, I knew they weren't going to pay me on it because *** they would have given it to me right then and there." Plaintiff went to Steve Ignowski, the general manager, and complained he was not getting his money. Ignowski said, "I don't know what's going on," and told plaintiff to speak with general sales manager Russ Ondo. Ondo told plaintiff that "he doesn't know what he's gonna do." Ignowski and Ondo did not explain why they did not know what they were going to

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do if the rule was clear. Plaintiff concluded he was "getting the runaround" and was not going to get paid. On Tuesday morning, they did not tell him anything until they saw plaintiff cleaning out his desk. Plaintiff sent Steve Ignowski a message, but Ignowski was off that day, so plaintiff went to Russ Ondo. Ondo told plaintiff, "Oh, well, [Ignowski] said he'll pay you now." Plaintiff waited there for the money but did not receive it and was not given a reason why they did not know what they were going to do. Plaintiff estimated that he was supposed to earn \$1,000 in commissions for car sales in the last pay period in addition to the bonus of \$300 for selling three cars in one day. He came back on Friday, the 16th, to get his last check, but "it was a zero dollar check." Plaintiff was given a form to sign, but he did not even look at it. Lisa Hurst, the company controller, told plaintiff that the form was for him not to be able to collect unemployment, so he refused to sign it. Plaintiff did not speak to Hurst about the bonus situation because she was not in charge of signing the bonuses.

¶ 7 Hurst testified that plaintiff's last day of working for the employer as a sales consultant was on January 12, 2015, when he quit. Hurst asked plaintiff to sign a termination form required upon resignation, so he could collect his last paycheck. She did not know why plaintiff quit. A new performance-based pay format went into effect at the beginning of January 2015. At that time, the bonus for selling three cars in one day increased from \$200 to \$300. The sales manager and the general manager announced the new pay plan and gave a written copy to the employees for their signature on Saturday, January 10, 2015. The plan was to become effective retroactively to January 1. However, Hurst testified that plaintiff refused to sign the new pay plan, "so we didn't have anything to pay him on other than the old pay plan."

¶ 8 Steve Ignowski, the employer's general manager, testified that on Tuesday, January 13, he was off from work when he received a text about the car sales bonus. Ignowski instructed

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General Sales Manager Russ Ondo to tell plaintiff they would pay him the bonus and that he (Ignowski) did not want plaintiff to quit. However, plaintiff left anyway. Ignowski was not aware until the administrative hearing that the bonus was the reason plaintiff quit; Ignowski thought plaintiff was upset about the pay plan change. The new pay plan was performance-based, so an employee who was underperforming would receive a reduction in pay and an employee who was performing would receive a pay increase. Plaintiff fell into the underperforming group and his pay would decrease by \$200 per month. If plaintiff had remained employed, continued work would have been available to him. He was not under any threat of discharge. However, plaintiff did not attempt to adhere to the new pay plan.

¶ 9 In response to Ignowski's testimony, plaintiff stated that at the meeting on January 10, when the new pay plan was presented to the employees, Ignowski told the employees that it was a pay reduction for everybody and would decrease his cost. As a consequence, plaintiff was "upset about the pay change." Plaintiff testified that on that Monday, when Ignowski "refused to pay, that's when I decided to leave the company."

¶ 10 Subsequently, the referee issued his written decision, setting aside the local office determination that plaintiff was eligible to receive benefits. The referee determined that plaintiff "quit the job without notice, because he felt that he was due a sales bonus when the matter was in question due to his refusal to sign employer's sales/commission policy. Continuing work was available for claimant, and he was not otherwise under threat of imminent discharge." The referee found that plaintiff failed to give his employer time to straighten out the commission question before plaintiff cleaned out his desk, and he did not sign the commission policy. The referee concluded that, pursuant to section 601A of the Unemployment Insurance Act (the Act) (820 ILCS 405/601A (West 2014)), plaintiff was not eligible for benefits from January 11, 2015,

for the weeks in which he left work voluntarily and without good cause attributable to the employing unit.

¶ 11 Plaintiff appealed *pro se* to the Board for administrative review of the ALJ's decision. The Board found that plaintiff had left his employment voluntarily after failing to make reasonable efforts to resolve a conflict arising from his not receiving a perceived bonus and failing to give his employer an opportunity to correct the situation. The Board concluded that plaintiff was not eligible for unemployment benefits because he failed to exhaust reasonable means of remaining employed as an alternative to collecting the benefits.

¶ 12 Thereafter, plaintiff filed a *pro se* complaint for judicial review of the Board's decision. The circuit court reversed the decision of the Board and reinstated the determination by the local office that plaintiff was eligible to receive unemployment benefits. Defendants now appeal from the circuit court judgment.

¶ 13 Our review is limited to the propriety of the Board's decision; we do not review the decision of the circuit court or the referee. *Phistry v. Department of Employment Security*, 405 Ill. App. 3d 604, 607 (2010). It is the responsibility of the administrative agency to weigh the evidence, determine the credibility of witnesses, and resolve conflicts in testimony. *Hurst v. Department of Employment Security*, 393 Ill. App. 3d 323, 329 (2009). We consider the purely factual findings of the Board to be *prima facie* true and correct, and they will not be disturbed unless they are contrary to the weight of the evidence. *Czajka v. Department of Employment Security*, 387 Ill. App. 3d 168, 173 (2008). Findings are against the weight of the evidence when an opposite conclusion is clearly evident from the record. *Id.*

¶ 14 The question of whether plaintiff voluntarily left his employment without good cause attributable to his employer presents a mixed question of fact and law, to which we apply the

clearly erroneous standard of review. *Childress v. Department of Employment Security*, 405 Ill. App. 3d 939, 942 (2010), citing *AMF Messenger Service Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 395 (2001). An agency decision will be found clearly erroneous only where a review of the entire record leaves the reviewing court with the definite and firm conviction that a mistake has been committed. *Id.*

¶ 15 An individual claiming unemployment insurance benefits has the burden of establishing his eligibility. *Grigoleit Co. v. Department of Employment Security*, 282 Ill. App. 3d 64, 68 (1996); *Collier v. Illinois Department of Employment Security*, 157 Ill. App. 3d 988, 991 (1987). Pursuant to section 601A of the Act, "[a]n 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 2014); *Childress*, 405 Ill. App. 3d at 943. Good cause results from circumstances that produce 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. *Id.* In determining whether an employee had good reason for leaving his employment, the focus is on the employer's conduct. *Grant v. Board of Review of Illinois Department of Employment Security*, 200 Ill. App. 3d 732, 734 (1990). Cause is attributable to the employer when produced or created by the employer's actions or inactions. *Jaime v. Director, Department of Employment Security*, 301 Ill. App. 3d 930, 936 (1998). However, an employee must make a reasonable effort to resolve the cause of his leaving prior to terminating his employment, when such effort is possible, and the focus in this regard is on the actions of the employee. *Walls v. Department of Employment Security*, 2013 IL App (5th) 130069, ¶¶ 15, 17; see *Lojek v. Department of Employment Security*, 2013 IL App (1st) 120679, ¶ 39 (citing the Illinois Administrative Code which requires employees to make "a reasonable effort to resolve the

cause" of their leaving "when such effort is possible." 56 Ill. Adm. Code 2840.101(b) (2010)). Generally, neither a claimant's dissatisfaction with the number of hours nor with wages constitutes good cause to leave employment for purposes of entitlement to unemployment benefits. *Acevedo v. Department of Employment Security*, 324 Ill. App. 3d 768, 772 (2001), citing *Collier v. Illinois Department of Employment Security*, 157 Ill. App. 3d 988, 992 (1987).

¶ 16 The Board's decision finds support in the evidence that plaintiff voluntarily quit his job because he was dissatisfied with a new pay plan that had been presented to the employees on Saturday, January 10, just two days before plaintiff announced he was going to quit. Hurst, the employer's controller, testified that plaintiff had rejected the new pay structure, refusing to sign the salespersons' pay plan. The \$300 bonus plaintiff claimed he was owed was part of the new pay structure that plaintiff had refused to accept.

¶ 17 It is also undisputed that plaintiff peremptorily formed the intent to terminate his employment, and so informed his superiors, on Monday night, January 12, without allowing the employer time to resolve the bonus dispute. Plaintiff came to work on January 13 only to clean out his desk without first giving his employer any opportunity to correct the situation. After cleaning out his desk, plaintiff did not return again to take up his employment. Ignowski testified that if plaintiff had not quit his job, continued work would have been available to him, and he was not under any threat of discharge. The Board's factual findings, that plaintiff failed to make reasonable efforts to resolve the conflict involving the bonus or give the employer an opportunity to resolve the situation, are amply supported by, and not contrary to the weight of, the evidence. Consequently, we will not disturb those findings. *Czajka*, 387 Ill. App. 3d at 173.

¶ 18 We are unable to say that the decision of the Board to deny plaintiff unemployment benefits was clearly erroneous. *Phistry*, 405 Ill. App. 3d at 607. Accordingly, we reverse the

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judgment of the circuit court and affirm the decision of the Board finding plaintiff disqualified from receiving unemployment benefits.

¶ 19 Reversed.