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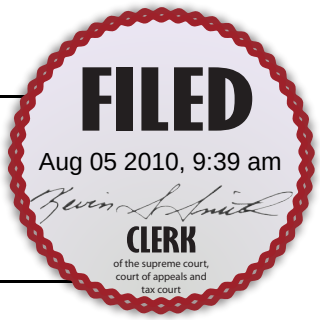

IN THE COURT OF APPEALS OF INDIANA

R.J.,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 93A02-1002-EX-243
	)	
REVIEW BOARD OF THE INDIANA DEPARTMENT OF WORKFORCE DEVELOPMENT and DPLOYIT, INC.,	)	
	)	
Appellee.	)	

APPEAL FROM THE REVIEW BOARD OF THE DEPARTMENT OF WORKFORCE DEVELOPMENT
Cause No. 09-R-6343

August 5, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

R.J. appeals from the decision of the Review Board of the Indiana Department of Workforce Development ("the Board") that he left work without good cause. We affirm.

Issue

Is the Board's determination that R.J. left work without good cause supported by substantial evidence?

Facts and Procedural History

R.J. worked for DPLOYIT, Inc., a temporary employment agency. On or around April 30, 2009, R.J. was assigned to work on grading I-STEP tests. This assignment required him to work in close quarters with 100 to 250 other people. R.J. had heard on the news that people working in this type of environment should take extra care to protect themselves against the H1N1 virus, also known as the swine flu. On his first day at this assignment, R.J. noticed that one employee was coughing all day and that another was wearing a medical mask.

That evening, R.J. e-mailed his manager at DPLOYIT. The e-mail stated that he was "not quite comfortable working in a closed space with over 100 people these days," but he indicated that he would "gladly return after we get a handle on this thing." Record at 6. According to R.J., his manager replied with an e-mail that stated, "I understand your concerns." *Id*. R.J. did not return to work the next day. He did not call DPLOYIT, because DPLOYIT usually called him if work was available. However, after about a month, R.J.

called DPLOYIT, at which time his manager told him that DPLOYIT no longer considered him an employee because he had quit.

At some time thereafter, R.J. filed for unemployment benefits. A claims deputy determined that R.J. had voluntarily left employment without good cause. R.J. requested a hearing before an administrative law judge ("ALJ"), which was held on November 19, 2009. DPLOYIT did not participate in the hearing, and R.J. was the only person to testify. R.J. testified concerning his assignment to grade I-STEP tests, his concerns about the swine flu, and his communications with his manager. R.J. stated that he did not intend to permanently leave employment with DPLOYIT. He testified that he wanted to wait and see what precautions the Center for Disease Control ("CDC") would suggest for prevention of swine flu. When asked whether the employer discharged him, he said, "that was not the understanding either." *Id*. at 4.

On November 30, 2009, the ALJ issued a decision and determined that the working conditions "were not so unreasonable or unfair that a reasonably prudent person would be impelled to leave employment." *Id*. at 16. Therefore, the ALJ affirmed the claims deputy's determination that R.J. voluntarily left employment without good cause in connection with work. R.J. appealed to the Board. On January 28, 2010, the Board affirmed, adopting the ALJ's findings of fact and conclusions of law. R.J. now appeals the Board's decision.

Discussion and Decision

R.J. alleges that he is currently working for DPLOYIT and strenuously argues that he did not quit working for DPLOYIT. R.J. supports his contention that he remains an employee of DPLOYIT with documents that he claims he submitted to the Board with a request to admit them as additional evidence.[1] As we understand the record and R.J.'s allegations, R.J. stopped working on the I-STEP grading assignment around April 30, 2009, and did not receive another assignment until sometime after the hearing before the ALJ. Thus, we understand R.J. to be seeking unemployment benefits for the period of time that he was not working on an assignment from DPLOYIT. He argues that the Board's findings are erroneous because he did not intend to permanently quit his employment with DPLOYIT.

The Board asserts that it received no request from R.J. to consider additional evidence. The Board argues that, regardless of whether R.J. quit working for DPLOYIT or just a particular work assignment, he did not have good cause to do so. We agree.[2]

[1] Sometime after the hearing, R.J. allegedly received two e-mails from DPLOYIT, one wishing him "happiness this Holiday Season" and thanking him for being "our Associate," and the other asking whether he wanted to remain on DPLOYIT's "active roster." Appellant's App. at 8-10. R.J. claims that he responded to the second e-mail, indicating that he wanted to work on DPLOYIT's upcoming "Spring Project." *Id*. at 11. R.J. outlined the contents of these e-mails in two documents that he claims that he faxed to the Board as evidence that DPLOYIT did not consider him to have quit.

[2] R.J.'s appellant's brief identifies four issues: (1) whether the Board abused its discretion by denying his request to accept additional evidence; (2) whether he voluntarily left his employment; (3) whether he had good cause in connection with the work; and (4) whether the Board's decision is reversible error. Although R.J. argues that he did not quit, it appears to be undisputed that he voluntarily left the I-STEP grading assignment; he does not contend that he was fired. Because we agree with the Board that it is irrelevant whether R.J. quit working for DPLOYIT completely or just a particular assignment, we will not address the issue further, nor do we need to determine whether the Board should have considered additional evidence. The remaining two issues raised by R.J. both address the sufficiency of the Board's decision, which turns on whether R.J. had good cause to leave his assignment.

On appeal, we review the Board's: (1) determinations of specific or basic underlying facts; (2) conclusions or inferences from those facts, or determinations of ultimate facts; and (3) conclusions of law. *McHugh v. Review Bd. of Ind. Dep't of Workforce Dev.*, 842 N.E.2d 436, 440 (Ind. Ct. App. 2006). The Board's findings of fact are subject to a substantial evidence standard of review. *Id*. We do not reweigh the evidence or assess the credibility of witnesses, and we only consider the evidence most favorable to the Board's findings. *Id*. We will reverse only if there is not substantial evidence to support the Board's findings. *Id*. "The Board's conclusions as to ultimate facts involve an inference or deduction based on the findings of basic fact." *McClain v. Review Bd. of Ind. Dep't. of Workforce Dev.*, 693 N.E.2d 1314, 1317 (Ind. 1998). The reviewing court determines if the Board's inference was a reasonable one. *Id*. at 1318. We finally assess whether the Board correctly interpreted and applied the law in making the conclusions of law. *McHugh*, 842 N.E.2d at 440.

An individual who voluntarily leaves his or her employment "without good cause in connection with the work" is not eligible for unemployment benefits. Ind. Code § 22-4-15-1(a). The question of whether an employee quit without good cause is a question of fact to be determined by the Board. *Indianapolis Osteopathic Hosp., Inc. v. Jones*, 669 N.E.2d 431, 433 (Ind. Ct. App. 1996). The claimant has the burden to prove that good cause existed. *Id*. The reason for quitting must be job-related and objective in character, excluding purely subjective and personal reasons, and the demands placed upon the employee must be so unreasonable or unfair that a reasonably prudent person would be compelled to quit.

Kentucky Truck Sales, Inc. v. Review Bd. of the Ind. Dep't. of Workforce Dev., 725 N.E.2d 523, 526 (Ind. Ct. App. 2000).

The Board noted that R.J. had not sought medical advice on how to protect himself from the swine flu. Furthermore, while R.J. notified his employer of his concerns, he gave the employer no opportunity to address his concerns; he simply did not return to work and did not contact the employer until about a month later. *See Winder v. Review Bd. of the Ind. Employment Sec. Div.*, 528 N.E.2d 854, 855 (Ind. Ct. App. 1988) (employee whose feet, ankles, and legs became swollen from standing at work did not have good cause to leave because she did not inform employer that she was suffering from having to stand). R.J. testified that his manager said that she understood his concerns, and the record is unclear as to what else, if anything, she said. By itself, the manager's statement that she understood R.J.'s concerns does not evince unwillingness to address them.[3] *Cf. Evans v. Enoco Collieries*, 120 Ind. App. 708, 709-10, 96 N.E.2d 674, 675 (1951) (coal miner had good cause to leave employment where employer failed to supply a hose to dampen dangerous coal dust, and supervisor told him that if he did not want to work without a hose, there was "just

[3] The additional evidence that R.J. allegedly submitted to the Board does not support his argument that the workplace was unsafe, but rather evinces the employer's willingness to address R.J.'s concerns. The additional evidence includes a list of instructions that he received when he returned to work. The instructions explain how to clean computer keyboards and mice, desk surfaces, and headsets. The instructions also ask employees to cover their mouths when they cough or sneeze and to wash their hands frequently. R.J. acknowledges that these precautions are consistent with those recommended by the CDC. R.J. appears to assume that the employer did not implement these precautions until well after he first raised his concerns; however, the record is silent on that point because R.J. did not contact his employer for over a month and did not return to work until sometime after the hearing before the ALJ.

one other thing he could do"). Therefore, we cannot say that the Board erred in finding that R.J. failed to meet his burden of demonstrating good cause for leaving his employment. *See Stepp v. Review Bd. of the Ind. Employment Sec. Div.*, 521 N.E.2d 350, 354 (Ind. Ct. App. 1998) (employee who worked in lab and was terminated when she refused to test samples from people with AIDS was not eligible for benefits; employer followed CDC guidelines and employee presented only speculative evidence concerning the risk of becoming infected).

Affirmed.

FRIEDLANDER, J., and BARNES, J., concur.