IN THE UTAH COURT OF APPEALS

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| Robin Fassett,<br><br>Petitioner,<br><br>v.<br><br>Department of Workforce Services,<br><br>Respondent. | ) | MEMORANDUM DECISION<br>(Not For Official Publication)<br><br>Case No. 20100115-CA<br><br>F I L E D<br>(April 15, 2010)<br><br>2010 UT App 92 |

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Original Proceeding in the Court

Attorneys: Robin Fassett, West Valley City, Petitioner Pro Se
Suzan Pixton, Salt Lake City, for Respondent

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Before Judges Davis, McHugh, and Voros.

PER CURIAM:

Robin Fassett seeks judicial review of a decision of the Workforce Appeals Board (the Board) that disqualified him from unemployment benefits based upon a determination that he voluntarily quit his employment without good cause. Utah Code section 35A-4-405(1)(a) provides that a claimant is ineligible for benefits if that person "left work voluntarily without good cause, if so found by the division." Utah Code Ann. § 35A-4-405(1)(a) (Supp. 2009). To the extent that Fassett challenges the Board's conclusion that he voluntarily left his employment without good cause, "we defer to the agency and we will not overturn its decisions regarding voluntariness and good cause unless we determine it has abused that discretion." Robinson v. Department of Employment Sec., 827 P.2d 250, 252 (Utah Ct. App. 1992). Good cause is established if continuance of the employment would have had an adverse effect that the claimant could not control or prevent and necessitated immediate severance of the employment relationship. See Utah Admin. Code R994-405-102(1). "The separation must have been motivated by circumstances that made continuance of the employment a hardship or matter of concern sufficiently adverse to a reasonable person so as to outweigh the benefits of remaining employed." Id. Nevertheless, the Board may make an award of benefits "[w]hen the circumstances of the quit were not sufficiently compelling to

justify an allowance of benefits for good cause, but there are mitigating circumstances, and a denial of benefits would be unreasonably harsh or an affront to fairness." Id. R994-405-103.

Fassett argues that he was denied an opportunity to provide evidence of his case and to cross-examine witnesses. He also claims that he raised this issue at the hearing before an Administrative Law Judge (ALJ). In fact, the University of Utah, not Fassett, sought a continuance of the hearing because the employees directly involved in the separation were not available on the hearing date. The ALJ denied the continuance, but stated that the record could remain open to allow the additional testimony. At the conclusion of the hearing, the ALJ asked the University's representative if the University still wished to "continue the hearing for witnesses that were not available today." Without any objection or comment from Fassett, the University withdrew its request as unnecessary. Therefore, Fassett's version of the conversations and events leading up to his separation was undisputed. Fassett did not object to closing the hearing nor did he request a continuance to obtain additional testimony. The claim that Fassett was prevented from presenting his case at the hearing because the employees directly involved were not present was not timely raised at the hearing before the ALJ and cannot be considered in this petition for review. See Brown & Root Indus. v. Industrial Comm'n, 947 P.2d 671, 677 (Utah 1997) ("We have consistently held that issues not raised in the proceedings before administrative agencies are not subject to judicial review except in exceptional circumstances."). Furthermore, there is no support for the claim that the University, the ALJ, or the Board prevented Fassett from presenting his case.

We will reverse an administrative agency's findings of fact "only if the findings are not supported by substantial evidence." Drake v. Industrial Comm'n, 939 P.2d 177, 181 (Utah 1997). We will not disturb the Board's conclusion regarding the application of law to facts unless it "exceeds the bounds of reasonableness and rationality." Nelson v. Department of Employment Sec., 801 P.2d 158, 161 (Utah Ct. App. 1990). Based upon the foregoing, we affirm the Board's determination that Fassett voluntarily quit his employment without good cause. Fassett did not demonstrate that it was necessary for him to immediately sever his employment relationship in order to address his claimed safety concerns. His assertions that he was forced to quit by the University are not supported by his own testimony that he introduced the topic of his resignation. He had the responsibility to correct any misunderstanding about his actual intent to resign and to clarify that he wished to remain employed. At the time he quit, he did not have sufficient evidence to support a belief that he would be terminated for insubordination. The Board did not abuse its

discretion by finding that Fassett did not have good cause to quit his employment. Applying the "equity and good conscience exception," the Board determined that Fassett did not demonstrate that his sister's health required that he immediately quit his employment, noting that he could have requested a leave of absence. Although Fassett demonstrated a continuing attachment to the labor market, the Board concluded that his actions were not reasonable and that mitigating circumstances did not make a denial of benefits "unreasonably harsh or an affront to fairness." Utah Admin. Code R994-405-103. We apply a reasonableness standard to this determination and conclude that the Board's decision was reasonable and rational.

Accordingly, we affirm the Board's decision.

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James Z. Davis,
Presiding Judge

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Carolyn B. McHugh,
Associate Presiding Judge

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J. Frederic Voros Jr., Judge