*Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2017-043

JULY TERM, 2017

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| Yorkmont Auctions, Inc. | } | APPEALED FROM: |
| | } | |
| v. | } | Employment Security Board |
| | } | |
| | } | |
| Department of Labor | } | DOCKET NO. 09-16-010-20 |

In the above-entitled cause, the Clerk will enter:

Employer Yorkmont Auctions, Inc., appeals a decision of the Employment Security Board concluding that claimant was entitled to unemployment benefits because claimant voluntarily quit due to good cause attributable to employer. On appeal, employer argues that this conclusion is in error because claimant's voluntary quit was not caused by employer's actions and employer did not unilaterally change the terms of claimant's employment. We affirm.

The Board made the following findings. Claimant was employed by employer for almost two years at a salary of $1500 per week. The employment terms were agreed to verbally and no written contract was submitted into evidence. The owner of the business had received complaints about claimant and was concerned that claimant was not putting in the necessary time and energy. Claimant's hours varied, in the previous months, claimant had been working approximately forty hours per week. On August 4, 2016, employer informed claimant that if he did not work fifty hours a week, he would be paid less or let go. On August 8, 2016, employer sent claimant an email that stated that if claimant did not work fifty hours a week his pay would be prorated. The employer further stated "So if you want to work 100%, be here tomorrow. If you don't, don't show up." The following day was a Tuesday, a day that claimant would ordinarily arrive at work at 6:30 a.m. When claimant did not arrive at his usual time, employer sent him an email at 7:59 a.m. informing him that he was no longer employed there.

Claimant filed a claim for unemployment benefits. The claims adjudicator found claimant left his employment without good cause attributable to his employer and denied him benefits. Claimant appealed to a claims adjudicator, who sustained the decision. Claimant then appealed to the Board. The Board concluded that claimant's action of not going to work on August 9 amounted to a voluntary quit. The Board found that claimant's reason for quitting was employer's decision to reduce claimant's salary if he did not agree to work fifty hours a week. The Board concluded that employer unilaterally changed the terms of claimant's employment because employer was placing additional obligations on claimant to receive the same salary. Thus, the Board concluded that claimant had met his burden of proving that he had good cause to leave his employment. Employer filed this appeal.

An employee is disqualified from unemployment benefits if the employee voluntarily leaves without good cause attributable to the employer. 21 V.S.A. § 1344(a)(2)(A). "The question of whether a resignation is for good cause attributable to the employer is a matter within the special expertise of the Board, and its decision is entitled to great weight on appeal." Cook v. Dep't of Emp't & Training, 143 Vt. 497, 501

(1983). The burden of proving good cause attributable to the employer is on the employee. Skudlarek v. Dep't of Emp't & Training, 160 Vt. 277, 280 (1993). To assess whether good cause exists, the Board employs "a standard of reasonableness." Id.

Employer argues that the Board's finding regarding claimant's reason for quitting is in error and that the evidence instead shows that claimant quit because he thought employer might fire him and this would be embarrassing. "The findings of the Board will be affirmed by this Court if they are supported by credible evidence, even if there is substantial evidence to the contrary." Cook, 143 Vt. at 501. In this case, there was evidence to support the Board's findings. The emails that were admitted show that employer told claimant he must work fifty hours or his pay would be reduced and gave claimant an ultimatum requiring him to agree to work that amount or not show up to work. The following day claimant did not appear at work at his regular time. While there may have been evidence to the contrary, this evidence is sufficient to support the Board's finding that claimant quit because employer indicated claimant's salary would be reduced if he did not work fifty hours per week.

Employer next claims that it did not unilaterally change the terms of claimant's employment, but was simply enforcing the existing terms of employment, which employer asserts required claimant to work fifty hours a week. Employer highlights particular evidence in the record to demonstrate its version of the facts. While some evidence might support employer's position, other evidence supports the Board's finding that the requirement to work fifty hours was a change in the employment contract to require claimant to work fifty hours a week. This evidence included claimant's testimony that he had not previously been required to work fifty hours a week and that his hours varied, and employer's statement in an email acknowledging that claimant's hours had not been discussed when negotiating his employment. Because the finding is supported by evidence in the record, there are no grounds to disturb it on appeal. See id.

Employer's final argument is related to a statement in the Board's decision that employer's action of requiring claimant to work fifty hours a week to receive his full salary violated federal labor law. **PC 5.** Employer argues that even if its action was in contravention of federal law it did not automatically provide claimant with good cause to quit because the threat to reduce his pay was not the reason claimant left his employment. As explained above, we affirm the Board's finding that the threat was indeed the reason for claimant quitting. We need not decide whether employer's threat violated federal law because we affirm the Board's conclusion that even if the threat did not violate federal law it altered the terms of claimant's employment contract and provided good cause for claimant to quit. See Skudlarek, 160 Vt. at 280 (concluding that employer's change of employment from part time to full time provided employee good cause to leave); Burke v. Dep't of Emp't Security, 141 Vt. 582, 585-86 (1982) (explaining that employer's change in employee's consideration amounted to good cause to quit).

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Harold E. Eaton, Jr., Associate Justice

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Karen R. Carroll, Associate Justice