

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
SARAH J. HEFFLEY, JUDGE

DIVISION IV

E 07-227

GINGER MCDONALD

June 18, 2008

APPELLANT

APPEAL FROM THE ARKANSAS STATE
BOARD OF REVIEW
[NO. 2007-BR-01189]

V.

DIRECTOR OF THE DEPARTMENT OF
WORKFORCE SERVICES AND
DARLOS A. ADAMS

AFFIRMED

APPELLEES

Appellant Ginger McDonald appeals the Board of Review's decision that appellee Darlos Adams was discharged for reasons that do not constitute misconduct connected with the work. Appellant contends on appeal that the evidence does not support the Board's finding that she fired appellee. We affirm.

Appellee began working at appellant's law office in 2005 as a part-time employee working in the afternoons. Her job included answering the phones, running errands, and keeping the office tidy. During the week of April 9 through 13 in 2007, another employee was to be out of the office to have surgery, and appellee was scheduled to cover the office in the mornings rather than the afternoons. Appellee worked on Monday and Tuesday, but on Wednesday morning her foster child became ill with a stomach virus. The child had special needs and was enrolled in a program that was suited to her

disability. School policy did not allow the child to attend school when sick, and other than appellee, only employees of the organization through which appellee was fostering the child were permitted to keep her when she was not in school. That day, however, there was no employee available to look after the child. Consequently, appellee was required to stay at home with her. Appellee thus missed work on Wednesday and also on Thursday morning. The child recovered early Thursday afternoon and was kept by appellee's daughter, who was an employee authorized to care for the child. Appellee stated that she did not go into work on Thursday afternoon because she was scheduled to work in the mornings, not afternoons.

On Friday morning, appellee came down with the stomach virus, and she telephoned appellant at home to notify her that she could not come to work. At appellant's insistence, appellee did go to work. Appellee testified that appellant arrived at the office at 10:00 a.m., slammed the door, screamed at her, and then sent her home, telling her not to come back until she had adequate daycare for a sick child. Appellee said that appellant added, "And then we'll have to talk about it." Appellee testified that she had no other child-care options when the child was sick. She said she gave appellant time to calm down, but that appellant never called her. She went back to the office the following Friday and gathered her personal belongings at a time when appellant was out of the office. Until then, she had retained her keys to the office.

Appellant testified that when she got to the office that Friday morning she kept a respectful distance from appellee and said, "When you come back, you are to have your child-care arrangements in order." She said that appellee then cleaned out her desk, slammed the door, and left. Appellant testified that she would have allowed appellee's return, even though her work was unsatisfactory, because she needed the help. She said that appellee did not come back to work or make any effort to return to work.

The Board of Review found that appellant initiated the separation when she sent appellee home with instructions not to return unless she obtained adequate child care. The Board thus concluded that appellant fired appellee and that she did so for reasons that did not constitute misconduct. Appellant contends on appeal that substantial evidence does not support the Board's decision that she terminated appellee's employment. She argues that appellant voluntarily quit her job without good cause, which disqualifies her from receiving unemployment compensation under Ark. Code Ann. § 11-10-513 (Supp. 2007).

Arkansas Code Annotated section 11-10-514(a)(1) (Supp. 2007) provides that an individual shall be disqualified for benefits if she is discharged from her last work for misconduct in connection with the work. On appeal, the findings of the Board of Review are affirmed if they are supported by substantial evidence. *Southwestern Bell Telephone, L.P. v. Director*, 93 Ark. App. 303, 218 S.W.3d 317 (2005). Substantial evidence is such evidence as reasonable minds might accept as adequate to support a conclusion. *Id.* The credibility of witnesses and the weight to be accorded their testimony are matters to be resolved by the Board of Review. *Williams v. Director*, 79 Ark. App. 407, 88 S.W.3d 427 (2002). Even where there is evidence upon which the Board might have reached a different conclusion, appellate review is limited to a determination of whether the Board could reasonably reach its decision upon the evidence before it. *Billings v. Director*, 84 Ark. App. 79, 133 S.W.3d 399 (2003).

Here, the Board accepted as credible appellee's version of events. Her testimony was that appellant told her to leave and to not come back without adequate child care. Appellee further testified that she could not obtain any better childcare than what she had, and that her options for care were limited when the child was ill. Because appellant told appellee to leave and not return without better child-care arrangements, and because appellee had no other child-care options available to her, we cannot say there is no substantial evidence to support the Board's finding that appellant effectively

discharged appellee from employment.

Affirmed.

HART and BAKER, JJ., agree.