

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOSEPHINE LINKER HART, JUDGE

DIVISION III

E 07-99

OTHALEE WINN

October 10, 2007

APPELLANT

V.

APPEAL FROM THE DEPARTMENT
OF WORKFORCE SERVICES
BOARD OF REVIEW

DIRECTOR OF WORKFORCE
SERVICES and
PEACHTREE VILLAGE/
FARMINGTON LLC

[NO. 2007-BR-00346]

APPELLEES

REVERSED AND REMANDED

JOSEPHINE LINKER HART, Judge

Othalee Winn, formerly a “security person” for Peachtree Village in Farmington, appeals from a decision of the Department of Workforce Services Board of Review denying her unemployment compensation benefits. On appeal, Winn argues that the Board of Review erred in finding that she voluntarily left work without good cause. We agree and reverse and remand for an award of benefits.

At her hearing, Winn testified that for thirty-three months, she worked from 11:00 p.m. to 7:00 a.m. at Peachtree Village, a sixty-five unit independent living facility. Although she was hired as the “security person,” she described her duties as being the facility contact person, present in case “residents got sick or needed anything.” She also was tasked with

housekeeping. Winn stated that in addition to the sixty-five apartments, the facility had five bathrooms and five laundries.

Starting in September 2006, there was a series of break-ins and robberies in the apartments. The first occurred when Winn was not on duty, but it happened during her regular work hours. The second incident, a robbery of a resident, took place during her shift. A third incident in which a resident's room was burglarized occurred during the day shift.

Winn found the other employees of Peachtree Village largely indifferent to the situation. She stated that there were twenty-one exit doors in the facility and they were not being secured even though it was the responsibility of personnel on the preceding shift. She found the laundry left unlocked with the lights on and the housekeeper's keys hanging in plain view. Likewise, she found the kitchen unsecured. Rather than allaying her fears, the actions of other employees exacerbated them. On one occasion, Winn found a maintenance employee asleep in a vacant apartment, and another time, she found the kitchen unsecured and an employee asleep on a couch.

Winn made her concerns known to the facility manager, Daisy Glen. She told Glen after one incident that she had "no protection," not even a flashlight. She relayed that the police recommended that she carry pepper spray, but none was provided. Winn carried a cordless telephone, but its signal did not reach all areas of the complex. She also reported to her employer that she found doors to the kitchen and transportation office unlocked, as

well as the exit doors. Her employer's only response was posting a "bulletin or two to the residents" encouraging them not to leave doors unlocked.

The Board of Review found that Winn voluntarily left her employment without good cause for quitting. It conceded that "there may have been more the employer could have done to improve security" but found that simply advising the residents to be more "security conscious" was sufficient. The Board of Review also acknowledged that it was "understandable that the claimant may have been uncomfortable" but opined that the security situation was not "to such an extent as would impel the average, able-bodied, qualified individual to give up the job."

On appeal, Winn argues that the Board of Review erred in finding that she voluntarily left work without good cause. She asserts that she left her job only "after weeks of reporting the building unsecured" and her employer failed to take steps to make her job safer. We agree that the Board erred in finding that Winn voluntarily left her employment without good cause.

On appeal, we review the findings of the Board of Review and will affirm if they are supported by substantial evidence. *Walls v. Director*, 74 Ark. App. 424, 49 S.W.3d 670 (2001). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Id.* We review the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Board's findings. *Lovelace v. Director*, 78 Ark. App. 127, 79 S.W.3d 400 (2002).

Arkansas Code Annotated section 11-10-513(a)(1) (Supp. 2007) provides that “an individual shall be disqualified for benefits if he or she voluntarily and without good cause connected with the work, left his or her last work.” Good cause is defined as “a cause that would reasonably impel the average able-bodied, qualified worker to give up his or her employment.” *Perdrix-Wang v. Director*, 42 Ark. App. 218, 856 S.W.2d 636 (1993). Good cause is dependent not only on the reaction of the average employee, but also on the good faith of the employee involved, which includes the presence of a genuine desire to work and to be self-supporting. *Lewis v. Director*, 84 Ark. App. 381, 141 S.W.3d 896 (2004). In addition, in order to receive unemployment benefits, an employee must make reasonable efforts to preserve his or her job rights. *Id.*

In *Thornton v. Director*, 80 Ark. App. 99, 91 S.W.3d 523 (2002), we recognized that an employee’s safety is a consideration in determining “good cause.” In that case, we reversed a denial of benefits where an employee resigned from her assistant manager position at a Dollar General Store after she had been robbed at gunpoint and the employer’s only remedial action was an instruction to request local police to act as a security guard “around Christmas time.” We hold that *Thornton* is analogous to the instant case. Winn was confronted with what was apparently a worsening security situation and her employer virtually ignored her concerns, opting instead to enact only the most perfunctory of remedial measures. Under these circumstances, we hold that Winn left her employment with good

cause. Accordingly, we reverse and remand this case for an award of unemployment benefits.

Reversed and remanded.

BIRD and GRIFFEN, JJ., agree.