

ARKANSAS COURT OF APPEALS

DIVISION IV

No. E12-40

KEITH BALLARD

APPELLANT

V.

DIRECTOR, ARKANSAS
DEPARTMENT OF WORKFORCE
SERVICES, and MID SOUTH, INC.
APPELLEES

Opinion Delivered May 30, 2012

APPEAL FROM THE ARKANSAS
BOARD OF REVIEW
[NO. 20012-BR-00009]

REVERSED AND REMANDED

RITA W. GRUBER, Judge

Keith Ballard appeals the denial of unemployment benefits by the Arkansas Board of Review (Board). He was employed by Mid South, Inc., from May 2, 2011, to August 13, 2011, when he voluntarily terminated his employment. He sought unemployment benefits from the Arkansas Department of Workforce Services, and his claim was denied. He appealed the denial to the Arkansas Appeal Tribunal (Tribunal), and a telephone hearing was conducted on November 10, 2011. The hearing officer then issued a decision denying Ballard benefits pursuant to Ark. Code Ann. § 11-10-513(a)(1) (Supp. 2011), after finding that Ballard quit work because he did not have transportation. Ballard appealed the Tribunal decision to the Board, which denied his application for appeal pursuant to Ark. Code Ann. § 11-10-525(a), (f) (Supp. 2011).¹ Ballard now petitions this court for review, asserting that he had good cause

¹An appeal filed by any party shall be allowed as of right if the determination was not affirmed by the appeal tribunal. Ark. Code Ann. § 11-10-525(a). However, upon denial by the board of an application for appeal from the decision of an appeal tribunal, the decision of the appeal tribunal shall be deemed to be a decision of the board within the meaning of this

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for voluntarily terminating his employment because he was not paid for several weeks of work. We hold that substantial evidence does not support the Board's determination; therefore, we reverse and remand for an award of benefits.

The facts are not in dispute. Ballard was employed as a small-business resale representative—a position that required him to provide his own transportation. At the telephone hearing, Ballard testified that employees were paid on a weekly basis; that he worked for several weeks without receiving his expected weekly pay; and that he made numerous attempts to resolve the issue by contacting his manager, the human-resources department, and the employer's corporate office—none of which provided any resolution. He further testified that because he was not paid, he was unable to pay his personal bills, which led to the repossession of his vehicle shortly before August 13, 2011. He stated that since he no longer possessed a vehicle, he was unable to perform his position, and he terminated his employment. He also testified that he had filed a claim with the Arkansas Department of Labor for his unpaid compensation.

Ballard also submitted several exhibits to the Tribunal: a letter from the employer reflecting how much he should expect to be paid during the first sixteen weeks of his employment; two checks—one for the pay period ending July 8, 2011, and one for the pay period ending August 16, 2011 (his final check)—reflecting that he had not received any pay

section for purposes of judicial review and shall be subject to judicial review within the time and in the manner provided for with respect to decisions of the board, except that the time for initiating the review shall run from the date of notice of the order of the board denying the application for appeal. Ark. Code Ann. § 11-10-525(f).

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for approximately five weeks; two contracts procured by Ballard on behalf of the employer during the time he was not receiving pay; and phone records reflecting his participation in conference calls with the employer during the time he was not receiving pay. The employer did not participate in the hearing or otherwise provide the Tribunal with any documentation.

The hearing officer found that while Ballard showed he went for weeks without pay, he continued working until the “immediate cause of separation was his lack of transportation.” The officer further found that Ballard did not show he was making efforts to resolve the nonpayment issue before he notified the employer that he quit. The officer concluded that Ballard was responsible for having transportation, that he quit his employment when he no longer had transportation, and that he therefore voluntarily left last work without good cause connected to the work. No specific credibility determinations were made. Pursuant to Ark. Code Ann. § 11-10-525(f), the decision of the Tribunal shall be deemed to be the decision of the Board.

Arkansas Code Annotated section 11-10-513(a)(1) provides that an individual shall be disqualified for benefits if he voluntarily and without good cause connected with the work left his last work. Where a claimant has voluntarily quit work and is seeking unemployment-insurance benefits, the burden is on the claimant to show by a preponderance of the evidence that he had good cause connected with the work for quitting. *Owens v. Dir., Ark. Emp’t Sec. Dep’t*, 55 Ark. App. 255, 935 S.W.2d 285 (1996). Good cause is a cause which would reasonably impel the average able-bodied, qualified worker to give up his employment. *Lewis*

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v. Dir., Emp't Sec. Dep't, 84 Ark. App. 381, 141 S.W.3d 896 (2004). 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. *Id.* Whether the employee took appropriate steps to prevent the mistreatment from continuing is also an element in determining good cause. *Teel v. Daniels, Dir. of Labor*, 270 Ark. 766, 606 S.W.2d 151 (Ark. App. 1980).

On appeal, we review the findings of the Board in the light most favorable to the prevailing party, reversing only where the Board's findings are not supported by substantial evidence. *Crouch v. Dir., Dep't of Workforce Servs.*, 2012 Ark. App. 262. Substantial evidence is such evidence as a reasonable mind might accept as adequate to support a conclusion. *Coker v. Dir., Dep't of Workforce Servs.*, 99 Ark. App. 455, 262 S.W.3d 175 (2007). Even when there is evidence on which the Board might have reached a different decision, the scope of our judicial review is limited to a determination of whether the Board could reasonably reach its decision upon the evidence before it. *Crouch*, 2012 Ark. App. 262, at 3. Issues of credibility of witnesses and weight to be afforded their testimony are matters for the Board to determine. *Coker*, 99 Ark. App. at 457, 262 S.W.3d at 176.

The Board's reasoning that Ballard did not have "good cause" for terminating his employment because his lack of transportation was the "immediate cause" for the termination was fundamentally flawed and resulted in an erroneous conclusion. While the superficial reason that Ballard voluntarily terminated his employment was his lack of transportation, the

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actual cause for Ballard voluntarily terminating his employment (and the reason that he asserted at the hearing) was that he had not been paid for several weeks of work, which resulted in the loss of his transportation. We have previously stated that allegations of a substantial decrease in wages may constitute good cause for voluntarily leaving one's employment. *Duncan v. Dir., Emp't Sec. Dep't*, 79 Ark. App. 367, 88 S.W.3d 858 (2002). Here, Ballard did not allege a substantial decrease, but rather no compensation at all, and the Board made a specific finding that Ballard showed he continued to work for several weeks without pay. We do not think that reasonable minds could conclude, on the basis of the facts actually found by the Board, that an employee lacks good cause connected with the work for terminating his employment when the employee is not being compensated. Finally, the Board's finding that Ballard did not show he was making efforts to resolve the nonpayment issue before he notified the employer that he quit is not supported by the record. The only evidence before the Board was Ballard's unrefuted testimony that he made multiple, unsuccessful attempts to resolve the compensation issue prior to terminating his employment. Thus, no reading of Ballard's testimony can support such a finding. Accordingly, we reverse and remand for an award of benefits.

Reversed and remanded.

GLADWIN and ROBBINS, JJ., agree.