

2013 Ark. App. 276

ARKANSAS COURT OF APPEALS

DIVISION II

No. E 12-613

WENDY L. WILSON

APPELLANT

V.

DIRECTOR, DEPARTMENT OF
WORKFORCE SERVICES and
RECTOR PHILLIPS MORSE

APPELLEES

Opinion Delivered April 24, 2013

APPEAL FROM THE ARKANSAS
BOARD OF REVIEW
[NO. 2011-BR-02554]

AFFIRMED

RHONDA K. WOOD, Judge

Wendy Wilson appeals the Board of Review's decision denying her unemployment benefits on the basis that she voluntarily left her last work without good cause connected to the work. On appeal, Wilson argues that she did not voluntarily leave her employment and was terminated. We affirm the Board's denial of benefits.

This court set forth the standard of review in unemployment cases in *Baldor Elec. v. Director*, 71 Ark. App. 166, 27 S.W.3d 771 (2000) (citations omitted):

On appeal, the findings of fact of the Board of Review are conclusive if they are supported by substantial evidence. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. We review the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Board's findings. Even when there is evidence upon which the Board might have reached a different decision, the scope of judicial review is limited to a determination of whether the Board could reasonably reach its decision upon the evidence before it.

Arkansas Code Annotated Section 11–10–513 (Repl. 2012) provides that an individual shall be disqualified for unemployment benefits if he “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.” *Relyea v. Director*, 104 Ark. App. 235, 290 S.W.3d 34 (2008). “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 be self-supporting.” *Id.* Additionally, an employee is required to make reasonable efforts to preserve his job rights in order to receive unemployment benefits. *Id.*

PDC Companies employed Wilson as a real estate agent until Rector Phillips Morse, Inc. (“RPM”) acquired the Hot Springs office on October 6, 2010. RPM informed Wilson at the time of the acquisition that it did not have a position for her and that her employment would end on December 31, 2010. RPM paid Wilson both W-2 wages and 1099 income through an independent-contractor agreement. On November 15, 2010, Wilson informed RPM that she was terminating the independent-contractor agreement and transferring her real estate license to another broker. RPM then issued Wilson her final check. Wilson applied for unemployment benefits, but the Arkansas Board of Review and the Appeal Tribunal found that Wilson left her last work without good cause connected with the work and denied her benefits. Wilson now appeals that decision.

Wilson argues that she was employed in two capacities with RPM: as an administrative assistant and as an independently-contracted real estate agent. Wilson

further contends that when she moved her real estate license to another broker, she was only voluntarily leaving her independent-contractor job with RPM and not her separate position as administrative assistant. She contends RPM should have continued to pay her as an administrative assistant and when they failed to do so, she was discharged and eligible for unemployment benefits.

We disagree and find that there is substantial evidence to support the Board's decision that Wilson's employment with RPM was dependant on her retaining her license with them in accordance with her independent contract. The Board reviewed Wilson's employment documents in the record and concluded that she voluntarily left by registering her real estate license with another real estate broker, effectively ended all her employment with RPM. The Board, therefore, found she voluntarily left her last employment without good cause connected to her work and was ineligible for benefits. We find that the Board could reasonably reach this conclusion based on the evidence before it. We hold that the Board's denial of benefits is supported by substantial evidence.

Affirmed.

WYNNE and HIXSON, JJ., agree.

Bridges, Young, Matthews & Drake PLC, by: *Michael J. Dennis*, for appellant.

Phyllis A. Edwards, for appellee.