

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2012 CA 1715

LARRY O. NEWKIRK

VERSUS

JERRY CREEL TRUCKING, INC.

DATE OF JUDGMENT: APR 26 2013

ON APPEAL FROM
THE TWENTY-SECOND JUDICIAL DISTRICT COURT
NUMBER 102,291, DIVISION G, PARISH OF WASHINGTON
STATE OF LOUISIANA

HONORABLE WILLIAM J. CRAIN, JUDGE

Larry O. Newkirk
Angie, Louisiana

Plaintiff-Appellant
Pro Se

J. Jerome Burden
Baton Rouge, Louisiana

Counsel for Defendant-Appellee
Louisiana Workforce Commission

BEFORE: KUHN, PETTIGREW, AND McDONALD, JJ.

Disposition: AFFIRMED.

KUHN, J.,

Appellant-claimant, Larry O. Newkirk, appeals a district court judgment dismissing his petition for judicial review of a decision of the Board of Review¹ that upheld Mr. Newkirk's disqualification to receive unemployment compensation benefits. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Mr. Newkirk worked as a local truck driver for Jerry Creel Trucking, Inc. (Creel), for approximately two and one-half years. On August 21, 2009, he gave Creel's secretary a one-week notice that he was quitting because he intended to reapply for social security disability. His last day of employment was August 28, 2009.

Thereafter, Mr. Newkirk filed an application with the Louisiana Workforce Commission, appellee herein, for unemployment compensation benefits. His claim was denied on the basis that he left his employment for personal reasons, rather than for good cause. After he took an appeal from that determination, a hearing was held before an administrative law judge (ALJ).

Mr. Newkirk testified at the hearing that the actual reason he quit was because there were regularly shortages in his paychecks. He believed the shortages were due to Creel's general manager, Craig Ritchie, keeping some of Mr. Newkirk's money for himself. He further asserted broadly that he was discriminated against and treated unfairly at Creel. According to Mr. Newkirk, he was not permitted, as his co-workers were, to haul loads of dirt that were paid at a higher rate per load. Finally, Mr. Newkirk claimed that he made a request before his last day of employment with Creel that he be allowed to keep his job, but his

¹ The Board of Review is within the Office of Unemployment Insurance Administration in the Louisiana Department of Labor. See La. 23:1651 & 1652.

request was refused.

Mr. Ritchie gave testimony that conflicted with that of Mr. Newkirk in several respects. He testified that the only instance he knew of when Mr. Newkirk complained about his paycheck was when Creel received an order from the Social Security Disability Administration to garnish Mr. Newkirk's wages. Mr. Ritchie admitted that when the garnishment order was eventually lifted, there was insufficient time to prevent the garnishment from being withheld from Mr. Newkirk's next paycheck. However, Mr. Newkirk was reimbursed quickly for the amount withheld from that check.

Further, Mr. Ritchie denied that Mr. Newkirk was treated unfairly or discriminated against. With respect to Mr. Newkirk's claim that he was not allowed to haul the higher-paying loads of dirt, Mr. Ritchie noted that different trucks were assigned to different tasks. In any event, he testified that Mr. Newkirk also was not assigned to haul dirt because those assignments typically were later in the day when he had already gone for the day.

Finally, Mr. Ritchie also denied Mr. Newkirk's claim that he asked for his job back before his last day of employment with Creel. According to Mr. Ritchie, Mr. Newkirk did not make this request until two to three weeks after his last day of employment. He explained that the request was denied because the process of hiring a replacement had already begun.

Following the hearing, the ALJ issued a written opinion affirming Mr. Newkirk's disqualification from receiving unemployment compensation benefits. In doing so, the ALJ specifically found Mr. Ritchie's testimony more credible than that of Mr. Newkirk, stating as follows:

The claimant and the employer had two entirely different versions of when the claimant requested that he be allowed to have his job back. The claimant's credibility is not as strong as the employer's credibility because the claimant was receiving social security disability prior to

starting his job with this employer and he continued to receive these benefits while he was employed fulltime. The claimant is again receiving social security disability. He did not tell the employer about this prior to being hired and he passed three DOT physicals during his employment with this employer.

Based on its credibility determination, the ALJ concluded that, “the claimant has not proven with a preponderance of evidence that he had good cause attributable to a substantial change made to the employment by the employer to quit [his] employment.”

Mr. Newkirk then appealed to the Board of Review. After reviewing the record, including the testimony given at the administrative hearing, the Board of Review found no justification for reversing or modifying the ALJ’s decision and adopted its findings as its own. Thereafter, Mr. Newkirk filed a petition for judicial review in district court. After hearing oral arguments on the matter, the district court concluded that the Board of Review’s decision was supported by its findings of fact and dismissed the petition for review with prejudice. Mr. Newkirk now appeals the district court judgment.

ANALYSIS

Under La. R.S. 23:1601(1)(a), an individual is ineligible for unemployment compensation benefits if he voluntarily leaves his employment “without good cause attributable to a substantial change made to the employment by the employer.” Furthermore, when an individual becomes unemployed and the issue is whether or not he left with good cause as required by statute, then the claimant bears the burden of proving by a preponderance of the evidence that good cause existed. See *Gonzales Home Health Care, L.L.C. v. Felder*, 08-0798 (La. App. 1st Cir. 9/26/08), 994 So.2d 687, 690, writ not considered, 998 So.2d 730, 08-2568 (La. 1/9/09).

The scope of judicial review in cases involving unemployment compensation benefits is expressly and severely limited by the Legislature. *King v. Tangipahoa Parish Police Jury*, 96-0934 (La. App. 1st Cir. 2/14/97), 691 So.2d 194, 196. Under La. R.S. 23:1634(B), the factual findings of the Board of Review must be upheld upon judicial review, if supported by sufficient evidence. Thus, the scope of appellate review in this matter is limited to determining whether the facts are supported by sufficient and competent evidence and whether the facts, as a matter of law, justify the action taken. La. R.S. 23:1634(B); *Strahan v. Eams Electric, L.L.C.*, 11-2016 (La. App. 1st Cir. 5/2/12), 92 So.3d 1025, 1027. Further, our appellate review does not entail the weighing of evidence, drawing of inferences, reevaluation of evidence, or substituting the views of this Court for those of the ALJ or Board of Review as to the correctness of facts. *Strahan*, 92 So.3d at 1027.

“Good cause” connected with an individual’s employment means a cause connected with his working conditions, the ability of the employee to continue the employment, the availability of transportation to and from work, and other factors that affect the employee’s ability or right to continue work or that affects the benefits he may receive from his employer. *Gonzales Home Health Care*, 994 So.2d at 693. “Good cause” connected with employment exists when an employee quits his job because the work becomes unsuitable due to unanticipated working conditions. However, mere dissatisfaction with working conditions does not constitute “good cause” unless the dissatisfaction is based on discrimination, unfair or arbitrary treatment, or is based upon a substantial change in wages or working conditions from those that existed at the time the employee’s position began. *Gonzales Home Health Care*, 994 So.2d at 693.

In this case, when Mr. Newkirk gave notice to his employer that he was quitting, he indicated he was doing so in order to reapply for social security disability benefits. Although he later claimed that he quit due to regular shortages in his paychecks, as well as unfair and discriminatory treatment by his employer, the ALJ and Board of Review made factual findings rejecting these claims and finding that Mr. Newkirk did not have "good cause," within the meaning of La. R.S. 23:1601(1)(a), to leave his employment with Creel. Based on our careful review of the record, we find that the factual findings of the ALJ and the Board of Review are supported by sufficient and competent evidence. Moreover, as a matter of law, those findings justify the Board of Review's decision that Mr. Newkirk was disqualified to receive unemployment compensation benefits because he left his employment without good cause attributable to a substantial change made to the employment by the employer. See La. R.S. 23:1601(1)(a); La. R.S. 23:1634(B).

CONCLUSION

For the reasons assigned, the decision of the district court dismissing the petition for judicial review filed by Mr. Newkirk is affirmed. Since Mr. Newkirk is exempt under La. R.S. 23:1692 from the payment of cost in these proceedings, we make no assessment of costs in this appeal.

AFFIRMED.