

IN THE UTAH COURT OF APPEALS

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Jennifer L. Juback,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Petitioner,	)	
	)	Case No. 20040957-CA
v.	)	
	)	
Department of Workforce	)	F I L E D
Services; Workforce Appeals	)	(October 6, 2005)
Board; and America West Bank,	)	
Inc.,	)	2005 UT App 421
	)	
Respondents.	)	

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Original Proceeding in this Court

Attorneys: Clella Blakely, Kaysville, for Petitioner  
          Michael R. Medley, Salt Lake City, for Respondents

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Before Judges Bench, Greenwood, and McHugh.

McHUGH, Judge:

Petitioner Jennifer L. Juback seeks review of a decision of the Workforce Appeals Board (Board) affirming a decision of a Department of Workforce Services Administrative Law Judge (ALJ) denying Petitioner's claim for unemployment insurance benefits. We affirm.

In our review of the Board's decision, we will disturb its factual findings only if they are "not supported by substantial evidence when viewed in light of the whole record before the court." Utah Code Ann. § 63-46b-16(4)(g) (2004). Further, "we will not disturb the Board's application of law to its factual findings unless its determination exceeds the bounds of reasonableness and rationality." Johnson v. Department of Employment Sec., 782 P.2d 965, 968 (Utah Ct. App. 1989).

Petitioner argues that because she had good cause for quitting her job, her claim for unemployment insurance benefits should not have been denied. See Utah Code Ann. § 35A-4-405(1)(a) (Supp. 2005) (providing that a claimant "is ineligible for benefits . . . [f]or the week in which the claimant left work voluntarily without good cause"). To establish good cause, a

claimant must show "that continuing employment would have caused an adverse effect which the claimant could not control or prevent." Utah Admin. Code R994-405-102. To successfully make this showing, a claimant must demonstrate (1) that the claimed adverse effect caused a hardship and (2) his or her inability to control or prevent the adverse effect. See id. R994-405-102(1)(a)-(b).

Even if we were to assume that Petitioner has demonstrated a hardship, we cannot conclude that she has demonstrated her inability to control or prevent the adverse effect. Rule 994-405-102(1)(b) of the Utah Administrative Code addresses a claimant's ability to control or prevent the adverse effect and provides, in relevant part, that "good cause may not be established if the claimant . . . reasonably could have continued working while looking for other employment." Id. R994-405-102(1)(b)(i). The ALJ determined<sup>1</sup> that, despite Petitioner's feeling and belief that the single late paycheck would develop into a "continuing pattern," a reasonable person in Petitioner's position would have continued working for the employer to determine if the late paycheck did in fact develop into such a "continuing pattern." Accordingly, the ALJ concluded that Petitioner did not establish good cause. See id. After reviewing the record and the ALJ's findings, we have determined that this conclusion is both reasonable and rational. See Johnson, 782 P.2d at 968.

Petitioner also asserts that Covington v. Board of Review, 737 P.2d 207 (Utah 1987), supports her argument that she established good cause. We have reviewed Covington and determined that it is distinguishable from Petitioner's case in several crucial respects. Most importantly, the claimant in Covington made multiple attempts to work out her differences with the employer. See id. at 209-10; see also Utah Admin. Code R994-405-102(1)(b)(iii) ("[G]ood cause may not be established if the claimant . . . did not give the employer notice of the circumstances causing the hardship thereby depriving the employer of an opportunity to make changes that would eliminate the need to quit. An employee with grievances must have made a good faith effort to work out the differences with the employer before quitting unless those efforts would have been futile."). In contrast, Petitioner made virtually no effort to work out her differences with the employer. The record indicates that Petitioner never met with the employer on a one-on-one basis to discuss her late paycheck. Instead, at the end of the same day that the employer met with multiple employees, including

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<sup>1</sup>In its decision, the Board adopted in full the ALJ's factual findings, reasoning, and conclusions of law.

Petitioner, to notify them that they would not be receiving their paychecks in a timely fashion, Petitioner left a letter for the employer that indicated she had quit her job.

For the foregoing reasons, we affirm the ALJ's conclusion that Petitioner has not established good cause.<sup>2</sup>

Petitioner also argues that it was against equity and good conscience to deny her claim for unemployment insurance benefits. See Utah Code Ann. § 35A-4-405(1)(b) ("A claimant may not be denied eligibility for benefits if the claimant leaves work under circumstances where it would be contrary to equity and good conscience to impose a disqualification."); Utah Admin. Code R994-405-103(1) ("If the good cause standard has not been met, the equity and good conscience standard must be applied in all cases . . . ."). To demonstrate that a denial of unemployment insurance benefits would be against equity and good conscience, a claimant must establish three elements. See Utah Admin. Code R994-405-103(1)(a)-(c). One of these elements requires the claimant to establish that he or she "acted reasonably." Id. R994-405-103(1)(b).

The ALJ found that on June 15, 2004, Petitioner "learned from the employer that she would be paid late" and that Petitioner "was eventually paid June 23, 2004." The ALJ also found that Petitioner "did not have other work at the time she quit" and that Petitioner "ha[d] been making ends meet by using her credit card." In addition, the Board stated in its decision that "[t]he record in this case establishes that the employer informed its employees it would be late with its payroll" and that "[t]he undisputed evidence further reflects that the employees received their pay one week late, and that the employer has not been late in making its payroll since that incident." Because our review of the record indicates that there is substantial evidence in the record to support these findings made by the ALJ and the Board, we will not disturb them. See Utah Code Ann. § 63-46b-16(4)(g).

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<sup>2</sup>Petitioner also argues, for the first time on appeal, that she established good cause because the employer violated her legal rights by failing to pay her when scheduled. See Utah Admin. Code R994-405-102(2) (stating that "[g]ood cause is established . . . if the individual's legal rights were violated"). Because Petitioner failed to raise this argument in the proceedings before the administrative agency, we will not consider it for the first time on appeal. See Gibson v. Board of Review, 707 P.2d 675, 677 (Utah 1985) (per curiam) ("Issues not raised before the administrative agency are waived on appeal.").

Based upon the record and its findings, the ALJ concluded that Petitioner "failed to establish that she acted reasonably," see Utah Admin. Code R994-405-103(1)(b), and that Petitioner's "decision to abandon a late paying full-time position for no income was not logical." After reviewing the record, the ALJ's findings, and the Board's findings, we cannot say that this conclusion "exceeds the bounds of reasonableness and rationality." Johnson v. Department of Employment Sec., 782 P.2d 965, 968 (Utah Ct. App. 1989). Accordingly, we affirm the ALJ's conclusion that Petitioner failed to establish that the denial of her claim for unemployment insurance benefits would be contrary to equity and good conscience.

Finally, Petitioner argues that the denial of her claim for unemployment insurance benefits was arbitrary and capricious, not supported by substantial evidence, and an abuse of discretion. A closer review of these arguments reveals that they are nothing more than an attempt by Petitioner to reargue the weight of the evidence she presented to the ALJ, which is an unavailing tactic on appeal. See Questar Pipeline Co. v. Utah State Tax Comm'n, 850 P.2d 1175, 1178 (Utah 1993) ("[W]hen reviewing an agency's decision, [we do] not conduct a de novo credibility determination or reweigh the evidence."). Therefore, we have determined that these arguments are without merit.

Affirmed.

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Carolyn B. McHugh, Judge

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WE CONCUR:

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Russell W. Bench,  
Associate Presiding Judge

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Pamela T. Greenwood, Judge