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**IN THE
COURT OF APPEALS OF INDIANA**

EDWARD HORTON,)
)
 Appellant-Claimant,)
)
 vs.) No. 93A02-0510-EX-956
)
 McCURDY MECHANICAL, INC.,)
)
 Appellee-Employer.)

APPEAL FROM THE REVIEW BOARD OF WORKFORCE DEVELOPMENT
The Honorable Howard B. Lyton, Chairperson
The Honorable George Baker, Member
The Honorable Sheri Clark, Member
Cause No. 05-R-2602

September 14, 2006

MEMORANDUM OPINION – NOT FOR PUBLICATION

BAKER, Judge

Appellant-claimant Edward Horton appeals from the decision of the Review Board of the Department of Workforce Development (the Board), which denied his claim for unemployment benefits following the termination of his employment with appellee-employer McCurdy Mechanical, Inc. (McCurdy). In essence, Horton argues that the Board's decision was erroneous because the evidence failed to show that he voluntarily left his employment at McCurdy without good cause. Horton also claims that the Board improperly denied his request for leave to submit additional tape-recorded evidence for its review. Finding no error, we affirm the Board's judgment.

FACTS

On May 17, 2004, Horton began working as a plumber for McCurdy, which is located in Fishers. Horton initially informed representatives of the company that he was experienced and licensed. Horton indicated on his employment application that he had earned a diploma from the Mechanical Skills School. Thus, he requested—and was paid—a wage in the amount of \$21.00 per hour as a licensed plumber.

After working with other McCurdy employees in the field, Frank McCurdy discovered that Horton's skills were only that of an entry-level apprentice. It was subsequently determined that Horton was either a journeyman or an apprentice-plumber and was not licensed. Thereafter, McCurdy reduced Horton's rate of pay to \$11.00 per hour and planned to enroll Horton into a mechanical skills trade school. Horton then apparently told McCurdy that he could earn more money drawing unemployment benefits and asked to be dismissed. In response, the company refused to dismiss Horton because it had available work for Horton

at his particular skill level. Thereafter, Horton quit his employment at McCurdy on February 17, 2005, because he believed that the company had no right to reduce his hourly wage.

Horton applied for unemployment benefits, and on May 28, 2004, a deputy of the Indiana Department of Workforce Development (the Department) determined that Horton was eligible for benefits. McCurdy appealed, and following a hearing that was conducted on June 27, 2005, before an Administrative Law Judge (ALJ), the deputy's decision was reversed. The ALJ determined that Horton voluntarily left his employment without good cause even though other work at McCurdy was available to him. More specifically, the ALJ found that Horton had obtained his position "through subterfuge," and even after McCurdy adjusted Horton's salary "to that due someone of Mr. Horton's actual skills and training," Horton "quit work without good cause." Appellant's App. p. 3.

Thereafter, Horton appealed the ALJ's decision to the Board and requested that he be allowed to submit additional taped "evidence," which apparently consisted of a conversation between Horton and Dave McCurdy. Id. at 6. Horton also asserted that "the [ALJ] kept cutting [him] off," at the hearing, and that the ALJ "did not allow [him] to present evidence." Id. The Board denied Horton's request, adopted the ALJ's findings, and affirmed the denial of unemployment benefits. Horton now appeals.

DISCUSSION AND DECISION

I. Standard of Review

The question of whether an employee voluntarily terminated employment without good cause is a question of fact to be determined by the Board. Lofton v. Review Bd. of the

Ind. Employment Sec. Div., 499 N.E.2d 801, 802 (Ind. Ct. App.1986). In reviewing unemployment compensation proceedings, this court will not reweigh the evidence but will consider only the evidence that supports the Board's decision. Id. We will reverse only if reasonable persons would be bound to reach a conclusion opposite that of the Board. Winder v. Review Bd. of Employment Sec. Div., 528 N.E.2d 854, 856 (Ind. Ct. App. 1988).

II. Horton's Claims

A. Denial of Benefits

Horton argues that the Board erred in denying his request for unemployment benefits because the evidence did not support that decision. Specifically, Horton argues that the evidence established that he was "laid off" by McCurdy and was, therefore, entitled to unemployment benefits. Appellant's Br. p. 4.

We initially observe that when individuals voluntarily terminate their employment without good cause, they are generally disqualified from receiving unemployment compensation benefits. Ind. Code § 22-4-15-1(a); Indianapolis Osteopathic Hosp., Inc., v. Jones, 669 N.E.2d 431, 433 (Ind. Ct. App. 1996). The issue of whether an employee voluntarily terminates employment without good cause is a question of fact to be determined by the Board. Indianapolis Osteopathic Hosp., 669 N.E.2d at 433. Additionally, the claimant has the burden of establishing that the voluntary termination of employment was for good cause. Thomas v. Dep't of Employment and Training Servs., 543 N.E.2d 397, 400 (Ind. Ct. App.1989). The claimant must show that (1) the reasons for abandoning employment were such as to impel a reasonably prudent person to terminate employment under the same or

similar circumstances, and (2) the reasons are objectively related to the employment. Gray v. Dobbs House, Inc., 171 Ind. App. 444, 447, 357 N.E.2d 900, 903 (1976).

As noted above, McCurdy hired Horton as a plumber because Horton represented on his employment application that he had the skill and education of a licensed plumber. Appellee's App. p. 2-3. Thus, Horton requested that he be paid in that capacity. Id. at 8-9. Only after working with other McCurdy employees in the field did McCurdy discover that Horton's skills as a plumber were that of an entry-level apprentice. Id. at 8. Hence, McCurdy reduced Horton's rate of pay from \$21 per hour to \$11 per hour and offered to enroll Horton into a mechanical skills school to improve his trade. Id. at 5, 8.

The evidence also shows that Horton informed McCurdy that he could make more money from unemployment and asked to be dismissed. Id. at 5. However, McCurdy refused to dismiss Horton because McCurdy had available work for someone with Horton's skill level. Id. at 3, 9-10, 15. In light of this evidence, the record supports the conclusion that Horton quit his job with McCurdy because he believed that the company had no right to reduce his hourly wage and that he left his employment without good cause. Id. at 3, 16. In essence, Horton's argument that he was "laid off" amounts to an invitation for us to reweigh the evidence—one that we decline. That said, we conclude that the Board properly denied Horton's claim for unemployment benefits.

B. Submission of Additional Evidence

In a related issue, Horton claims that the Board erred in denying his request to present additional evidence for its review. Specifically, Horton contends that the Board should have

allowed the evidence because “the [ALJ] did not allow [him] to present additional evidence,” and that the ALJ constantly “cut him off” at the hearing. Appellee’s App. p. 36.

Pursuant to 646 Indiana Administrative Code 3-12-8(b), the Board may permit either party leave to submit additional evidence for good cause shown, together with a showing of a good reason why such additional evidence was not procured and introduced at the hearing before the ALJ. The Board has discretion to deny a request for a further hearing based on allegedly “new” evidence if the applicant fails to present a good reason for the failure to present the evidence at the original hearing. Id.; see also Best Lock Corp. v. Review Bd., 572 N.E.2d 520, 528-29 (Ind. Ct. App. 1991).

In this case, Horton failed to articulate a good reason for submitting additional evidence. Contrary to Horton’s argument, there is no showing that the ALJ “[cut] him off” during his presentation of evidence. Appellant’s App. p. 6. Rather, the record reflects that the ALJ simply overruled Horton’s improper objections and assertions while McCurdy was presenting its evidence. Appellee’s App. p. 14-17. Moreover, Horton was permitted to present his case, and he made no claim at the time that the ALJ prevented him from presenting his evidence. Finally, notwithstanding the “new” evidence that Horton sought to present, he acknowledged at the hearing before the ALJ that “he had asked to be fired and that turned around.” Tr. p. 16. For these reasons, we conclude that the Board did not improperly deny Horton’s request to present additional evidence.

The judgment of the Board is affirmed.¹

SULLIVAN, J., and MAY, J., concur.

¹ After submitting his brief on appeal, Horton filed a motion with this court requesting that he be permitted to submit the alleged tape-recorded conversation as part of his evidence in this appeal. We deny that motion.