

Orin YOUNG *v.* William F. EVERETT, Director
of Labor, and H & P APPRAISAL

E 82-67

641 S.W.2d 39

Court of Appeals of Arkansas
Opinion delivered November 3, 1982

1. UNEMPLOYMENT COMPENSATION — TELEPHONE CONVERSATION IS NOT SUBSTANTIAL EVIDENCE. — Hearsay evidence *may* constitute substantial evidence, but just *any* hearsay will not do so; the reported telephone conversation with the employer in this case does not rise to the dignity of substantial evidence.
2. UNEMPLOYMENT COMPENSATION — ABSENCE OF SUBSTANTIAL EVIDENCE TO SUPPORT DECISION REQUIRES REVERSAL. — Where the only item of evidence that the Board of Review could have based its decision upon has been found not to constitute substantial evidence, the Board's decision must be reversed.

Appeal from Arkansas Board of Review; reversed.

Daniel D. Becker, for appellant.

Bruce Bokony, for appellees.

LAWSON CLONINGER, Judge. The Arkansas Board of Review denied unemployment benefits to claimant under the provisions of Section 5 (a) of the Arkansas Employment Security Act, on the grounds that claimant quit his last work without good cause. The Board also found that his base period wages should be reduced 25% under Section 3 (h) of the Act.

On this appeal, claimant contends that his resignation was with good cause because of the breach of the employment agreement by the employer. We agree with claimant's contention.

Claimant was employed as a residential field appraiser for H & P Appraisal in Garland County. When the employer's work was finished in Garland County, some of the employees were given employment, with expenses paid, when the employer's operation was moved to Howard

County. Other employees, including claimant, were offered a job in Howard County but were told that the employer would not pay their out-of-town expenses. Claimant testified that at the time he was hired the employer agreed to provide expenses for any change in location of the job site.

Claimant worked one day in Howard County, by agreement with the employer, to see what his expenses would be. Claimant resigned when he discovered that his wages would not cover his expenses. The only testimony to refute the evidence presented by claimant was a telephone conversation between the employer and an employee of the Employment Security Division. In that conversation, the employer stated that there had been no agreement regarding out-of-town expenses when claimant was hired.

The telephone conversation between the employer and the Agency employee was hearsay, and does not constitute substantial evidence to support the decision of the Board.

In *Smith v. Director of Labor*, 276 Ark. 430, 637 S.W.2d 537 (1982), the Arkansas Supreme Court held that hearsay evidence may constitute substantial evidence, but the court did not say that any hearsay would do so. The same conclusion was reached in *Bockman v. Arkansas State Medical Board*, 229 Ark. 143, 313 S.W.2d 826 (1958), relied upon in *Smith v. Director*, but in *Bockman* the evidence which the court found to be substantial consisted of affidavits and certified copies of court decisions.

Under these facts the reported telephone conversation does not rise to the dignity of substantial evidence, and since that item of evidence was the only evidence upon which the Board could have based its decision, we must hold that claimant is entitled to benefits.

Reversed.

MAYFIELD, C.J., concurs.

MELVIN MAYFIELD, Chief Judge, concurring. I agree with the majority that there is no substantial evidence in this

case to support the decision of the Board of Review. My reason for agreeing is based upon the fact that there is no showing of when or how the employer's statement got into the record and upon the fact that neither the appeals referee nor the board even mentioned the statement in their decisions.

I recognize, however, that the Supreme Court of Arkansas has held that hearsay evidence alone may constitute substantial evidence. *Smith v. Everett*, 276 Ark. 430, 637 S.W.2d 537 (1982). Therefore, my agreement to reverse is limited to the facts in this case.
