

ARKANSAS COURT OF APPEALS

DIVISION III

No. E12-402

GUADALUPE RIVAS

APPELLANT

V.

DIRECTOR, DEPARTMENT OF
WORKFORCE SERVICES, AND
ADVANCED CONCRETE SERVICES

APPELLEES

Opinion Delivered February 13, 2013

APPEAL FROM THE ARKANSAS
BOARD OF REVIEW
[2011-BR-01005]

AFFIRMED

DAVID M. GLOVER, Judge

Appellant Guadalupe Rivas appeals the Board of Review's decision denying him unemployment benefits on the basis that he voluntarily left his last work without good cause connected to the work. On appeal, Rivas argues that he did not voluntarily leave his employment; alternatively, he argues that, if he did voluntarily leave his last work, he left for good cause. 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, 168–69, 27 S.W.3d 771, 773 (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. Dir.*, 104 Ark. App. 235, 238, 290 S.W.3d 34, 36 (2008) (citing *Perdrix-Wang v. Dir.*, 42 Ark. App. 218, 221, 856 S.W.2d 636, 638 (1993)). “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.* (citing *Lewis v. Dir.*, 84 Ark. App. 381, 386, 141 S.W.3d 896, 899–900 (2004)). Additionally, an employee is required to make reasonable efforts to preserve his job rights in order to receive unemployment benefits. *Id.*

Rivas was a carpenter for Advanced Concrete Services for over a year. At the hearing before the Appeal Tribunal, Rivas testified that he had never been given an employee handbook; that he never had a set schedule; and that he would just call Mike Moffitt, one of his supervisors, to be told when and where to show up for work. He said that during the last part of August 2010, the work was slow; that neither Moffitt nor Clay Grote, another one of his supervisors, answered or returned his calls when he tried to inquire about work; and that because he never got a call back, he filed for unemployment benefits. Rivas testified that, on previous occasions, he had gone to Moffitt’s house to report for work; he did not know why he did not do so when no one called him back.



Grote testified that although he and Moffitt were the final authority in the chain of command, Rivas's brother, Felipe, was Rivas's immediate supervisor until Felipe was terminated at the end of June 2010. Grote said that he, Felipe, or Moffitt would verbally inform workers where they were needed and that Rivas knew how to contact them by phone. Grote testified that Rivas's last day of work was August 31, 2010, and that Rivas filed for unemployment benefits on September 2, 2010. Grote did not know why Rivas was not working for Advanced Concrete Services anymore—he said that Rivas quit communicating with them, and then he heard that Rivas was working for his brother. Grote said that at the time Rivas quit, there was work remaining to be done on one of the houses on which they were working.

Rivas argues on appeal that he did not voluntarily leave his work because he tried to contact both of his supervisors and left messages for both men that were never returned. He further contends that if he voluntarily left work, he had good cause to do so because he had received no response from Moffitt or Grote and therefore assumed that no work was available.

We hold that the Board's decision was based on substantial evidence. The usual mode of communication was by telephone, but Rivas had also gone to Moffitt's house on occasion to report for work. Grote's testimony was that Rivas's last day of work was August 31, 2010, and he filed for unemployment benefits on September 2, 2010. In this instance, Rivas made no attempt to go to Moffitt's house to report for work when he had not been contacted by telephone or to continue trying to establish contact by telephone; instead, he immediately filed for unemployment benefits. Furthermore, while Rivas asserted that Moffitt and Grote



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had not returned his phone calls, Grote testified that it was Rivas who did not return phone calls when contacted for work and that communication ceased on Rivas's part. Grote testified that there was work available for Rivas at the time he quit. Grote also said that he had been told that Rivas went to work for his brother. We hold that the Board's denial of benefits on the finding that Rivas voluntarily left his last work, without good cause connected to the work, is supported by substantial evidence.

Affirmed.

WHITEAKER and VAUGHT, JJ., agree.

DWSA Law Group, LLP, by: *Tim Snively*, for appellant.

Phyllis Edwards, for appellee Artee Williams, Director of Department of Workforce Services.