

ARKANSAS COURT OF APPEALS

DIVISION I

No. E12-384

WILLIAM BARNARD III
APPELLANT

V.

DIRECTOR, DEPARTMENT OF
WORKFORCE SERVICES, AND
UTILITY PROTECTION SERVICE

APPELLEES

Opinion Delivered February 27, 2013

APPEAL FROM THE ARKANSAS
BOARD OF REVIEW
[NO. 2011-BR-00414]

AFFIRMED

PHILLIP T. WHITEAKER, Judge

Appellant William Barnard appeals the denial of his claim for unemployment benefits. The Arkansas Department of Workforce Services (“Department”) denied benefits. Barnard appealed to the Arkansas Appeal Tribunal (“Tribunal”), which upheld the denial of benefits. Barnard then appealed to the Arkansas Board of Review (“Board”), which affirmed the Tribunal’s decision, finding that Barnard was discharged from work for misconduct in connection with the work on account of dishonesty. *See* Ark. Code Ann. § 11-10-514(b) (Repl. 2012). From that decision, Barnard timely appealed to this court, and he now argues that the Board’s decision is not supported by substantial evidence. *We* affirm.



Barnard was employed by Arkansas Utility Protection Service. His job duties as a damage-prevention specialist required him to locate and mark underground utilities. Damage-prevention specialists were also required to fill out tickets each day that reflected the work done that day. On July 22, 2010, Barnard received a written warning for not following proper procedures in marking an area. An October 20, 2010 employee-performance review found that Barnard had been instructed twice previously to follow proper marking procedures and not engage in conduct that increased his time spent at any given locale.

Dewayne Huff, Barnard's regional manager, reported that Barnard had falsified documentation to the employer. Barnard misrepresented conversations with contractors, in that he would turn in call tickets reflecting that he had spoken with contractors, but the contractors denied the conversations. Huff testified that Barnard had falsified his work documentation as well. Huff said that Barnard falsified the number of cables at a work site to justify spending more time on a ticket and thus to get more overtime pay. On one occasion, Barnard's documentation showed that he was working on a site, when the GPS on his vehicle showed that he was actually at City Hall in Central City.¹ Ultimately, Barnard was discharged for falsification of documents.

Barnard asserted that the "document falsification" explanation was merely an excuse

¹Barnard was mayor of Central City.



for firing him. He alleged that he was terminated because he filed a sexual-harassment complaint about his previous manager. Barnard acknowledged that falsification of documents was against the employer's rules, but he denied ever falsifying his records and claimed that his firing was retaliatory.

The Tribunal issued a decision finding that the preponderance of the evidence indicated that Barnard falsified the employer's business records on repeated occasions. The Tribunal found that Barnard's actions were dishonest and in willful disregard of the employer's best interests and that Barnard was therefore discharged from last work for misconduct in connection with the work on account of dishonesty.

The Board of Review adopted the Tribunal's decision. The Board noted Barnard's assertion that his discharge was in retaliation for his sexual-harassment claim against his employer in the spring prior to his discharge in 2010. The Board concluded, however, that the weight of the evidence established that Barnard was discharged for falsifying the employer's business records on multiple occasions.

Whether an employee's actions constitute misconduct in connection with the work sufficient to deny unemployment benefits is a question of fact for the Board. *Valentine v. Director*, 2012 Ark. App. 612; *Thomas v. Director*, 55 Ark. App. 101, 931 S.W.2d 146 (1996).

Our standard of review of the Board's findings of fact is well settled:

We do not conduct a de novo review in appeals from the Board of Review. In appeals of unemployment compensation cases we instead review the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Board of Review's findings. The findings of fact made by the Board of Review are conclusive if supported by substantial evidence; 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 have reasonably reached its decision based on the evidence before it. Substantial evidence is such evidence as a reasonable mind might accept as adequate to support a conclusion.

Valentine, supra (quoting *Snyder v. Director*, 81 Ark. App. 262, 263, 101 S.W.3d 270, 271 (2003)). Additionally, the credibility of witnesses and the weight to be accorded their testimony are matters to be resolved by the Board of Review. *Williams v. Director*, 79 Ark. App. 407, 88 S.W.3d 427 (2002).

The Board made a factual finding that the weight of the evidence showed that Barnard was fired for falsifying his documentation, not out of retaliation. The Board had before it testimony that supported its decision, and although Barnard offered his own testimony to contradict that of his employer, the credibility of witnesses and the weight to be accorded their testimony are matters to be resolved by the Board. *Valentine, supra; Williams, supra*. The findings of fact made by the Board of Review are conclusive if supported by substantial evidence. Because there was evidence upon which the Board could reasonably base its decision, its findings are supported by substantial evidence.

Affirmed.

PITTMAN and GRUBER, JJ., agree.

Michael Hamby, P.A., by: *Michael Hamby*, for appellant.

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