

ARKANSAS COURT OF APPEALS

DIVISION IV

No. E12-1032

LADONNA C. ALEXANDER
APPELLANT

V.

DIRECTOR, DEPARTMENT OF
WORKFORCE SERVICES, and
LOWE'S HOME CENTERS
APPELLEES

Opinion Delivered April 10, 2013

APPEAL FROM THE ARKANSAS
BOARD OF REVIEW
[NO. 2012-BR-02510]

REVERSED AND REMANDED

BILL H. WALMSLEY, Judge

Appellant LaDonna Alexander was denied unemployment benefits upon the Board of Review's determination that, while Alexander voluntarily left her job due to a disability, she failed to make any reasonable efforts to preserve her job rights before quitting. We hold that substantial evidence does not support the Board's decision, and therefore reverse and remand for an award of benefits.

Alexander had been working in the customer-service department at Lowe's Home Centers for approximately six months. Alexander suffered from a previous back injury and found it increasingly difficult to stand and walk on concrete floors all day, which was required for her particular position. Alexander spoke with the assistant store manager about being permitted to sit down for part of the day, but, when no resolution was reached, Alexander quit her job.

Arkansas Code Annotated section 11-10-513(a)(1) (Repl. 2012) provides that an



individual shall be disqualified for benefits if she voluntarily and without good cause connected with the work left her last work. However, no individual shall be disqualified if, after making reasonable efforts to preserve her job rights, she left her last work because of illness, injury, or disability. Ark. Code Ann. § 11-10-513(b)(2)(A). An individual may preserve job rights by requesting a transfer to another department. See *Western Sizzlin of Russellville, Inc. v. Director of Labor*, 30 Ark. App. 141, 783 S.W.2d. 875 (1990).

Both the Appeal Tribunal and the Board found that Alexander left her job due to a disability. That matter is not an issue on appeal. The Tribunal concluded that Alexander's failure to request a leave of absence constituted a failure to make reasonable efforts to preserve her job rights, and that opinion was affirmed and adopted by the Board. The Board, however, added that Alexander had asked the employer about an accommodation only with respect to her current position, as opposed to a transfer to any available position within the store. The Board essentially found a total failure on Alexander's part to make any reasonable efforts to preserve her job rights.

On appeal, we review the findings of the Board in the light most favorable to the prevailing party, reversing only where the Board's findings are not supported by substantial evidence. *Ballard v. Director, Ark. Dep't of Workforce Servs.*, 2012 Ark. App. 371. Substantial evidence is such evidence as a reasonable mind might accept as adequate to support a conclusion. *Id.* Even when there is evidence on which the Board might have reached a different decision, the scope of our judicial review is limited to a determination of whether the Board could reasonably reach its decision upon the evidence before it. *Id.* Issues of



credibility of witnesses and weight to be afforded their testimony are matters for the Board to determine. *Id.*

The Board made no specific credibility determinations. In its decision, the Board referenced the “Miscellaneous-Claimant Statement,” which read in part, “[The assistant store manager] told me that since I worked customer service on the floor they would not allow me to work with the accom[m]odation.” The Board also referenced Alexander’s testimony at the Tribunal hearing, at which she said that she “asked [the assistant store manager], ‘Did he have another position for me?’” The Board wrote that

[w]hile that testimony, standing alone, could be interpreted as indicating that the claimant was asking for another position anywhere in the store, and not just for an accommodation in the position at which she customarily worked, the assistant store manager’s testimony which followed, and which was not disputed by the claimant, tends to indicate that the request by the claimant was considered as having been in regard to an accommodation in the position at which she customarily worked. That testimony by assistant store manager was that he told the claimant, “The position she was in didn’t have that capability to sit down.” At the hearing, the claimant did not thereafter assert that she was seeking a transfer to any other position in the store that could have accommodated her medical condition.

We hold that reasonable minds could not reach the same conclusion as the Board based on the evidence before it. The record simply does not support the Board’s findings. First, Alexander’s testimony did not “stand alone,” given that Alexander also testified that

- I told [the assistant store manager] that I couldn’t come back to work if they didn’t have . . . somewhere for me to sit down, or another position where I could sit and alternate. And he said they didn’t have anything else for me and they wouldn’t have a seat, and that he understood about back problems and he was sorry that they didn’t have anything else for me.
- [The assistant store manager] said the position that they had is WE Teamer, and they didn’t have like any flexibility for that position for like – for me to go into another position. Like they didn’t have anything else open for me.



Second, the Board relied on the assistant store manager's testimony, but after reading the quoted material in context, it is clear that Alexander sought another position that would allow her to alternate between sitting and standing. The following exchange transpired between the hearing officer and the assistant store manager:

HEARING OFFICER: And she indicated that she called you and told you she was quitting. Is that true?

MANAGER: Correct.

HEARING OFFICER: Did she say why?

MANAGER: She said she had back problems.

HEARING OFFICER: And did she ask you for a seat or anything like that?

MANAGER: No. She asked if we had another position that – that would allow her – allow her to sit down throughout the day.

HEARING OFFICER: And what did you tell her?

MANAGER: No. The position that she was in didn't have that – that capability to sit down. It was a position that required movement throughout the floor.

According to the assistant store manager's own testimony, Alexander requested a transfer to another position where she had the option of sitting down. Alexander should not be penalized for the manager's misunderstanding of or his failure to answer her general question, instead limiting the request so that it pertained only to her current position. Alexander likely saw no reason to dispute the manager's testimony given the entirety of what was said.

Alexander was not required to exhaust every possibility in her attempt to continue her



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employment; instead, Alexander was required only to make reasonable efforts to preserve her job rights. Although Alexander did not request a leave of absence, which is certainly a factor in determining whether reasonable efforts were made, Alexander did take active steps to preserve her job rights by requesting a transfer to another position that could accommodate her disability. We hold that reasonable minds could not conclude that Alexander made no reasonable efforts to preserve her job rights before quitting. Because the Board's decision is not supported by substantial evidence, we reverse and remand for an award of benefits.

Reversed and remanded.

WYNNE and BROWN, JJ., agree.

Ladonna C. Alexander, pro se appellant.

Phyllis Edwards, Associate General Counsel for Artee Williams, Director, Dep't of Workforce Servs., for appellee.