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ARKANSAS COURT OF APPEALS

DIVISION II
No. E-23-194

CHAPMAN SERVICE CO., INC. APPELLANT V. DIRECTOR, DIVISION OF WORKFORCE SERVICES; AND BRANDON BICKHAM APPELLEES	**Opinion Delivered** June 5, 2024 APPEAL FROM THE ARKANSAS BOARD OF REVIEW [2023-BR-00285] AFFIRMED

STEPHANIE POTTER BARRETT, Judge

Chapman Service Co., Inc., appeals the decision of the Board of Review (Board) affirming an Appeal Tribunal (Tribunal) finding that Brandon Bickham was entitled to benefits because he was discharged for reasons other than misconduct connected with the work. We affirm.

Brandon Bickham was an employee of Chapman Service Co., Inc. (Chapman), until November 17, 2022. Bickham alleged he was terminated by Chapman. Chapman countered that Bickham was not terminated but that he quit his job on November 17, 2022, by his actions. The Division of Workforce Services mailed Chapman a request for additional information regarding its allegation that Bickham had quit his job and stated the information must be received by December 20, but Chapman failed to respond. At the Division's request, Bickham provided the Division copies of text messages and phone logs

by the December 20, 2022, deadline. Bickham testified that Chapman had canceled his participation in two nationwide training classes with Trane, and Bickham believed Chapman had done so because he was being let go. It was this, along with several days of reduced hours, that led him to make his unemployment claim. The agency found Chapman had presented insufficient evidence to substantiate its allegation that Bickham had quit his job. On December 22, the Division sent a notice of agency determination to the parties, notifying them it was awarding Bickham benefits. Chapman filed a timely appeal of this decision.

On January 27, 2023, The Tribunal found that Bickham last worked for Chapman on November 14, 2022, as a service technician. The Tribunal further found that on several occasions, Chapman sent text messages to Bickham and told him not to report to work because no work was available. Bickham testified that it became apparent there was no work for him, and Chapman was basically reducing his hours down to nothing. Bickham attempted to report to work to retrieve tools he needed at home but was denied access to the building for unknown reasons. Bickham presented documented accounts that he was told not to report to work due because no work was available.

Chapman testified that it was not allowing Bickham to work due to several write ups concerning Bickham's behavior but admitted that Chapman did not advise Bickham of this. The Tribunal found that Chapman had not shown by a preponderance of the evidence that Bingham had violated any of its policies or that its claims of alleged misconduct had merit. The Tribunal affirmed the Division's determination to award Bickham benefits under Ark. Code Ann. § 11-10-514(a) (Supp. 2023). Chapman filed a timely appeal to the Board.

The Board conducted a review of all the evidence and testimony presented in the case and issued an opinion on March 30, 2023. The Board noted that there was considerable conflicting testimony between Bickham and Chapman. The testimony was clear that Bickham was never specifically told he was fired. Bickham was told on multiple occasions that there was no work for him. However, during testimony, Chapman stated that there was plenty of work for everyone to have forty hours a week. The record contains texts from Chapman telling Bickham to stay home on November 16, 2022, because there was no work. After receiving the text to stay home because there was no work, he asked if there was a training class the next day. He received no response. On November 17, 2022, Chapman sent Bickham a text stating that there was no work and no class that day and to take the day off. Bickham replied that he needed his tools to do some work around the house. Chapman responded that they would be back after 12:00 p.m. Bickham replied that he needed his tools that morning. Later in the afternoon, Chapman texted Bickham again and stated that since Bickham had brought his uniforms that morning when he tried to pick up his tools, Chapman took that as his intention to resign, and Chapman would honor it. Bickham replied that he had not resigned, that Chapman had no work for him that week, and that he needed his tools at his house. Chapman replied that Bickham's actions say otherwise. Bickham responded, "What actions, no work all week says enough."

The Board found that Bickham believed Chapman was discharging him without saying he was discharged in an effort to avoid having to pay him unemployment benefits, and the Board agreed. If the reason Chapman told Bickham to stay home was because of

his prior actions, then Chapman could have told him he was being temporarily suspended. Chapman did not testify that Bickham was told not to come to work because of misconduct. If the reason was because Bickham had asked for the time off, Chapman could have told him that he was scheduled off that day at his own request. Instead, Chapman texted that there was no work for him. Chapman's testimony at the hearing was that there was plenty of work so that everyone could work forty hours a week. The Board, having considered the entire record of prior proceedings before the Tribunal, including the testimony submitted at the hearing, concluded that the Tribunal's decision was correct. Chapman filed a timely petition for review for this court.

Our standard of review in unemployment-insurance cases is well settled. We do not conduct de novo reviews on appeals from the Board. *Keener v. Dir.*, 2021 Ark. App. 88, at 1, 618 S.W.3d 446, 448. Instead, we review the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Board's findings of fact. *Id.*, 618 S.W.3d at 448. We accept the Board's findings of fact as conclusive if supported by substantial evidence, which is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Id.*, 618 S.W.3d at 448. Even when there is evidence on which the Board might have reached a different decision, our scope of judicial review is limited to a determination of whether the Board could have reasonably reached the decision rendered on the basis of the evidence presented. *Id.* at 1–2, 618 S.W.3d at 448. We defer credibility calls to the Board as the finder of fact as well as the weight to be accorded to testimony presented to the Board. *Id.* at 2, 618 S.W.3d at 448. While our role in these

cases is limited, we are not here to merely ratify the decision of the Board. *Id.*, 618 S.W.3d at 448. Instead, our role is to ensure that the standard of review has been met. *Id.*, 618 S.W.3d at 448.

Having reviewed the record, we are satisfied that there is substantial evidence to support the Board's decision granting benefits to Bickham on a finding that he was discharged for undisclosed reasons. The Board made extensive findings of fact in its review of the testimony and evidence and cites specific evidence in support of its decision. The Board found that Bickham believed his employer discharged him without saying he was discharged in an effort to avoid paying him unemployment benefits. The Board found that Bickham was effectively discharged. Although Chapman testified to the contrary, inconsistencies in the testimony, the credibility of witnesses, and inferences drawn from the testimony are matters for the Board and not this court. *Ramirez v. Dir.*, 2013 Ark. App. 453.

Chapman argues on appeal that he did not get a fair hearing because the Board did not consider his documentary evidence. However, the Tribunal allowed Chapman to testify about the alleged misconduct and Chapman's written statement that alleged misconduct. The record also showed that Chapman was provided an opportunity to submit additional information to support its position that unemployment benefits should not be granted to Bickham but failed to do so by the deadline set by the agency or at any other time. After it considered the testimony about Bickham's alleged misconduct, the Board found Chapman had not shown that Bickham was discharged for conduct amounting to a willful disregard of Chapman's interests. It is the employer's burden to establish misconduct by a

preponderance of the evidence. *Follett v. Dir.*, 2017 Ark. App. 505, 530 S.W.3d 884. The Board found that Chapman did not meet the burden of proof to establish misconduct. Arkansas Code Annotated section 11-10-525(c)(1) (Repl. 2012) provides that the Board may direct that additional evidence be taken. However, this is a discretionary call by the Board, and it is not required to do so as long as each side had notice and an opportunity to rebut the evidence of the other party. *See Ark. Game & Fish Comm'n v. Dir.*, 36 Ark. App. 243, 821 S.W.2d 69 (1992). Here, during the Tribunal hearing, Chapman was permitted to testify about Bickham's alleged misconduct and to cross-examine Bickham about his conduct. Both parties had a fair opportunity to present their evidence at the hearing before the Tribunal, and we find no abuse of discretion in the Board's denial of Chapman's request to take additional evidence.

We find there was substantial evidence for a reasonable person to reach the conclusion that Bickham was discharged for unknown reasons. The Board's findings on this issue are supported by substantial evidence and are, therefore, conclusive.

Affirmed.

THYER and BROWN, JJ., agree.

Gill Ragon Owen, P.A., by: *Aaron M. Heffington*, for appellant.

Cynthia L. Uhrynowycz, Associate General Counsel, for separate appellee Director, Division of Workforce Services.