



In the Missouri Court of Appeals Eastern District

DIVISION TWO

MICHAEL MENLEY,	)	No. ED109507
	)	
Claimant/Appellant,	)	
	)	Appeal from the Labor and
vs.	)	Industrial Relations Commission
	)	
JJF & C, LLC.,	)	
	)	
Employer/Respondent,	)	
	)	
and	)	
	)	
DIVISION OF EMPLOYMENT	)	
SECURITY,	)	
	)	
Respondent.	)	Filed: November 30, 2021

OPINION

Michael Menley (Appellant) appeals the decision of the Labor and Industrial Relations Commission (Commission) disqualifying him from receiving unemployment benefits under § 288.050¹ because Appellant voluntarily terminated his employment without good cause attributable to his work or employer. Appellant claims the Commission erred in finding he voluntarily terminated his employment without good cause.² We affirm the Commission's

¹ All statutory references are to RSMo. 2020 unless otherwise indicated.

² Appellant raises a second point asserting that his employer violated his rights by failing to offer him an alternative position or a leave of absence under the Family and Medical Leave Act (FMLA), 29 U.S.C. § 2601 *et seq.* Appellant did not raise this issue at any point in the record and is asserting it now for the first time on appeal. “This Court may only address issues that were determined by the Commission and may not consider issues which were not before the Commission.” *Wheeler v. Pinnacle Auto. Prot., Inc.*, 413 S.W.3d 721, 729 (Mo. App. E.D. 2013); *Taylor v. St. Louis*

decision because Appellant voluntarily severed the employment relationship when he did not return to work, and he failed to establish good cause, meaning his illness or disability was attributable to his work or to his employer.

Factual and Procedural Background

Appellant started working as a salesman for JJF & C, LLC (Employer) on January 16, 2019. Among his job responsibilities, Appellant was required to drive between various locations. In February 2020, Appellant met with his employer to discuss Appellant's concerns regarding a recently developed eye condition and its effect on his ability to continue working. Appellant, his supervisor, and the company owner agreed that Appellant would take a leave of absence until he was able to return to work. Following the meeting, Appellant did not return to work and Appellant's supervisor and Employer lost contact despite efforts to reach him.

Appellant subsequently filed a claim for unemployment benefits with the Division of Employment Security (Division). On March 30, a deputy for the Division determined Appellant was disqualified from receiving benefits because he voluntarily quit without good cause attributable to his work or employer. On April 13, Appellant appealed the deputy's decision to the Division's Appeals Tribunal.

On November 30, the Appeals Tribunal held an evidentiary hearing where Appellant, his supervisor, and Employer's human resources manager testified about the circumstances surrounding Appellant's departure. Appellant testified he was discharged. Appellant's supervisor testified the parties mutually agreed Appellant would take a leave of absence, but that Appellant stopped responding to telephone calls and Employer lost contact with him.

Arc, Inc., 285 S.W.3d 775, 776 (Mo. App. E.D. 2009); *Davis v. Transportation Sec. & Div. of Emp. Sec.*, 295 S.W.3d 594, 597 (Mo. App. E.D. 2009) ("Issues not raised before the Commission may not be raised on appeal"). We will not find the Commission erred "for not analyzing every conceivable unraised alternative." *Wheeler*, 413 S.W.3d at 729. Accordingly, Appellant's second point is waived for appellate review.

On December 2, the Appeals Tribunal affirmed the deputy's decision to disqualify Appellant from receiving benefits because Appellant voluntarily quit without good cause attributable to his work or employer. The Appeals Tribunal concluded that neither Employer nor Appellant's work caused, contributed to, or aggravated Appellant's eye malady. In other words, the Appeals Tribunal relied on Appellant's failure to show a causal connection between his eye condition and his work or Employer. To the extent the testimony was contradictory, the Appeals Tribunal found Employer "more persuasive since the employer's testimony was corroborated by a witness," who was logical and likely conveyed what actually unfolded.

Subsequently, Appellant appealed to the Commission. On February 9, 2021, the Commission affirmed the Appeals Tribunal and adopted its decision, finding it was "fully supported by the competent and substantial evidence on the whole record and it [was] in accordance with the relevant provision of the Missouri Employment Security Law."

Point on Appeal

On appeal, Appellant claims the Commission erred in finding Appellant voluntarily quit his employment without good cause attributable to his work or employer.

Standard of Review

When reviewing the Commission's decision to deny unemployment benefits, our analysis is governed by § 288.210, which reads in pertinent part:

The findings of the commission as to the facts, if supported by competent and substantial evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the appellate court shall be confined to questions of law. The court, on appeal, may modify, reverse, remand for rehearing, or set aside the decision of the commission on the following grounds and no other:

- (1) That the commission acted without or in excess of its powers;
- (2) That the decision was procured by fraud;
- (3) That the facts found by the commission do not support the award; or
- (4) That there was no sufficient competent evidence in the record to warrant the making of the award.

Smith v. Greyhound Bus Company, 477 S.W.3d 55, 59 (Mo. App. E.D. 2015).

Appellate review “is limited to deciding whether the Commission’s decision is supported by competent substantial evidence and authorized by law.” *Ewing v. SSM Health Care*, 265 S.W.3d 882, 886 (Mo. App. E.D. 2008) (internal quotations omitted). Viewing the evidence and reasonable inferences in the light most favorable to the Commission’s decision, we will affirm the decision if, based upon the entire record, we find that the Commission could have reasonably made its findings and reached this result. *Id.*; *Cotton v. Flik Intern. Corp.*, 213 S.W.3d 189, 192 (Mo. App. E.D. 2007). The claimant “generally has the burden of showing that he is eligible for benefits” meaning the claimant must prove he left work involuntarily or, if he left voluntarily, that he did so with good cause attributable to the work or to the employer. *Berger v. Scroll Compressors, LLC*, 473 S.W.3d 727, 731 (Mo. App. S.D. 2015) (citing *Harris v. Division of Employment Security*, 350 S.W.3d 35, 39 (Mo. App. W.D. 2011)).

Discussion

The controlling statute in this case, § 288.050.1(1), provides that an employee shall be disqualified from receiving benefits if the deputy finds:

That the claimant has left work voluntarily without good cause attributable to such work or to the claimant’s employer . . . “Good cause”, for the purposes of this subdivision, shall include only that cause which would compel a reasonable employee to cease working or which would require separation from work due to illness or disability . . .”

In *Difatta-Wheaton v. Dolphin Capital Corp.*, 271 S.W.3d 594, 597-98 (Mo. banc 2008), the Missouri Supreme Court reinforced the applicability of this statute by noting that all claimants who leave work involuntarily and those claimants who leave voluntarily with good cause are eligible for benefits under the statute. However, those who leave work voluntarily and without good cause are barred from receiving benefits. *Id.*

A. *Appellant voluntarily left his employment.*

“The Commission’s determination of whether an employee voluntarily left his employment or was discharged is ordinarily . . . a factual determination.” *Morris v. Glenridge Children’s Ctr., Inc.*, 436 S.W.3d 732, 736 (Mo. App. E.D. 2014). “An employee leaves work voluntarily when he leaves of his own accord, as opposed to being discharged, dismissed, or subjected to layoff by the employer.” *Gray v. City of St. Louis, Collector’s Office*, 472 S.W.3d 643, 646-47 (Mo. App. E.D. 2015). “[W]hether an employee quits or is discharged may be determined by examining whether the employer or the employee committed the final act severing the employment relationship.” *Cook v. Accord Bldg. Servs., LLC*, 481 S.W.3d 893, 901 (Mo. App. E.D. 2016). The burden is on the claimant to prove he was discharged and did not voluntarily terminate his employment. *Cotton*, 213 S.W.3d at 193. Evidence that the claimant failed to take the steps necessary to preserve employment is sufficient to establish that the claimant voluntarily terminated employment and thus bears the fault for his unemployment. *Madewell v. Division of Employment Sec.*, 72 S.W.3d 159, 165 (Mo. App. W.D. 2002); *Difatta-Wheaton*, 271 S.W.3d at 597-98.

We defer to the Commission’s resolution of conflicting evidence regarding factual matters, weighing evidence, and witness credibility. *Lombardo v. Brandt Investments, LLC*, 400 S.W.3d 890, 893 (Mo. App. E.D. 2013). Essentially, the Commission’s determinations are conclusive. *Dearborn v. Great Southern Financial Corp.*, 422 S.W.3d 487, 494 (Mo. App. S.D. 2014) (citing *Cotton*, 213 S.W.3d at 193); *Guccione v. Ray’s Tree Service*, 302 S.W.3d 252, 257 (Mo. App. E.D. 2010). “When the Commission, as a trier of fact, has reached one of two possible conclusions from the evidence, we will not reach a contrary conclusion even if we might have reasonably done so.” *Cotton*, 213 S.W.3d at 192.

The parties do not dispute that Appellant met with his supervisor and the company owner in February 2020, when they discussed his eye condition, its impact on his work performance and potential solutions. At the evidentiary hearing, Appellant's supervisor testified that during the meeting Appellant, the company owner, and the supervisor agreed Appellant would take a leave of absence. Following the meeting however, the employer lost contact with Appellant, according to the supervisor. More specifically, he asserted that Appellant stopped answering their calls and some time passed before Appellant returned the company phone. The supervisor's testimony indicated he was under the impression Appellant had quit and that Appellant's involuntary termination claim filed with the Division was "the first time [he was] hearing" otherwise.

Appellant testified he was discharged at the February meeting but suggested that his departure was consensual because he said "it was more of a mutual—" before asked another question. Appellant's testimony was very brief, he did not present any exhibits, and he did not cross-examine Employer's witnesses.

We defer to the Commission's factual determination that Employer's testimony was more credible and we will not disturb this credibility finding on appeal. *Cotton*, 213 S.W.3d at 193; *Worley v. Division of Employment Security*, 978 S.W.2d 480, 482 (Mo. App. W.D. 1998); *Hise v. PNK (River City), LLC*, 406 S.W.3d 59, 68 (Mo. App. E.D. 2013). When viewing the evidence collectively and in the light most favorable to the Commission's decision, Appellant agreed to take a leave of absence but failed to maintain contact with Employer indefinitely and effectively failed to preserve his employment. *Madewell*, 72 S.W.3d at 165 (holding Claimant left her work voluntarily because she failed to contact her employer about her return-to-work date after her leave expired; in support of its holding, the court found Claimant "did not do what she

reasonably could to preserve her position with the employer” and thus left herself “vulnerable to discharge”). Here, Appellant effectively severed his employment relationship when failing to communicate, declining to contact and ignoring Employer’s efforts to reach him. Actions like this are outcome determinative pursuant to Missouri case law. *See Id.* In sum, the Commission’s findings were supported by sufficient and competent evidence and we affirm its decision that Appellant left work voluntarily.

B. Appellant’s resignation was without “good cause” as defined in § 288.050.

To remain eligible for benefits after voluntarily terminating employment, the claimant bears the burden of proving “good cause *attributable to such work or to the claimant’s employer,*” pursuant to § 288.050.1(1) (emphasis added). The phrase “attributable to his work or to his employer” means that “the work or employer . . . creates the condition making it unreasonable to expect this employee to continue [to] work.” *Quik ‘N Tasty Foods, Inc. v. Division of Employment Security*, 17 S.W.3d 620, 626 (Mo. App. W.D. 2000) (citing *Hessler v. Labor & Indus. Relations Com’n*, 851 S.W.2d 516, 518 (Mo. banc 1993)); *Ewing*, 265 S.W.3d at 887. “An employee whose employment terminates because of personal illness unrelated to her employment is considered to have voluntarily left her work without good cause attributable to her employer unless the illness was caused or aggravated by her work.” *Lake v. Labor and Indus. Relations Com’n*, 781 S.W.2d 207, 208 (Mo. App. E.D. 1989).

When a claimant alleges a medical reason as good cause for prompting his departure, he must offer expert medical evidence proving a causal connection between his work and the medical reason to establish his employment caused or aggravated the existing medical condition. *Mena v. Cosentino Group, Inc.*, 233 S.W.3d 800, 804 (Mo. App. W.D. 2007); *Tucker v. United Healthcare Services, Inc.*, 232 S.W.3d 636, 639 (Mo. App. S.D. 2007).

In the instant case, Appellant did not present any medical evidence establishing that his eye condition was caused or aggravated due to his work or employer. In fact, Appellant's evidence was limited to his assertion that he was not "able to drive much" because of his eye condition, suggesting that his eye problems existed independently of his work for Respondent. Importantly, he did not assert that his potentially pre-existing eye condition was caused or aggravated by his duties as a sales representative. If anything, his comments reflect his realization that his eye condition prevented him from meeting his employer's expectations, a consideration which undoubtedly contributed to his voluntary departure.

Appellant failed to meet his burden of establishing a causal connection between his eye condition and his work or employer. Accordingly, Appellant failed to prove he had good cause to leave his employment. Point denied.

Conclusion

The decision of the Commission to disqualify Appellant from unemployment benefits is affirmed because Appellant left his employment voluntarily and without good cause attributable to his employment.



Thomas C. Clark, II, Judge

Robert M. Clayton III, P.J., concurs.

Gary M. Gaertner, Jr., J., concurs.