

IN THE SUPREME COURT OF THE STATE OF NEVADA

HANNE ROGERS,
Appellant,

vs.

NEVADA EMPLOYMENT SECURITY
DEPARTMENT; STATE OF NEVADA;
STANLEY P. JONES, IN HIS
CAPACITY AS EXECUTIVE DIRECTOR
OF THE NEVADA EMPLOYMENT
SECURITY DEPARTMENT; LINDA K.
LEE, IN HER CAPACITY AS
CHAIRWOMAN OF THE NEVADA
EMPLOYMENT SECURITY
DEPARTMENT BOARD OF REVIEW;
IMEXWARE, INC.; AND EDGARD T.
SARGI,
Respondents.

No. 46440

FILED

OCT 18 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order denying a petition for judicial review in an unemployment benefits matter. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

After appellant Hanne Rogers left her employment with respondent Edgard T. Sargi, she filed for unemployment benefits, claiming that she had been laid off. She was initially granted benefits and received \$658 before respondent Nevada Employment Security Department (NESD) learned, from Sargi, that Rogers had not been laid off. Upon further investigation, NESD determined that Rogers had left her employment without good cause and denied benefits. NESD also determined that Rogers had misrepresented the facts when she filed for benefits, and consequently notified her that she needed to repay the benefits that she had received as a result of her misrepresentation.

Rogers administratively challenged the two NESD determinations. At a hearing, an appeals referee heard testimony from both Rogers and Sargi, who disputed several factual assertions, including whether Rogers had given notice of her resignation, whether she had been told (about one-to-three months prior) that she would be laid off at the end of the year, and whether Sargi's business was experiencing serious financial problems. Although they agreed that, around November, Rogers' wages had changed from salary to hourly, they disagreed over the amount to which her hours were reduced.

Nevertheless, according to Rogers, she decided to leave at the end of the year because she "felt that a lay off was imminent" and that "basically . . . it was time to leave"; she averred that she left a letter of resignation with Sargi to that effect. Although Rogers testified that her position at Sargi's business made her aware of the business's financial problems and also indicated that she had not received past vacation pay and retirement benefits, she also admitted that she had consistently received her weekly paychecks on time. Further, she conceded that she left her job with Sargi before having secured other employment, apparently without having attempted to resolve any financial issues.

Determining that Sargi's testimony was more credible than Rogers' testimony, the appeals referee concluded that Rogers quit her employment and that she did so without good cause. Accordingly, the appeals referee upheld both determinations. The Board of Review declined to consider Rogers' subsequent administrative appeal, and the district court denied her petition for judicial review. Consequently, Rogers appeals.

In the context of an appeal from a district court order denying a petition for judicial review of an administrative decision, this court, like the district court, examines the administrative decision for clear error or arbitrary abuse of discretion.¹ The appeals referee's decision will not be disturbed if it is legally sound and supported by substantial evidence.² This court may not substitute its judgment for that of the appeals referee as to credibility determinations or the weight of the evidence.³ While pure legal questions may be decided without deference to the appeals referee's determination, the appeals referee's conclusions of law, which will necessarily be closely related to his view of the facts, are entitled to deference; we may not disturb those fact-based conclusions if they are supported by substantial evidence.⁴ Our review is limited to the record.⁵

Asserted errors by the Board of Review and district court

Rogers first points out that neither the Board of Review nor the district court made findings of fact and conclusions of law, and she asserts that, as a result, she was precluded from effectively addressing

¹Construction Indus. v. Chalue, 119 Nev. 348, 352, 74 P.3d 595, 597 (2003).

²Ayala v. Caesars Palace, 119 Nev. 232, 235, 71 P.3d 490, 491-92 (2003).

³Chalue, 119 Nev. at 352, 354, 74 P.3d at 597, 598 (citing United Exposition Service Co. v. SIIS, 109 Nev. 421, 425, 851 P.2d 423, 425 (1993)); see also State, Emp. Sec. Dep't v. Weber, 100 Nev. 121, 124, 676 P.2d 1318, 1320 (1984); NRS 612.530(4).

⁴Jones v. Rosner, 102 Nev. 215, 217, 719 P.2d 805, 806 (1986).

⁵Ayala, 119 Nev. at 235, 71 P.3d at 491; Carson Ready Mix v. First Nat'l Bk., 97 Nev. 474, 635 P.2d 276 (1981).

alleged errors on appeal. But in declining to further review the appeals referee's decision, the Board and the district court essentially upheld that decision. Accordingly, this court looks at the appeals referee's decision to determine whether it is legally sound and supported by substantial evidence.⁶ Thus, Rogers, in her civil appeal statement, appropriately addressed alleged errors by the appeals referee.

Asserted errors by the appeals referee

Rogers asserts that the appeals referee's credibility determinations were made without any basis therefor, especially in light of the referee's improper "dismissal" of, or refusal to consider, evidence labeled as "hearsay" that supported Rogers' version of the events leading up to her assumed lay off.

Under NRS 612.500(2), an appeals referee must "receive and consider evidence without regard to statutory and common-law rules." While the appeals referee did mention that a certain affidavit was a "hearsay document, anyway," which would "be whatever it's worth," since the affiant had not personally testified, the appeals referee overruled Sargi's objection to its admittance. In any event, an appeals referee's failure to comply with statutory provisions constitutes grounds for setting aside a decision only when the failure prejudiced appellant's substantial rights.⁷ In this instance, Rogers asserts that the affidavit supported her testimony and undermined the credibility determinations made by the appeals referee. Nevertheless, the appeals referee's decision is supported

⁶See Jones, 102 Nev. 215, 719 P.2d 805; NRS 612.530(4).

⁷See NRS 233B.135(3)(a).

by Rogers' own testimony, and thus we cannot conclude that any failure by the appeals referee to properly consider all the evidence prejudiced Rogers' substantial rights.⁸

NRS 612.380(1) prohibits the NESD from providing benefits to claimants who leave their employment without good cause or to seek other employment. Rogers admitted that she chose to "resign" before any alleged future lay-off was effected, and before she had secured other employment. She also noted that she was consistently paid in a timely manner, and the record bears no indication that no work was available for Rogers, even though her hours were somewhat reduced. These reasons were cited by the appeals referee for his determination that Rogers did not have good cause to leave. Accordingly, we conclude that the appeals referee's decision denying benefits was based on substantial evidence and a correct interpretation of the law.⁹


⁸Rogers also complains that the appeals referee failed to comply with NRS 612.500(2), which requires him to "inquire into and develop all facts bearing on the issues." It is unclear which issues Rogers would have had the appeals referee further explore. We note, however, that Rogers was given full opportunities to testify, to question Sargi, and to present arguments. Accordingly, Rogers' substantial rights were not prejudiced by any failure of the appeals referee to fully explore the issues.

⁹See State, Emp. Sec. Dep't v. Evans, 111 Nev. 1118, 1119, 901 P.2d 156, 156 (1995) (recognizing that voluntarily leaving employment without good cause constitutes a statutory ground for denying unemployment benefits); McCracken v. Fancy, 98 Nev. 30, 32-33, 639 P.2d 552, 554 (1982) (recognizing that, together, the failure to have a firm offer of employment before leaving and a move prompted by a desire to live in another state constituted grounds for denying unemployment benefits for voluntarily quitting without good cause); see also In re Kohen, 793 N.Y.S.2d 640, 640-41 (App. Div. 2005) ("It is well settled that dissatisfaction with one's

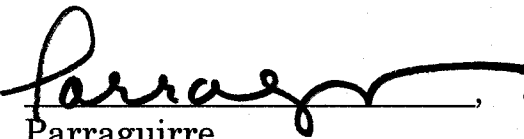
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Further, NRS 612.445 states that a claimant must repay all the benefits received for each week with respect to which a misrepresentation was made. Rogers received benefits for two weeks based on her representation that she was laid off for lack of work. She later explained that she resigned at the end of December after having been told approximately one month earlier that she would be laid off at the year's end. Given that Rogers voluntarily left her employment based on her belief that she would be laid off in the immediate future, we cannot conclude that the appeals referee's determination that Rogers misrepresented the facts when she applied for benefits on the ground that she already had been laid off is unsupported by the evidence or legally erroneous. Accordingly, we affirm the district court's order denying judicial review.

It is so ORDERED.


_____, J.
Becker


_____, J.
Hardesty


_____, J.
Parraguirre

... continued

working environment does not constitute good cause for leaving employment.”).

cc: Hon. Kenneth C. Cory, District Judge
Hanne Rogers
Kummer Kaempfer Bonner Renshaw & Ferrario/Carson City
Clark County Clerk