

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARENCE WILLIAMS,
Appellant,
vs.
NEVADA DEPARTMENT OF
EMPLOYMENT, TRAINING &
REHABILITATION, EMPLOYMENT
SECURITY DIVISION BOARD OF
REVIEW, AN AGENCY OF THE STATE
OF NEVADA; AND FINDLAY
CADILLAC SAAB, EMPLOYER,
Respondents.

No. 62143

FILED

MAR 13 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
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.

Appellant Clarence Williams previously worked as a carpenter, but took a job as an auto salesperson at Findlay Acura when he could not find other work. After a month at Findlay Acura, Williams quit, and began receiving unemployment benefits upon an Employment Security Division (ESD) finding that he quit for good cause. About one month later, in March 2011, Williams took another auto salesperson position at respondent Findlay Cadillac Saab, but he quit after one day of work. Williams continued to file for unemployment benefits on the former job without reporting this one day of work. In December 2011, after the ESD determined that Williams voluntarily resigned from the Findlay Cadillac job without good cause, Williams was disqualified from unemployment benefits beginning on March 27, 2011. ESD also

determined that Williams must repay the overpaid benefits. Williams administratively appealed. The appeals referee found that Williams quit his job without good cause and was therefore disqualified from receiving unemployment benefits, and that Williams was liable for the overpayment. The Board of Review declined further review, and Williams' subsequent petition for judicial review was denied. This appeal followed. On appeal, Williams argues that the appeals referee erred in finding that he had voluntarily left his position at Findlay Cadillac without good cause because the position was the same as his prior position at Findlay Acura, which Williams had left for good cause.

Under NRS 612.380, a person is ineligible for unemployment benefits if he voluntarily leaves his job without good cause or to seek other employment. The appeals referee concluded that Williams' desire to work as a carpenter and his contention that the commute was too costly did not constitute good cause to leave his job at Findlay Cadillac and that Williams could have continued in his job until his union called him back to carpentry work. Williams gave varying reasons for leaving his job at different times: misrepresentations in the potential earnings, the long working hours, the costly commute, and that he was close to being at the top of the union carpenter job list. But the record demonstrates that while Findlay Cadillac made the same alleged misrepresentations of potential earnings as Findlay Acura, Williams took the job without question. Williams also stated that in the best case scenario, he could earn more at Findlay Cadillac than working as a carpenter. And the appeals referee determined that Williams' testimony about his commute costs were not credible. Therefore, we conclude that substantial evidence in the record

supports the appeals referee's finding that Williams voluntarily left his job at Findlay Cadillac without good cause. See *Kolnik v. Nev. Emp't Sec. Dep't*, 112 Nev. 11, 16, 908 P.2d 726, 729 (1996) (noting that mixed questions of law and fact are entitled to deference and the agency's conclusions will not be disturbed by this court if they are supported by substantial evidence); see also *Lellis v. Archie*, 89 Nev. 550, 554, 516 P.2d 469, 471 (1973) (recognizing that this court will not substitute its judgment for that of the referee on issues of credibility or the weight of the evidence).

The appeals referee also determined that Williams was liable for the overpayment of benefits from March 27, 2011, forward due to his failure to report his employment with Findlay Cadillac. When an overpayment of benefits is due to fraud, misrepresentation, or willful nondisclosure on the part of the claimant, or caused by the fault of the claimant, that claimant is liable for the amount of any overpaid benefits. NRS 612.365(1). Williams testified that he did not report the one day of work because he "figured that one day wouldn't matter" and he "needed the cash." We conclude that substantial evidence in the record also supports the appeals referee's finding that Williams failed to report his employment and failed to show he was without fault, and thus, he is liable for the overpayment of benefits.

Because substantial evidence supports the appeals referee's decision, the Board of Review's decision to affirm the appeals referee's ruling was not arbitrary or capricious. See NRS 233B.135(3)(f); *McCracken v. Fancy*, 98 Nev. 30, 31, 639 P.2d 552, 553 (1982) (explaining that in reviewing an unemployment benefits decision, this court

determines whether the board acted arbitrarily or capriciously). Thus, we affirm the district court's denial of Williams' petition for judicial review.

It is so ORDERED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Cherry, J.
Cherry

cc: Hon. Kenneth C. Cory, District Judge
Clarence Williams
Kemp & Kemp
State of Nevada/DETR
Attorney General/Las Vegas
Eighth District Court Clerk