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IN THE
COURT OF APPEALS OF INDIANA

C.S.,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 93A02-0906-EX-575
	)	
REVIEW BOARD OF THE	)	
INDIANA DEPARTMENT OF	)	
WORKFORCE DEVELOPMENT	)	
and A.S., INC.,	)	
	)	
Appellees.	)	

APPEAL FROM THE REVIEW BOARD OF THE
DEPARTMENT OF WORKFORCE DEVELOPMENT
Steven F. Bier, Chairperson
Cause No. 09-R-1970

December 17, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

C.S.,[1] *pro se*, appeals a decision by the Review Board of the Indiana Department of Workforce Development ("Board") denying her unemployment benefits. C.S. raises one issue, which we revise and restate as whether the Board's determination that C.S. voluntarily left her employment without good cause in connection with the work was reasonable. We affirm.

The facts most favorable to the Board's determination follow. C.S. worked full-time as a cashier and fill shift manager for A.S., Inc. ("A.S."). C.S. had been employed by A.S. since August 27, 2007, and it was her second stint of working there after quitting once before. On November 20, 2008, C.S.'s employment with A.S. ended after C.S. and the First Shift Manager had a "public altercation" in front of customers. Transcript at 6. C.S. applied for unemployment benefits, and on December 16, 2008, a deputy with the Indiana Department of Workforce Development determined that C.S. had been discharged for just cause. On April 22, 2009, a hearing was conducted by an Administrative Law Judge ("ALJ"), and both C.S. and A.S.'s General Manager appeared by telephone. The ALJ reversed the deputy's determination, finding that C.S. "did not manifest an intent to voluntarily leave employment. [C.S.] was involuntarily unemployed and is subject to no penalty on the unemployment claim bases [sic] on this job separation." Appellant's Appendix at 13. A.S. appealed, and the matter was reviewed by the Board on May 11, 2009. On June 16, 2009, the Board reversed the ALJ's determination. In deciding that C.S. voluntarily left her employment without good cause

[1] Portions of the record are excluded from public access. Pursuant to Ind. Appellate Rule 9(J) and Ind. Administrative Rule 9(G)(4), we are obligated to "identify the names of the parties and affected persons in a manner reasonably calculated to provide anonymity and privacy . . . ."

in connection with the work, the Board entered findings of fact and conclusions thereon as follows:

> **DECISION:** Reversed. [C.S.] is not entitled to unemployment insurance benefits.
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> * * * * *
>
> **FINDINGS OF FACT:** The Review Board adopts and incorporates the findings of fact of the Administrative Law Judge except to the extent inconsistent with this decision and as modified herein.
>
> [C.S.] worked for the Employer from August 27, 2007 until her last day of work on November 20, 2008. [C.S.] was a cashier/fill-shift manager for the Employer. If there were no managers on duty, [C.S.] would fill-in as the manager; if there was a manager scheduled for the same shift, [C.S.] would not have any managerial duties and would instead perform her duties as a cashier.
>
> On the morning of November 20, 2008, [C.S.] and the First Shift Manager had a verbal confrontation. The First Shift Manager had overheard [C.S.], who was working as a cashier, tell the Third Shift Manager, who was going off-duty, not to let the First Shift Manager tell her, the Third Shift Manager, what to do. The First Shift Manager took exception to [C.S.'s] comments, and she reprimanded [C.S.] in public. The two exchanged verbal comments; the two were involved in a verbal altercation in the front of the store.
>
> When the General Manager arrived, she was informed of the verbal altercation. She spoke with the Third Shift Manager who had been present for the start of the confrontation, and the General Manager decided to issue write-ups to both [C.S.] and the First Shift Manager. The General Manager called the First Shift Manager into the office to receive her warning first. [C.S.] was then asked to go into the office to discuss the morning's events with the General Manager. [C.S.] did not feel like she should be written up since she was just offering advice to the Third Shift Manager. The General Manager responded that both the First Shift Manager and [C.S.] were in management positions and should have known not to argue "out on the front lawn." [C.S.] eventually signed the write-up.
>
> The General Manager and [C.S.] continued their conversation, and the General Manager discussed [C.S.'s] duties as a cashier and as a fill-shift

manager – that [C.S.] should not be performing managerial duties when she was scheduled as a cashier. [C.S.] stated that that was not fair, because her co-workers would come to her with questions when she was working as a cashier, and she would answer because the First Shift Manager was not answering the other employees' questions. The General Manager told [C.S.] that if she had a problem with the employees, she needed to report it to the First Shift Manager. [C.S.] asked how she could take a problem to the First Shift Manager when her problem was with the First Shift Manager. [C.S.] became more agitated and was flailing her hands. The General Manager told [C.S.] that she was trying to get [C.S.] a full-time management position, but [C.S.] was not doing what she needed to do to get the position. The General Manager told [C.S.] she was being stupid about it and was jeopardizing the General Manager's efforts to place her in a full-time management position.

[C.S.] took exception to the word "stupid." She stood up with hands flailing and yelled at the General Manager for calling her stupid. She said, "I'm done," and walked out of the office. [C.S.] grabbed her purse and was about to walk out, but the General Manager asked her to count down her drawer before she left. [C.S.] complied, but she slammed the drawer down on the counter and was mumbling under her breath as she counted down the drawer. [C.S.] then left the building. She never returned to work, but she did call to ask for a written statement that she had been fired. The Employer did not provide such a statement, because [C.S.] quit.

The Administrative Law Judge found that [C.S.] did not manifest the requisite intent to voluntarily quit the employment. The Administrative Law Judge determined that [C.S.] was not disqualified from receiving unemployment benefits. Administrative Law Judge's Decision.

CONCLUSIONS OF LAW: Some manifestation of intent is necessary to show that a claimant voluntarily left her employment. *Cheatem v. Review Bd.*, 553 N.E.2d 888, 891 (Ind. Ct. App. 1990). Contrary to the Administrative Law Judge's findings and conclusions, [C.S.] did voluntarily quit her employment and manifested her intent to quit when she stood up, said "I'm done," and walked out of the General Manager's office.

In *Cheatem*, when the employee in that matter was faced with what she believed was an unjust reprimand, she refused to accept the discipline, stated "No, you might as well fire me," clocked out, and left the facility. *Id.* at 892. The employee later tried to file a grievance, and when she discovered she could not successfully grieve the discipline, she returned to work for her next shift. The Court found that her words and subsequent

actions did not demonstrate an intent to quit her employment. *Id.* In the present case, [C.S.] took exception to the General Manager's comment that she was behaving stupidly. She stood up, said, "I'm done," and walked out of the office. [C.S.] never returned to work.

"An individual who has voluntarily left the individual's most recent employment without good cause in connection with the work . . . is ineligible for . . . benefit rights." Ind. Code § 22-4-15-1. The burden of proof is on [C.S.] to show she voluntarily left the employment for good cause in connection with work. *Best Chairs v. Review Bd. Of Ind. Dep't of Workforce Dev.*, 895 N.E.2d 727 (Ind. Ct. App. 2008). "Good cause" does not include "purely personal and subjective reasons which are unique to the employee." *Geckler v. Review Bd.*, 193 N.E.2d 357, 359 (Ind. 1963).

To show good cause to justify voluntary termination of employment, the claimant must show that the reasons for leaving the employment were objectively related to the employment and the reason for leaving would be such as would impel a reasonably prudent person to behave likewise. *Lofton v. Review Bd.*, 499 N.E.2d 801 (Ind. Ct. App. 198[6]). It is not the purpose of the Unemployment Security Act to allow employees to terminate their employment merely because working conditions are not entirely to their liking. *Marozsan v. Review Bd.* 429 N.E.2d 986 (Ind. Ct. App. 1982). Working conditions must be so unfair or unreasonable so as to compel a reasonably prudent person to leave the employment. *Quillen v. Review Bd.*, 468 N.E.2d 238 (Ind. Ct. App. 1984).

[C.S.] did not meet her burden of proof. The General Manager justly reprimanded [C.S.] for her part in the public verbal confrontation. After the General Manager issued the write-up to [C.S.], the General Manager attempted to discuss how [C.S.] could improve in order to advance to a full-time management position. [C.S.], already upset by the discipline, took exception to the General Manager's statement that [C.S.] was being stupid about the situation. [C.S.] said, "I'm done," and walked out. A reasonably prudent person would not quit their employment over an inartful statement from one's superior. [C.S.] failed to meet her burden of proof that the working conditions were so unfair and unreasonable as to compel a reasonably prudent person to leave the employment. [C.S.] voluntarily left the employment without good cause in connection with the work.

ORDER: The decision of the Administrative Law Judge is reversed. [C.S.] is not entitled to unemployment benefits.

Appellant's Confidential Orders at 1-3 (footnotes omitted).

The issue is whether the Board's determination that C.S. voluntarily left her employment without good cause in connection with the work was reasonable. The Indiana Unemployment Compensation Act provides that "[a]ny decision of the review board shall be conclusive and binding as to all questions of fact." Ind. Code § 22-4-17-12(a) (2004). However, Ind. Code § 22-4-17-12(f) provides that when the Board's decision is challenged as contrary to law, the reviewing court is limited to a two part inquiry into: (1) "the sufficiency of the facts found to sustain the decision;" and (2) "the sufficiency of the evidence to sustain the findings of facts." McClain v. Review Bd. of Ind. Dep't of Workforce Dev., 693 N.E.2d 1314, 1317 (Ind. 1998), reh'g denied. The Indiana Supreme Court clarified our standard of review of the Board's decisions in McClain:

> Review of the Board's findings of basic fact [is] subject to a "substantial evidence" standard of review. In this analysis the appellate court neither reweighs the evidence nor assesses the credibility of witnesses and considers only the evidence most favorable to the Board's findings.
>
> The Board's conclusions as to ultimate facts involve an inference or deduction based on the findings of basic fact. These questions of ultimate fact are sometimes described as "questions of law." They are, however, more appropriately characterized as mixed questions of law and fact. As such, they are typically reviewed to ensure that the Board's inference is "reasonable" or "reasonable in light of [the Board's] findings." The term "reasonableness" is conveniently imprecise. Some questions of ultimate fact are within the special competence of the Board. If so, it is appropriate for a court to exercise greater deference to the "reasonableness" of the Board's conclusion. . . . However, not all ultimate facts are within the Board's area of expertise. As to these, the reviewing court is more likely to exercise its own judgment. In either case the court examines the logic of the inference drawn and imposes any rules of law that may drive the result. That inference still requires reversal if the underlying facts are not supported by substantial evidence or the logic of the inference is faulty,

> even where the agency acts within its expertise, or if the agency proceeds under an incorrect view of the law.

Id. at 1317-1318 (internal citations and footnotes omitted).

"[A]n individual who has voluntarily left the individual's most recent employment without good cause in connection with the work or who was discharged from the individual's most recent employment for just cause" is ineligible for unemployment benefits. Ind. Code § 22-4-15-1(a). Pursuant to Ind. Code § 22-4-15-1(a), there are circumstances under which an employee is entitled to receive unemployment benefits if the employee can prove that she left her employment voluntarily with good cause. The question of whether an employee voluntarily terminated employment without good cause in connection with the work is a question of fact to be decided by the Board. M & J Mgmt., Inc. v. Review Bd. of Dep't of Workforce Dev., 711 N.E.2d 58, 62 (Ind. Ct. App. 1999). The burden of establishing that the voluntary termination of employment was for good cause rests with the employee. Id. Specifically, the employee must show that: (1) the reasons for leaving employment were such as to impel a reasonably prudent person to terminate employment under the same or similar circumstances; and (2) the reasons are objectively related to the employment. Id. The latter component requires the employee show that her reasons for terminating employment are job-related and objective in nature, excluding reasons which are personal and subjective. Id.

C.S. appears to argue that she was fired and did not quit, or that she voluntarily terminated her employment for good cause.[2] Essentially, C.S. requests that we reweigh

[2] C.S. also argues that she was denied her freedom of speech and believes "the reason [A.S.] has pursued refusing my employment is for retaliation purposes. This is as a result of my filing a complaint

the evidence and judge the credibility of the witnesses, which we cannot do. McClain, 693 N.E.2d at 1317.

The record reveals that C.S. and the First Shift Manager engaged in a public, verbal confrontation. The General Manager spoke with both C.S. and the First Shift Manager about the incident, and both were issued written reprimands. The record further shows that during the discussion between C.S. and the General Manager, C.S. took exception to the General Manager telling her that she was "being stupid" about the situation, and C.S. "stood up with hands flailing and yelled at the General Manager for calling her stupid. [C.S.] said, 'I'm done,' and walked out of the office." Appellant's Confidential Orders at 2. C.S. never returned to work after that incident. We therefore conclude that the evidence supports the findings made by the Board that C.S. voluntarily terminated her employment without good cause and is therefore ineligible for unemployment benefits pursuant to Ind. Code § 22-4-15-1(a). See Marozsan v. Review Bd. of Ind. Employment Sec. Div., 429 N.E.2d 986, 989-990 (Ind. Ct. App. 1982) (holding claimant failed to show that the reprimands which claimant received would impel a reasonable person to resign his employment, and concluding that the claimant did not voluntarily leave his employment for good cause in connection with the work); see also Ky. Truck Sales, Inc. v. Review Bd. of Ind. Dep't of Workforce Dev., 725 N.E.2d 523, 525-526 (Ind. Ct. App. 2000) (holding that appellant employer demonstrated reversible prima facie error on the Board's finding that claimant voluntarily left his

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with the EEOC." Appellant's Brief at 4. C.S. fails to put forth a cogent argument. Consequently, this argument is waived. See, e.g., Loomis v. Ameritech Corp., 764 N.E.2d 658, 668 (Ind. Ct. App. 2002) (holding argument waived for failure to cite authority or provide cogent argument), reh'g denied, trans. denied.

employment for good cause when claimant told his supervisor that he "didn't have to listen to this s---," clocked out, and did not contact employer in the weeks thereafter).

For the foregoing reasons, we affirm the Board's determination that C.S. voluntarily left her employment without good cause in connection with the work.

Affirmed.

MATHIAS, J., and BARNES, J., concur.