

**IN THE ARKANSAS COURT OF APPEALS**

**CONNIE JONES**

**APPELLANT**

**VS.**

**NO. E13-1269**

**ARTEE WILLIAMS, DIRECTOR  
DEPARTMENT OF WORKFORCE SERVICES  
AND LAWRENCE HALL NURSING CENTER**

**APPELLEES**

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**AN APPEAL FROM THE  
ARKANSAS BOARD OF REVIEW**

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**BRIEF FOR APPELLEE**

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**Phyllis A. Edwards #88030  
P.O. Box 8040  
Little Rock, Arkansas 72203  
(501) 682-3154**

**Attorney for Appellee  
Artee Williams, Director  
Arkansas Department of  
Workforce Services**

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**POINT ON APPEAL**

**THE DECISION OF THE BOARD OF REVIEW THAT APPELLANT LEFT HER LAST WORK VOLUNTARILY AND WITHOUT GOOD CAUSE CONNECTED WITH THE WORK MUST BE AFFIRMED AS IT IS SUPPORTED BY SUBSTANTIAL EVIDENCE.**

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## ARGUMENT

**THE DECISION OF THE BOARD OF REVIEW THAT APPELLANT LEFT HER LAST WORK VOLUNTARILY AND WITHOUT GOOD CAUSE CONNECTED WITH THE WORK MUST BE AFFIRMED AS IT IS SUPPORTED BY SUBSTANTIAL EVIDENCE.**

In the case before the court the Arkansas Board of Review (board), pursuant to Ark. Code Ann. § 11-10-513 found that appellant left her last work voluntarily and without good cause connected with the work. The decision of the board may be appealed to the court however the scope of the court's review is governed by the substantial evidence rule. Ark. Code Ann. §11-10-529(c)(1). When a board decision is appealed to the court the findings of the board are conclusive if supported by substantial evidence. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequately supporting the board's conclusions. The court reviews all evidence and all reasonable inferences deducible therefrom in the light most favorable to the board's findings. Additionally, even when evidence exists upon which a different conclusion could be reached, the scope of review does not permit the court to substitute its judgment for that of the board. The sole question is whether the board could have reasonably

reached its decision upon the evidence before it. *Perdrix-Wang v. Director, Employment Security Department*, 42 Ark. App. 217, 856 S.W.2d 636 (1993).

Finally, the Supreme Court of Arkansas has recognized that:

An administrative agency, like a jury, is free to believe or disbelieve any witness.... We give the evidence its strongest probative force to support the administrative decision.

...To establish an absence of substantial evidence to support the decision the appellant must demonstrate that the proof before the administrative tribunal was so nearly undisputed that fair-minded men could not have reached its conclusion.

*Singleton v. Smith*, 289 Ark 577, 715 S.W. 2d. 437 (1986).

There is substantial evidence that Appellant left her last work voluntarily and without good cause connected with the work. Ark Code Ann. §11-10-513(a) (1), in pertinent part, states, "If so found by the Director of the Department of Workforce Services, an individual shall be disqualified for benefits if she or she voluntarily and without good cause connected with the work, left his or her last work ...". This court has defined good cause as, "[A]cause which would reasonably impel the average able-bodied, qualified worker to give up his or her employment..." *McEwen v. Everett*, 6 Ark. App. 32, 637 S.W.2d 617 (1982), citing *Teel v. Daniels*, 270 Ark. 766, 606 S.W.2d 151 (1980). In the instant case the Appellant left his last work voluntarily and without good cause connected with the work.

Appellant was employed as a registered nurse supervisor on the 3-11 shift at Lawrence Hall Nursing Center (employer) for a little over six years. (Ab 7) Appellant quit her employment because she thought that the employer was going to cover up an incident of neglect and not report it to the Department of Long Term Care (OLTC). (Ab 15) The incident concerned the care of an elderly resident who refused care and was wet for a period of time. (Ab 7) After verbally reporting the incident to the employer's administrator Josh Bryan, Appellant filled out the appropriate paperwork, including the occurrence sheet and furnished witness statements from Keith Britton and Cody Ferrell. (Ab 8) Appellant testified that the next day Mr. Bryan told her that they had decided to keep it in-house. (Ab 9) Six days after the incident Appellant saw what she thought was an altered statement by Cody Ferrell. (Ab 9) Appellant thought that her employer was trying to cover up the incident and quit. (Ab 15)

Josh Bryan testified that Appellant had reported several allegations of abuse or neglect and all of these were reported to the OLTC. (Rec. 186) He testified that all allegations of this nature were reported to the OLTC. (Ab 28, Rec. 186, 190) Mr. Bryan testified that neither Appellant nor any other employee had been reprimanded or terminated for reported allegations of abuse or neglect. (Rec. 194, 191) Mr. Bryan denies ever making a statement to Appellant that they would

handle the mater in-house and not turn it or any other allegation over to the OLTC. (Ab 29) Mr. Bryan testified that they followed their procedure on reporting. (Rec. 213) He did say that Cody Ferrell had been asked to rewrite his statement but that both of these were included in the report to the OLTC. The report of abuse or neglect was investigated by the OLTC and was determined to be unfounded. (Rec. 192, SuppAdd 010)

Kim Nunally, Assistant Director of Nursing testified that this was the policy of the facility to follow the statute and report all incidents of suspected abuse or neglect. She testified that they had filed the report with the specified time limits in this case. (Ab 22 Rec. 113) She never heard any threats to Appellant's job from Mr. Bryan (Rec. 114)

Debbie Wheelis, Director of Nursing testified that all incidents of abuse and neglect that were reported to her were investigated (Ab 30). She also testified that no one was ever disciplined or terminated for making such allegations. (Rec. 221)

A preponderance of the evidence shows that Appellant did not have good cause connected with the work to voluntarily quit her job. The claimant stated she quit because she believed a cover-up was occurring concerning allegations of abuse and neglect of a resident and that the employer was not reporting the incident to the OLTC. The employer, however, reported the allegations to the OLTC within the mandatory reporting period. In addition a reasonable person, if

she believed that a cover-up was occurring, would have reported this information not only to the authorities over the nursing home but also the OLTC. Appellant did neither. (Ab 15) The employer had a grievance procedure that Appellant could have followed if she believed that a cover-up was occurring and Appellant was aware of that procedure. (Ab 32, Rec. 244) She never filed a grievance with either her direct supervisor or the facility administrator.

The testimony as to whether the allegation of abuse and neglect would be handled in house is contradictory. It is within the purview of the board to determine the credibility of the witnesses in reaching a decision. In *Grigsby v. Everett*, this court stated, “The credibility of the witnesses and the weight to be accorded their testimony are matters to be resolved by the Board of Review.” *Grigsby v. Everett*, 8 Ark. App. 188, 49 S.W.2d 404 (1983), citing *Daniels v. Hillcrest Homes, Inc.*, 268 Ark. 576, 594 S.W.2d 62 (Ark. App. 80) It is clear that the board found the employer’s testimony as to the statement more credible than Appellants. That along with the fact that the issue was turned over to the OLTC in the prescribed manner and within the prescribed timeframes shows that Appellant did not have good cause to voluntarily quit her last work.

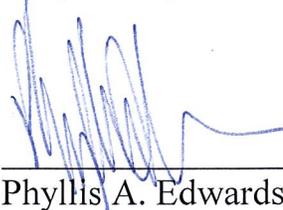
It is clear from the evidence presented that Appellant voluntarily left her last work without good cause connected with the work and that the board of Review’s

decision denying Appellant unemployment Insurance benefits should be affirmed as it is supported by substantial evidence.

## CONCLUSION

When the evidence and all reasonable inferences deducible therefrom are reviewed in a light most favorable to the board's conclusions there can be no question that the board reasonably could have and did reach its decision based upon such evidence. Consequently, substantial evidence supports the board's decision and it must be affirmed. For this and all reasons stated above, the Appellee respectfully requests that the court affirm the board's decision.

Respectfully submitted,



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Phyllis A. Edwards #88030  
P.O. Box 8040  
Little Rock, Arkansas 72203

Attorney for Appellee  
Artee Williams, Director  
Arkansas Department of  
Workforce Services

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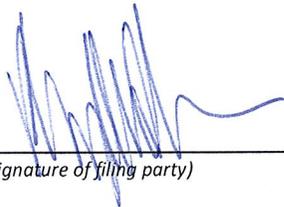
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I have submitted and served on opposing counsel an un-redacted and, if required, a redacted PDF document(s) that comply with the Rules of the Supreme Court and Court of Appeals. The PDF documents(s) are identical to the corresponding parts of the paper document(s) from which they were created as filed to the court. To the best of my knowledge, information, and belief formed after scanning the PDF documents for viruses with an antivirus program, the PDF documents are free of computer viruses. A copy of this certificate has been submitted with the paper copies filed with the court and has been served on all opposing parties.

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*(Signature of filing party)*

Phyllis Edwards

\_\_\_\_\_  
*(Printed name)*

Arkansas Department of Workforce Services

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*(Agency)*

September 17, 2014

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*(Date)*