

**\*\*\* NOT FOR PUBLICATION \*\*\***

NO. 25061

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

---

CHRISTOPHER BOYTER, Appellant-Appellant,

vs.

STATE OF HAWAI'I, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS,  
EMPLOYMENT SECURITY APPEALS REFEREES' OFFICE, and GEMINI/AURA,  
Appellees-Appellees,

and

ASSOCIATION OF UNIVERSITIES FOR RESEARCH IN ASTRONOMY, INC.,  
Employer-Appellee.

---

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CIV. NO. 01-1-2882)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy JJ.)

The appellant-appellant Christopher Boyter appeals from the judgment of the first circuit court, the Honorable Eden Elizabeth Hifo presiding, filed on May 2, 2002, in favor of the appellees-appellees State of Hawai'i, Department of Labor and Industrial Relations (DLIR) and Employment Security Appeals Referees' Office (ESARO) and the employer-appellee Association of Universities for Research in Astronomy, Inc. (AURA). On appeal, Boyter contends that the circuit court: (1) erred in concluding that there was sufficient evidence to support the ESARO's decision that Boyter was disqualified from receiving unemployment benefits, on the basis that Boyter had voluntarily terminated his employment relationship with AURA without good cause; and (2) refusing to permit Boyter to submit new evidence on appeal before the circuit court.

**\*\*\* NOT FOR PUBLICATION \*\*\***

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we affirm the order of the circuit court. Hawai'i Revised Statutes (HRS) § 383-30(1) (1993), which pertains to the disqualification for unemployment benefits based on "voluntary separation," provides that "[a]n individual shall be disqualified for benefits . . . [f]or any week beginning on and after October 1, 1989, in which the individual has left the individual's work voluntarily without good cause . . . ." Hawai'i Administrative Rules (HAR) § 12-5-47(b) prescribes that "[a] separation is a voluntary leaving or quitting when the facts and circumstances demonstrate that a claimant is the 'moving party' in the termination of an employment relationship." "[T]he issue of whether an employee is the 'moving party in the termination of the employment relationship' and has 'left work voluntarily' hinges on the employee's intent to end the employment relationship." Keanini v. Akiba, 84 Hawai'i 407, 413, 935 P.2d 122, 128 (App.), cert. denied by Keanini v. Nakanelua, 85 Hawai'i 81, 937 P.2d 922 (1997) (quoting HRS § 383-30(1) and HAR § 12-5-47(b)). Moreover, "the employee has the burden of establishing that the voluntary termination was with good cause." Noor v. Agsalud, 2 Haw. App. 560, 562, 634 P.2d 1058, 1060 (1981).

The notion of voluntary quitting without good cause involves two levels of volition: (1) the immediate circumstances of leaving must reflect a subjective intent of the employee to terminate; and (2) the act of leaving must be an exercise of free will and not the product of other compelling reasons or pressures forcing him to leave. It is the second level of volition that concerns the ultimate issue of whether or not the employee has quit for good cause.

Ipsen v. Akiba, 80 Hawai'i 481, 486, 911 P.2d 116, 121 (App.

**\*\*\* NOT FOR PUBLICATION \*\*\***

1996) (footnote omitted).

In the present matter, there was sufficient evidence to support the ESARO's conclusion that Boyter voluntarily terminated his employment with AURA. The evidence adduced at the hearing before the ESARO established that Boyter was discontent with his employment at AURA as well as his living situation in Hilo almost immediately upon his arrival in Hilo. AURA introduced several e-mails from Boyter to various AURA supervisors, informing them that he no longer wished to continue his employment with AURA from Hilo; in response, AURA twice persuaded Boyter to continue his employment. Finally, on March 13, 2001, Boyter expressly informed AURA by e-mail communication that, due to his work environment and financial situation, he would "not [be] able to continue working this position" but that he would "be glad to consult for [G]emini from [his] home in [H]onolulu, but that is the best [he could] do." The foregoing statement unequivocally manifests Boyter's intention to discontinue his employment relationship with AURA and relocate to Honolulu. Thus, inasmuch as (1) there was substantial evidence to support the ESARO's conclusion that Boyter voluntarily terminated his employment relationship with AURA and (2) "the clearly erroneous standard requires the court to sustain the [ESARO's] findings unless the court is left with a firm and definite conviction that a mistake has been made," Korsak v. Hawaii Permanente Med. Group, 94 Hawai'i 297, 303, 12 P.3d 1238, 1244 (2000), the circuit court did not err in denying Boyter's appeal of the ESARO's decision.

Finally, Boyter's argument that the circuit court erred in refusing to permit him to introduce new evidence is without merit. Pursuant to HRS § 91-14(f) (1993), which pertains to

**\*\*\* NOT FOR PUBLICATION \*\*\***

judicial review of contested cases, "[t]he review shall be conducted by the appropriate court . . . and shall be confined to the record . . . ." HRS § 91-14(e) (1993), however, provides for the supplementation of a record upon the request of a party to the action as follows:

If, before the date set for hearing, application is made to the court for leave to present additional evidence material to the issue in the case, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon such conditions as the court deems proper. The agency may modify its findings, decision, and order by reason of the additional evidence and shall file with the reviewing court, to become a part of the record, the additional evidence, together with any modifications or new findings or decision.

(Emphasis added.)

It appears from the record in the present matter that Boyter failed to file an application to supplement the record, pursuant to HRS § 91-14(e), with documentation relating to the approval of his claim for unemployment benefits in California. That being the case, the circuit court did not err in refusing to permit Boyter to introduce the foregoing evidence. Moreover, assuming arguendo that Boyter had filed the requisite application to supplement the record in the circuit court, the record reflects that there were no "good reasons for [Boyter's] failure to present it in the proceeding before the [ESARO]" -- i.e., Boyter was cognizant of the proffered evidence at the time of the ESARO hearing, as established by his request that the ESARO officer consider the approval of his California claim for unemployment benefits in his decision, to which the ESARO officer responded that he was "not bound by [California's] decision." Thus, the circuit court did not err in denying Boyter's request

**\*\*\* NOT FOR PUBLICATION \*\*\***

to introduce new evidence on appeal. Therefore,

IT IS HEREBY ORDERED that the order from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, February 18, 2004.

On the briefs:

Christopher Boyter, Pro se

Staci I. Teruya, deputy  
attorney general, for  
the appellees-appellees  
Department of Labor and  
Industrial Relations and  
Employment Security Appeals  
Referees' Office

William H. Jarrett, of  
Torkildson, Katz,  
Fonseca, Moore & Hetherington,  
for the employer-appellee  
Association of Universities  
for Research in Astronomy, Inc.