

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

ABDOULIE MANNEH,

Plaintiff and Appellant,

v.

**CALIFORNIA UNEMPLOYMENT
INSURANCE APPEALS BOARD,**

Defendant and Respondent.

A140729

**(Alameda County
Super. Ct. No.
RG12622678)**

The Employment Development Department (EDD) denied appellant Abdoulie Manneh’s application for unemployment benefits (Unemp. Ins. Code, § 1256)¹ and an administrative law judge (ALJ) and the California Unemployment Insurance Appeals Board (CUIAB) upheld the denial. Manneh petitioned for writ of administrative mandate, requesting the superior court set aside the denial of unemployment benefits (Code Civ. Proc., § 1094.5). The court denied Manneh’s petition for writ of mandate, concluding the “weight of the evidence” supported the CUIAB’s factual findings and the CUIAB did not abuse its discretion by concluding Manneh “negated his good cause to

¹ Unless noted, all further statutory references are to Unemployment Insurance Code. Section 1256 provides in relevant part: “An individual is disqualified for unemployment compensation benefits if [] he [] left his [] most recent work voluntarily without good cause . . .”

voluntarily quit by failing, both before and after he resigned, to give his employer a chance to fix the problems he cited.”

Manneh appeals in propria persona. He argues substantial evidence does not support the court’s decision upholding the CUIAB’s denial of unemployment benefits and he had good cause to resign pursuant to sections 1256.2 and 1256.5. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Manneh worked as a commercial designer for SolarCraft Services, Inc. (SolarCraft or company) for 19 months. SolarCraft’s employee handbook — which Manneh received — “encourage[d] all employees to report any incidents of harassment immediately” by confronting the offending individual and/or notifying a supervisor. In March 2011, Manneh emailed SolarCraft’s president and resigned “effective immediately” because he claimed his supervisor denied him work sharing benefits, refused to backdate his pay raise, used “foul” language, and had “childish tantrums.” Manneh did not raise these concerns with SolarCraft management before he resigned.

SolarCraft’s President, William Stewart, responded to Manneh’s resignation email. William told Manneh he was a “highly valued employee” and lamented not having an opportunity to have a “discussion sooner” about Manneh’s concerns. Stewart felt “badly” the company was “not aware of the issue” before Manneh resigned. Stewart promised to “spare no effort” to rectify Manneh’s concerns so Manneh could return to work and asked Manneh to call him. Manneh declined Stewart’s efforts to discuss the situation and politely refused to return to work; he told Stewart he was starting his own company.

Manneh’s Application for Unemployment Insurance Benefits

The EDD denied Manneh’s application for unemployment insurance benefits and he appealed to the CUIAB. Following an evidentiary hearing, an ALJ concluded Manneh “had good cause to leave work” but “failed to give the employer an opportunity to correct the working conditions and resigned effective immediately. When informed of the resignation, the employer requested an opportunity to rectify the matter, but to no

avail. Under these circumstances, the claimant negated good cause for leaving work and is therefore not qualified for benefits under section 1256.”

Manneh appealed the ALJ’s decision to the Appeals Board of the CUIAB. The CUIAB “carefully and independently reviewed the record” and affirmed. It concluded Manneh did not have “any justifiable reason for not contacting upper management in an attempt to preserve his employment relationship. . . . [T]he record establishes that the employer would have made efforts to correct problems with the supervisor, if [Manneh] would have communicated his concerns . . . in a timely manner. Accordingly, . . . [Manneh] negated any good cause he may have had to voluntarily quit his last employment by failing to contact upper management to express his concerns . . . prior to resigning.”

Manneh’s Petition for Writ of Mandate

Manneh petitioned for writ of mandate in the Alameda County Superior Court to command the CUIAB to set aside the ALJ’s decision denying unemployment benefits. In a thorough written order, the court denied the petition, concluding Manneh “negated [] good cause” to resign “and disqualified himself to receive unemployment insurance benefits” pursuant to section 1256 because he did not notify SolarCraft of his grievances before abruptly resigning, and because he failed to respond to the company’s efforts after he resigned to “fix the problems and maintain the employment relationship.” As the court explained, “viewed *objectively*, Manneh did not act as a reasonable person desirous of retaining his job would have acted under similar circumstances. Manneh failed to do so both when he resigned without having raised the issue and, more importantly, when he declined Stewart’s prompt, repeated solicitations to meet or enter a dialog to try to find a way to save the employment relationship. Although such efforts may have failed, the CUIAB did not abuse its discretion by holding that an employee in such circumstances must give such efforts a chance before voluntarily resigning.” The court entered judgment for the CUIAB.

DISCUSSION

I.

Standard of Review

“In reviewing a decision of the [CUIAB], the superior court exercises its independent judgment on the evidentiary record of the administrative proceedings and inquires whether the findings of the administrative agency are supported by the weight of the evidence.’ [Citations.]” (*Natkin v. California Unemployment Ins. Appeals Bd.* (2013) 219 Cal.App.4th 997, 1002 (*Natkin*) quoting *Lozano v. Unemployment Ins. Appeals Bd.* (1982) 130 Cal.App.3d 749, 754.) Appellate review of the superior court’s “ruling on a writ of mandate . . . is ordinarily confined to an inquiry as to whether the findings and judgment of the trial court are supported by substantial, credible and competent evidence. [Citation.] However, where the probative facts are not in dispute, the determination of the trial court may be reviewed as a matter of law. [Citation.]” (*Natkin*, at p. 1002.) We review the court’s denial of Manneh’s petition for writ of mandate for substantial evidence.

II.

Substantial Evidence Supports the Denial of Manneh’s Writ Petition

As stated above, the court concluded Manneh “negated [] good cause” to resign “and disqualified himself to receive unemployment insurance benefits” under section 1256 because he did not notify SolarCraft of his grievances before abruptly resigning, and because he failed to respond to the company’s efforts after he resigned to “fix the problems and maintain the employment relationship.” Manneh contends this conclusion was wrong for various reasons, none of which is persuasive.

Section 1256 provides, “[a] person is disqualified for unemployment benefits if ‘he or she left his or her most recent work voluntarily without good cause. . . .’ (§ 1256.)” (*Kelley v. California Unemployment Ins. Appeals Bd.* (2014) 223 Cal.App.4th 1067, 1075, fn. omitted (*Kelley*).) Section 1256 imposes a rebuttable presumption the claimant did not voluntarily leave work without good cause. (*Kelley*, at p. 1075.) “The

term ‘good cause’ is not susceptible of precise definition. In fact, its definition varies with the context in which it is used. Very broadly, it means a legally sufficient ground or reason for a certain action.” (*Zorrero v. Unemployment Ins. Appeals Bd.* (1975) 47 Cal.App.3d 434, 439 [good cause requires “voluntary termination of employment be based on serious and exigent circumstances”].) “[T]he quitting must be for such a cause as would, in a similar situation, reasonably motivate the average able-bodied and qualified worker to give up his or her employment with its certain wage rewards in order to enter the ranks of the unemployed. [Citation.]” (*Evenson v. Unemployment Ins. Appeals Bd.* (1976) 62 Cal.App.3d 1005, 1016.)

The issue here is not whether Manneh had good cause to resign from SolarCraft. It is whether he negated that good cause by failing to notify SolarCraft of his grievances before abruptly resigning. As we explain below, we conclude evidence of Manneh’s failure to notify SolarCraft of his grievances before he resigned — to give SolarCraft an opportunity to correct the situation — negated good cause under section 1256. (O’Brien, *Cal. Unemployment, Disability, & Paid Family Leave* (12th ed. 2014) With a Fellow Employee and/or Supervisor, § 18.30.2, p. 409.)

Several courts have concluded an employee has good cause to leave employment where he makes a “communicated protest” and his employer refuses to remedy the situation. (*Morrison v. Unemployment Ins. Appeals Bd.* (1976) 65 Cal.App.3d 245, 253 (*Morrison*); *Prescod v. Unemployment Ins. Appeals Bd.* (1976) 57 Cal.App.3d 29, 33-34 (*Prescod*)). For example, in *Morrison*, the appellate court held “discrimination in pay based upon sex, which [persists] after communicated protest and after reasonable time and opportunity to eliminate the discrimination, affords good cause for the employee discriminated against to quit the employment.” (*Morrison*, at p. 250.) As the *Morrison* court explained, “[a]n employee who is in fact discriminated against in the matter of compensation, because of sex, who makes appropriate protest and request for equalization of compensation, and who is refused such adjustment after the employer has had an opportunity to investigate and adjust said compensation, has good cause to leave that employment.” (*Id.* at p. 253; see also *Sanchez v. Unemployment Ins. Appeals Bd.*

(1984) 36 Cal.3d 575, 580, 585 [employees had good cause to quit where they were “subjected to a continuing course of illegal discrimination” despite submitting to management “a list of employee grievances”]; *Prescod, supra*, 57 Cal.App.3d at pp. 33-34 [employee demoted after maternity leave had good cause to resign where employer refused her request for reinstatement or transfer].)

A corollary of this rule is good cause may be negated if the employee does not notify his employer of his grievances, as the CUIAB concluded in the precedent benefit decision, *In the Matter of Burns* (1968) California Unemployment Appeals Board Precedent Benefit Decision No. 8 (*Burns*). There, a longtime salesclerk quit her job after her supervisor refused to excuse her from a scheduled shift. (*Id.* at p. 1.) The salesclerk applied for unemployment benefits, claiming she worked two shifts within a time period prohibited by a provision of the California Administrative Code. (*Id.* at p. 2.) The CUIAB determined the salesclerk was “required to work in violation” of a provision of the California Administrative Code, but she was not entitled to unemployment benefits. (*Id.* at p. 4.)

As the CUIAB explained, “[t]hese facts would ordinarily establish good cause for voluntarily leaving work. However, in this case the record shows that the claimant worked the same shift for a considerable period of time without any complaint to her supervisor as to the hours she was required to work and made no attempt to obtain a transfer to a more satisfactory shift. We believe that an individual genuinely desirous of retaining employment would have informed her supervisor of her dissatisfaction with the hours she was required to work, thus affording the supervisor an opportunity to make a satisfactory adjustment. [¶] The claimant did not do this, but rather summarily left work with no explanation to the employer as to the reasons therefor. The claimant’s failure to seek an adjustment prior to her leaving of work negates any good cause she may otherwise have had for so doing. We conclude that the claimant voluntarily left her most recent work without good cause within the meaning of section[] 1256. . . .” (*Burns, supra*, Cal. Unemp. App. Bd. Precedent Benefit Dec. No. 8, at p. 4.) As in *Burns*, we conclude Manneh’s failure to inform SolarCraft of his grievances or “seek an adjustment”

before resigning “negate[d] any good cause [he] may otherwise have had for” resigning. (*Ibid.*)²

An administrative regulation promulgated pursuant to section 1256 supports this conclusion. (Cal. Code Regs., tit. 22, § 1256-3, subd. (c) (Reg. 1256-3).) Regulation 1256-3, subdivision (c) provides in relevant part: “Prior to leaving work, the claimant has a duty to attempt to preserve the employment relationship. Failure to do so negates what would otherwise constitute good cause. This duty may be satisfied by reasonable steps, including, but not limited to . . . [¶] (1) Seeking an adjustment of the problem by allowing the employer an opportunity to remedy the situation if the employer can reasonably do so. . . .” Here, Manneh failed to “seek[] an adjustment of the problem” or allow SolarCraft “an opportunity to remedy the situation” before he resigned. (Reg. 1256-3, subd. (c)(1).) At the evidentiary hearing before the ALJ, Manneh conceded he did not communicate his grievances to SolarCraft’s management before he resigned. Similarly, Stewart testified “the first indication” he had “of any problem” Manneh had was Manneh’s resignation email. Pursuant to Regulation 1256-3, subdivision (c)(1), Manneh’s failure to give SolarCraft a reasonable opportunity to remedy the situation before he resigned negated any good cause Manneh may have had for resigning.

We reject Manneh’s claim that he had good cause to resign under section 1256.2, which provides unlawful discrimination constitutes good cause to leave employment unless the individual “fails to make reasonable efforts to provide the employer with an opportunity to remove any unintentional deprivation of the individual’s equal employment opportunities.” (§ 1256.2, subs. (a), (b)(2).) Manneh’s reliance on this statute fails because he did not raise it in the trial court. (*Ochoa v. Pacific Gas & Electric Co.* (1998) 61 Cal.App.4th 1480, 1488, fn. 3, [“arguments not asserted below are waived and will not be considered for the first time on appeal”].) This claim also fails on the

² As he did in his writ petition, Manneh contends he notified SolarCraft of his grievances before resigning. The court rejected this argument after carefully reviewing the evidence offered at the ALJ hearing. We decline Manneh’s invitation to reweigh the evidence or substitute our judgment for the trial court’s.

merits because there is no evidence Manneh made “reasonable efforts to provide [SolarCraft] with an opportunity to remove any unintentional deprivation of [Manneh’s] equal employment opportunities” before he resigned. (§ 1256.2, subd. (b)(2).)

We are not persuaded by Manneh’s reliance on section 1256.5, subdivision (a). That statute provides in relevant part, “An individual shall be deemed to have left his or her most recent work with good cause if the director finds that she or she leaves employment because of sexual harassment if the individual has taken reasonable steps to preserve the working relationship. No steps shall be required if the director finds it would have been futile.” Section 1256.5 does not assist Manneh because he did not allege sexual harassment in the lower court and because he did not, as required by the statute, take “reasonable steps to preserve the working relationship.” (§ 1256.5, subd. (a).)

We conclude the court properly denied Manneh’s petition for writ of mandate. Substantial evidence demonstrates Manneh negated any good cause he had to resign by failing to notify SolarCraft of his grievances before he resigned. As a result, Manneh was disqualified for unemployment compensation benefits under section 1256.

DISPOSITION

The judgment is affirmed. In the interests of justice, each party is to bear its own costs. (Cal. Rules of Court, rule 8.278(a)(5).)

Jones, P.J.

We concur:

Simons, J.

Needham, J.