

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Richard J. Day,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
Unemployment Compensation	:	
Board of Review,	:	No. 1027 C.D. 2010
	:	
Respondent	:	Submitted: December 30, 2010

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER

FILED: February 1, 2011

Richard Day (Claimant) petitions this Court for review of the April 21, 2010 order of the Unemployment Compensation Board of Review (UCBR) affirming the decision of the Referee and denying benefits. There is essentially one issue before the Court: whether there was sufficient evidence to prove that the loss of Claimant's wife's income was a necessitous and compelling reason for his decision to leave his employment, thereby making Claimant eligible for benefits under Section 402(b) of the Unemployment Compensation Law (Law).¹ For reasons that follow, we affirm the order of the UCBR.

Claimant was employed as a telemarketer by Prospect Cemetery (Employer) beginning January 6, 2009, and ending September 26, 2009. Claimant

¹ Act of December 5, 1936, Second Ex.Sess., P.L. (1937) 2897, *as amended*, 43 P.S. § 802(b).

left his employment in Pennsylvania because his wife died. Claimant represents that he could no longer afford to live in Pennsylvania because, as a result of his wife's death, he no longer benefitted from his wife's Social Security Income (SSI) and food stamps. On October 2, 2009, Claimant moved to Montana to live near his wife's family.

Claimant subsequently applied for Unemployment Compensation (UC) benefits. On November 24, 2009, the Erie UC Service Center mailed a notice of determination denying Claimant UC benefits under Sections 402(b) of the Law. Claimant appealed, and a hearing was held by a Referee. On February 3, 2010, the Referee mailed his decision affirming the determination of the UC Service Center denying UC benefits. Claimant appealed to the UCBR. The UCBR affirmed the decision of the Referee and denied benefits. Claimant appealed, pro se, to this Court.²

As stated, Claimant represents that he left his employment because he could no longer afford to live in Pennsylvania after his wife died. He contends that this was a compelling and necessitous reason to quit his job. We disagree.

An employee who claims to have left employment for a necessitous and compelling reason must prove that: (1) circumstances existed which produced real and substantial pressure to terminate employment; (2) such circumstances would compel a reasonable person to act in the same manner; (3) the claimant acted with ordinary common sense; and, (4) the claimant made a reasonable effort to preserve her employment.

² This Court's review is limited to determining whether the findings of fact were supported by substantial evidence, whether constitutional rights were violated, or whether errors of law were committed. *Johnson v. Unemployment Comp. Bd. of Review*, 869 A.2d 1095 (Pa. Cmwlt. 2005).

Brunswick Hotel & Conf. Ctr., LLC v. Unemployment Comp. Bd. of Review, 906 A.2d 657, 660 (Pa. Cmwlth. 2006). “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Coal Gas Recovery, L.P. v. Franklin Twp. Zoning Hearing Bd.*, 944 A.2d 832, 838 n.9 (Pa. Cmwlth. 2008).

Claimant testified at the hearing that he could not afford his rent when his wife’s SSI and food stamps stopped, so he moved to Montana because his sister-in-law offered him a place to stay. Claimant further testified that he had made no arrangements for work in Montana prior to his move. Furthermore, he did not provide any evidence to show that he made any reasonable effort to preserve his employment. While it was his personal choice to quit his job and move to Montana, this testimony does not provide substantial evidence to prove that Claimant had a necessitous and compelling reason to leave his employment. *See Rose v. Unemployment Comp. Bd. of Review*, 398 A.2d 749 (Pa. Cmwlth. 1979) (wherein this Court found that a claimant’s act of terminating her employment was an exercise of personal preference in favor of living near her family out-of-state after her spouse died; there the Court noted that continuing work was available to the claimant, that the claimant did not attempt to remain in Pennsylvania where her employment was, that she made no effort to lower her fixed monthly expenses, and that the claimant moved without substantial prospects of future replacement employment).

For all of the above reasons, the order of the UCBR is affirmed.

JOHNNY J. BUTLER, Judge

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ORDER

AND NOW, this 1st day of February, 2011, the April 21, 2010 order of the Unemployment Compensation Board of Review is affirmed.

JOHNNY J. BUTLER, Judge