

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Robert A. Koch, :
Petitioner :
 :
v. :
 :
Unemployment Compensation :
Board of Review, : No. 1232 C.D. 2009
Respondent : Submitted: April 16, 2010

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY

FILED: May 19, 2010

Robert A. Koch (Claimant) petitions for review from the order of the Unemployment Compensation Board of Review (Board) which affirmed the referee's denial of benefits under Section 402(b) of the Unemployment Compensation Law (Law).¹

The facts, as initially found by the referee and confirmed by the Board, are as follows:

1. For the purpose of this appeal, the claimant last worked for Watson's Sunoco as a full time Auto Mechanic from July 6, 2006 until January 20, 2009, his last day of work, with a final rate of pay of \$16.50 per hour.

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

2. On January 20, 2009, the owner was informed by a customer that a vehicle waiting to be picked up on the employer's parking lot had been in an accident.
3. The employer noticed damage to the body of the vehicle.
4. The owner informed the workers that the police had been called and would be coming to the worksite.
5. A short time later, the claimant informed the owner that it was best for both parties if he did not continue his employment and voluntarily quit.
6. Continuing work was available.
7. The claimant informed the unemployment authorities that he was let go because work was slow.

Referee's Decision, April 14, 2009, (Decision), Findings of Fact Nos. 1-7 at 1.

The referee determined that Claimant failed to establish that he had a necessitous and compelling reason for leaving his employment.² The Board adopted the referee's findings and conclusions and, like the referee, found Thomas Watson (Watson), owner of Watson's Sunoco (Employer) credible.

Claimant contends that the Board was biased and erred when it concluded that he was ineligible for benefits.³

² The referee also determined that Claimant received a fault overpayment under Section 804(a) of the Law, 43 P.S. §874, and imposed penalty weeks under Section 801(b) of the Law, 43 P.S. §871. These determinations are not before this Court.

³ This Court's review in an unemployment case is limited to a determination of whether constitutional rights were violated, errors of law were committed, or essential findings of fact were not supported by substantial evidence. Lee Hospital v. Unemployment Compensation Board of Review, 637 A.2d 695 (Pa. Cmwlth. 1994).

With respect to bias, Claimant asserts that he was treated unfairly because he could not afford to hire an attorney and did not understand the hearing process. However, this Court has stated, “[a]ny lay person who chooses to represent himself in a legal proceeding must assume the risk that his lack of expertise and legal training may prove to be his undoing.” Daly v. Unemployment Compensation Board of Review, 631 A.2d 720, 722 (Pa. Cmwlth. 1993).

Claimant also asserts that the first six findings of fact are unsupported by substantial evidence because of “available documents.” However, these documents were not made part of the record. The Board may only consider evidence that is part of the record. Lock Haven University of Pennsylvania v. Unemployment Compensation Board of Review, 559 A.2d 1015 (Pa. Cmwlth. 1015). Further, this Court may not consider evidence attached to a brief which was not part of the record below. Croft v. Unemployment Compensation Board of Review, 662 A.2d 24 (Pa. Cmwlth. 1995).

Also, Watson testified that Claimant’s rate of pay was \$16.50 per hour, that a customer informed him that a vehicle in Employer’s parking lot had been in an accident, that he noticed damage to the vehicle, and that he informed the employees that the police had been called and were coming to Employer’s Sunoco station. Notes of Testimony, April 13, 2009, (N.T.) at 5-7. Watson also testified that fifteen minutes after he informed the employees that the police were scheduled to arrive, “Robert Koch [Claimant] walked into my office and found it in his best interest with both of is [sic] that he no longer works here.” N.T. at 7.

Claimant testified to the contrary that he was informed he was terminated from employment due to economic reasons. The Board explicitly found Watson credible. In unemployment compensation proceedings, the Board is the ultimate factfinding body empowered to resolve conflicts in evidence, to determine the credibility of witnesses, and to determine the weight to be accorded the evidence. Unemployment Compensation Board of Review v. Wright, 347 A.2d 328 (Pa. Cmwlth. 1975). Findings of fact are conclusive upon review provided that the record, taken as a whole, provides substantial evidence to support the findings. Taylor v. Unemployment Compensation Board of Review, 474 Pa. 351, 378 A.2d 829 (1977). The Board's findings were supported by substantial evidence.⁴

⁴ Whether a termination of employment is voluntary is a question of law subject to this Court's review. The failure of an employee to take all reasonable steps to preserve employment results in a voluntary termination. Westwood v. Unemployment Compensation Board of Review, 532 A.2d 1282 (Pa. Cmwlth. 1987). An employee voluntarily terminating employment has the burden of proving that such termination was necessitous and compelling. The question of whether a claimant has a necessitous and compelling reason to terminate employment is a question of law reviewable by this Court. Willet v. Unemployment Compensation Board of Review, 429 A.2d 1282 (Pa. Cmwlth. 1981). Good cause for voluntarily leaving one's employment results from circumstances which produce pressure to terminate employment that is both real and substantial and which would compel a reasonable person under the same circumstances to act in the same manner. Philadelphia Parking Authority v. Unemployment Compensation Board of Review, 654 A.2d 280 (Pa. Cmwlth. 1995).

Here, the Board determined that Claimant voluntarily quit his employment. Claimant does not argue that he had good cause to voluntarily quit. Rather, Claimant argues that he was laid off. The Board as factfinder did not accept Claimant's version of the events that transpired on January 20, 2009.

Accordingly, this Court affirms.

BERNARD L. McGINLEY, Judge

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ORDER

AND NOW, this 19th day of May, 2010, the order of the Unemployment Compensation Board of Review in the above-captioned matter is affirmed.

BERNARD L. MCGINLEY, Judge