

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Christal Williams,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1262 C.D. 2010
	:	
Unemployment Compensation	:	Submitted: December 17, 2010
Board of Review,	:	
	:	
Respondent	:	

BEFORE: HONORABLE BERNARD L. MCGINLEY, Judge  
HONORABLE PATRICIA A. MCCULLOUGH, Judge  
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY SENIOR JUDGE KELLEY

FILED: March 15, 2011

Christal Williams (Claimant) petitions for review of an order of the Unemployment Compensation Board of Review (Board) affirming the decision of a Referee that denied Claimant's application for unemployment compensation benefits pursuant to Section 402(b) of the Unemployment Compensation Law (Law).<sup>1</sup> We affirm.

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<sup>1</sup> Act of December 5, 1936, Second Ex. Sess. P.L. (1937) 2897, as amended, 43 P.S. § 802(b). Section 402(b) of the Law provides, in pertinent part:

An employee shall be ineligible for compensation for any week—

\* \* \*

(b) In which his unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature,

(Continued....)

Claimant filed a claim for benefits with the Philadelphia UC Service Center upon the separation of her employment as a senior claims adjuster with Independence Blue Cross (Employer). The Service Center representative issued a determination denying her claim for benefits pursuant to Section 402(b) of the Law.

Claimant appealed this determination and a hearing was conducted before a Referee on February 1, 2010. See N.T. 2/1/10<sup>2</sup> at 1-11. Claimant testified at the hearing<sup>3</sup>, and indicated that she had separated from her employment with Employer to accept an early retirement plan that had been offered by Employer. See id. at 4, 5, 6. Claimant testified that the incentives offered by Employer under the plan included the addition of three years to her years of service, plus health insurance benefits for life, because Employer was trying to cut back due to the loss of money. See id. at 4, 6, 7. Claimant acknowledged that she was not directly informed by Employer that she would be laid off if she did not accept the early retirement plan, and that continuing work would have been available to her if she had remained in her employment with Employer. See id. at 4, 7-9.<sup>4</sup>

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irrespective of whether or not such work is “employment” as defined in this act.

<sup>2</sup> “N.T. 2/1/10” refers to the transcript of the hearing conducted before the Referee on February 1, 2010.

<sup>3</sup> No one appeared on Employer’s behalf at the hearing.

<sup>4</sup> More specifically, Claimant testified, in pertinent part, as follows:

R And why’d you no longer work with Employer beyond October 30<sup>th</sup>, 2009?

C Okay, because I was told that they were downsizing and my job would possibly be affected because of my pay rate. They were trying to cut back. The company was really losing monies. Okay.

*(Continued....)*

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\* \* \*

R Okay. That's said if they were laid off. So did they indicate prior – when the program was offered to you, were you ever told by anyone your job would definitely be eliminated as of any specific date?

C They couldn't give me a yes or no answer when I asked. They just told me that ....

R So when – who did you ask about that?

C My Manager.

R And when you asked your Manager, what was your Manager's response?

C She said I can't give you a yes or no answer. You know ask, because I would get – it was – that's her job. But she told me she advised me to accept it. But my years of service....

R And did she indicate why she was advising you to accept it?

C Because in my years of service she didn't [want to] see me lose out.

R All right, so it was your understanding if you didn't accept a package, you could've worked until what date?

C I don't know.

R Okay. And the reason you accepted the package rather than continue working to see if you were laid off, was what reason?

C Because I didn't want to lose my benefits – my health benefits for life [and] a three year enhancement.

R All right.

C I mean I've worked 33 years nonstop and....

R Okay, so if you were laid off in the future, if you didn't accept the package, what would be the difference in health benefits?

C I wouldn't get them. After six months....

R Why wouldn't you get them?

C Because you're not retirement age. I'm not retirement age.

*(Continued....)*

On February 1, 2010, the Referee issued a Decision in which he made the following relevant findings of fact: (1) in order to downsize its workforce,

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I'm only 52 years old.

R Okay. So you would get the retirement benefits when you were 55. Is that what you're saying?

C Yes. And with them adding...

R Now...

C ...three years, it made me 55 actually.

R And I'm looking at your Petition for Appeal. On here you wrote that I was offered and accepted the early retirement package with incentive due to employer downsizing. There was no guarantee that my job would be safe if the [Employer]'s quot[a] of reduction [in] work staff was not met. So what do you mean by reduction [in] work staff was not met. What do you mean by that?

C Well they offered it to like 800 people. Okay, and I think only like probably 500 of us took it.

R All right. So was it your understanding that they were offering this early retirement to see how many people would take it. And then they would determine if...

C Yes.

R ...there were layoffs necessary in the future.

C And I think it's in the article that I gave you that I had attached to – with my papers I submitted. I faxed in.

\* \* \*

R And then [on your Claimant Questionnaire] it says was continued work available to you if you did not accept the Employer's incentives. And your response was, I do not know; could not get a yes or no answer when I asked.

C Yes.

R And then it says please explain your reason for accepting the Employer's plan. And your response was I did not want to take the chance of being laid off if the program was not successful, forfeiting a retirement package with benefits.

*(Continued....)*

Employer offered an early retirement plan to its eligible employees; (2) employees were given forty-five days to accept Employer's early retirement plan, and must have separated from employment by October 30, 2009; (3) Claimant qualified for Employer's early retirement plan; (4) Claimant was advised by Employer that there may be involuntary layoffs of employees if the workforce quota reduction goals were not met by the end of the early retirement plan period; (5) when Claimant questioned Employer as to whether or not she would be subject to an involuntary layoff if the workforce quota reduction goals were not met, Employer could not answer yes or no to Claimant's question; (6) Claimant accepted Employer's early retirement plan, and agreed to leave her employment by October 30, 2009, because she felt that she may be subject to an involuntary layoff in the future and that she would not receive the incentives offered through the early retirement plan; (7) Claimant was never informed by Employer that she would be subject to layoff and that her termination from employment was imminent prior to her acceptance of the early retirement plan; and (8) continuing work was available had Claimant not elected to accept the early retirement plan. Referee's Decision at 1-2.

Based upon the foregoing, the Referee concluded:

The Pennsylvania Courts have held that where an employee chooses to voluntarily terminate her employment to receive an enhanced retirement offer, that speculation pertaining to an employer's financial condition and/or future layoffs, however disconcerting, does not establish the requisite necessitous and compelling cause when continuing work is available to the claimant.

In the present case, the Claimant's own testimony establishes that she left her employment to take

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C     Yes.

advantage of the enhanced retirement offer extended to her by the employer because of speculation she may be involuntarily laid off in the future. However, prior to the claimant accepting the [employer]'s early retirement plan and leaving her employment, the claimant was never informed by the employer that she would be subject to layoff or that her separation from employment was imminent. Thus, the claimant's leaving her employment under such circumstances was a personal choice on her part, which was not based upon compulsion or necessity as required by Section 402(b) of the Law. Accordingly, benefits must be denied under said section of the Law.

Referee's Decision at 2. Accordingly, the Referee issued an order affirming the Service Center representative's determination, and finding her ineligible to receive benefits pursuant to Section 402(b) of the Law. Id.

On February 15, 2010, Claimant appealed the Referee's decision to the Board. On April 28, 2010, the Board adopted the Referee's decision, and issued an order affirming that decision. Claimant then filed the instant appeal from the Board's order.<sup>5</sup>

In this appeal, Claimant contends that the Board erred in determining that she did not have "necessitous and compelling cause" to terminate her employment thereby precluding the grant of benefits under Section 402(b) of the Law, and that the Board's determination in this regard is not supported by substantial evidence. We do not agree.

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<sup>5</sup> This Court's scope of review in an unemployment compensation appeal is limited to determining whether an error of law was committed, whether constitutional rights were violated, or whether necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa.C.S. § 704; Hercules, Inc. v. Unemployment Compensation Board of Review, 604 A.2d 1159 (Pa. Cmwlth. 1992). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Wheelock Hatchery, Inc. v. Unemployment Compensation Board of Review, 648 A.2d 103 (Pa. Cmwlth. 1994).

A claimant is ineligible for unemployment compensation benefits if she voluntarily becomes unemployed without cause of a necessitous and compelling nature. 43 P.S. § 802(b). A necessitous and compelling cause for unemployment “results from circumstances which produce pressure to terminate employment that is both real and substantial, and which would compel a reasonable person under the circumstances to act in the same manner.” McCarthy v. Unemployment Compensation Board of Review, 829 A.2d 1266, 1270 (Pa. Cmwlth. 2003). The burden of proving that her voluntary termination was necessitous and compelling rests with the claimant. Mansberger v. Unemployment Compensation Board of Review, 785 A.2d 126 (Pa. Cmwlth. 2001). If an employer elects not to testify or provide evidence regarding a claimant’s termination or the possibility of continued work, benefits are not automatically granted “because the burden remains on the claimant to demonstrate necessitous and compelling cause.” Johnson v. Unemployment Compensation Board of Review, 869 A.2d 1095, 1105 (Pa. Cmwlth. 2005).

It is now well settled that in the context of corporate downsizing, the critical inquiry is whether the fact finder determined that the circumstances surrounding a claimant’s voluntary quit indicated a likelihood that her fears would materialize, that serious impending threats to her job would be realized, and that her belief that her job is imminently threatened is well-founded. Renda v. Unemployment Compensation Board of Review, 837 A.2d 685 (Pa. Cmwlth. 2003), petition for allowance of appeal denied, 581 Pa. 686, 863 A.2d 1151 (2004); Staub v. Unemployment Compensation Board of Review, 673 A.2d 434 (Pa. Cmwlth. 1996); Peoples First National Bank v. Unemployment Compensation Board of Review, 632 A.2d 1014 (Pa. Cmwlth. 1993). “[S]peculation pertaining to an employer’s financial condition and future layoffs, however disconcerting, does not establish the requisite

necessitous and compelling cause.” Renda, 837 A.2d at 692 (quoting Staub, 673 A.2d at 437). Where at the time of retirement suitable continuing work is available, the employer states that a layoff is possible but not likely, and no other factors are found that remove an employee’s beliefs from the realm of speculation, a claim for unemployment compensation benefits fails despite the offer to leave. Id.

As noted above, the following findings of fact made by the Referee were adopted by the Board: Claimant accepted Employer’s early retirement plan, and agreed to leave her employment, because she felt that she may be subject to an involuntary layoff in the future and that she would not receive the incentives offered through the early retirement plan; Claimant was never informed by Employer that she would be subject to layoff and that her termination from employment was imminent prior to her acceptance of the early retirement plan; and continuing work was available had Claimant not elected to accept the early retirement plan. As also noted above, these findings are amply supported by Claimant’s testimony at the hearing conducted before the Referee. See N.T. 2/1/10 at 4, 5, 6, 7-9.

The Board is the ultimate fact-finding body in unemployment matters and is empowered to resolve conflicts in evidence, to determine what weight is to be accorded the evidence, and to determine the credibility of witnesses. Peak v. Unemployment Compensation Board of Review, 509 Pa. 267, 501 A.2d 1383 (1985); Wright v. Unemployment Compensation Board of Review, 347 A.2d 328 (Pa. Cmwlth. 1975). The Board’s findings of fact are conclusive on appeal so long as the record, taken as a whole, contains substantial evidence to support those findings. Penflex, Inc. v. Bryson, 506 Pa. 274, 485 A.2d 359 (1984). Our duty as an appellate court is to examine the testimony in a light most favorable to the party in whose favor the Board has found, giving that party the benefit of all inferences



that can logically and reasonably be drawn from the testimony, to see if substantial evidence for the Board's conclusions exists. Id.

As a result, the Referee's findings that were adopted by the Board in this matter are conclusive in the instant appeal. Penflex, Inc. The fact that there is evidence cited by Claimant which contradicts the Board's determination that Claimant did not have necessitous and compelling cause to abandon her employment, does not compel the conclusion that the Board's determination in this regard should be reversed. See, e.g., Tapco, Inc. v. Unemployment Compensation Board of Review, 650 A.2d 1106, 1108-1109 (Pa. Cmwlth. 1994) ("[T]he fact that Employer may have produced witnesses who gave a different version of events, or that Employer might view the testimony differently than the Board, is not grounds for reversal if substantial evidence supports the Board's Findings.").

Moreover, the Referee's findings adopted by the Board support the Board's determination that Claimant is not eligible for benefits pursuant to Section 402(b) of the Law.<sup>6</sup> As a result, Claimant's allegations of error in the instant appeal are patently without merit.

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<sup>6</sup> See, e.g., Mansberger v. Unemployment Compensation Board of Review, 785 A.2d 126, 129 (Pa. Cmwlth. 2001) ("The Board found that Claimant speculated that Employer would eliminate her job. Claimant did not know whether there would be another opportunity to take the \$25,000 bonus payment because the VSIP/VERA program might only be offered once. As in *Staub*, and critical to our standard of review, substantial evidence supports the Board's finding. There is nothing in the record to indicate that continuing work would not be available to Claimant or that her employment was imminently threatened. The Board applied the correct standard and found that Claimant did not meet her burden. Accordingly, we affirm.") (footnotes omitted); Peoples First National Bank, 632 A.2d at 1018 ("Claimant voluntarily terminated his employment as a matter of choice because he wished to avoid the possibility of being laid off in the future. At no time, did Employer state that Claimant's job was to be eliminated. Moreover, our review of the record reveals that the testimony of Employer's witness, which Claimant did not refute, indicates that continuing work was available.... We, therefore, conclude that Claimant's speculative belief that he would be terminated if he did not accept Employer's

(Continued....)

Accordingly, the order of the Board is affirmed.

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JAMES R. KELLEY, Senior Judge

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voluntary enhanced early retirement package is not cause of a necessitous and compelling nature. As such, Claimant is ineligible for benefits under Section 402(b) of the Law.”).

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Board of Review,	:	
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**ORDER**

AND NOW, this 15th day of March, 2011, the order of the Unemployment Compensation Board of Review, dated April 28, 2010, at No. B-498949, is AFFIRMED.

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JAMES R. KELLEY, Senior Judge