

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Joanne Hueber,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1342 C.D. 2010
	:	
Unemployment Compensation	:	Submitted: January 7, 2011
Board of Review,	:	
	:	
Respondent	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE ROBERT SIMPSON, Judge  
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION  
BY JUDGE SIMPSON**

**FILED: March 18, 2011**

Joanne Hueber (Claimant) petitions for review from an order of the Unemployment Compensation Board of Review (Board) that denied her benefits under Section 402(b) of the Unemployment Compensation Law (Law) (relating to voluntary quit).<sup>1</sup> Claimant contends the Board erred in determining the referee afforded her a full and fair hearing. Claimant argues the referee improperly limited her testimony and the testimony of a witness. Finding no error, 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). “An employe shall be ineligible for compensation for any week...[i]n which his unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature.” Id.

## **I. Background**

Claimant worked for Lauren Sara (Employer) as a housekeeper. Claimant submitted a letter of resignation to Employer. According to Claimant, she terminated her employment after a discussion with Employer concerning vacation days.

Claimant subsequently filed an application for unemployment benefits, which was denied. Claimant appealed. The Board scheduled a hearing with a referee. Claimant represented herself, and counsel represented Employer. At the hearing, Employer testified. Also, Claimant and her sister, Eileen Sylvester, testified.

Ultimately, the referee issued a decision which affirmed the initial denial of benefits. The referee found Claimant's dissatisfaction with Employer's tone when discussing her vacation time caused Claimant to voluntarily leave her employment. The referee determined these circumstances did not provide Claimant with good cause for terminating her employment.

Claimant appealed to the Board and requested a remand, which the Board denied.<sup>2</sup> The Board stated:

On appeal, the claimant asserts that the Referee refused to accept relevant background information in regard to her reasons for quitting and requests a remand hearing in order to appear with counsel. The parties were afforded a full and fair hearing and were duly advised of

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<sup>2</sup> After Claimant filed her appeal from the referee's decision, she retained counsel.

their right to appear with counsel at the Referee's hearing via the hearing notice. As the claimant has not advanced proper cause for granting a remand hearing, the claimant's request that the record be remanded for additional testimony is denied.

Bd. Order, 6/10/10. The Board adopted the referee's findings and conclusions and affirmed the referee's order with a slight modification. The facts adopted by the Board include:

1. The claimant was last employed by Lauren Sara as a part-time Housekeeper averaging 19 hours per week at \$30.00 per hour.
2. She was employed for six years and nine months, and her last day of work was January 1, 2010.
3. The claimant agreed to work on New Year's Day.
4. The claimant had a change of plans, and wanted to work a half day instead of a full day.
5. The employer met with the claimant about working a half day.
6. The claimant was paid for working the full day.
7. The claimant also discussed her vacation time with the employer.
8. The employer advised the claimant that she would think about the issue and get back to her.
9. The claimant was upset by the employer's tone during the conversation.
10. By letter dated January 5, 2010, the claimant resigned citing the employer's lack of respect for her.

Referee's Op., 3/11/10, Findings of Fact Nos. 1-10; Bd.'s Order, 6/10/10. Claimant petitions for review.<sup>3</sup>

## II. Issues

In her brief to this Court, Claimant raises the following issues:<sup>4</sup>

1. Did the Unemployment Compensation Board of Review (UCBR) erroneously find that Appellant was afforded a full and fair hearing, when the Referee refused to allow her to testify about the ongoing negative effects of the employer's abusive conduct on her health for years, as her necessitous and compelling reason to resign?
2. Did the UCBR err by disallowing employee's witnesses from testifying about her observations of the employee's declining health as a result of the employer's historical abusive conduct?
3. Did the Referee erroneously disallow the admittance of the employee's evidence regarding the ongoing effects of the

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<sup>3</sup>Although Claimant raised other issues in her petition for review, her brief exclusively addresses the issue of a full and fair hearing. An issue in a petition for review which is absent from the petitioner's brief is waived. Diehl v. Unemployment Comp. Bd. of Review, 4 A.3d 816 (Pa. Cmwlth. 2010); McDonough v. Unemployment Comp. Bd. of Review, 670 A.2d 749 (Pa. Cmwlth. 1996). Because Claimant abandoned issues regarding the merits of her claim in her brief to this Court, they are waived. Id.

<sup>4</sup> Our review is limited to determining whether the necessary findings of fact were supported by substantial evidence, whether errors of law were committed, or whether constitutional rights were violated. Beddis v. Unemployment Comp. Bd. of Review, 6 A.3d 1053 (Pa. Cmwlth. 2010).

The Board is the ultimate fact finder and resolves all conflicts in the evidence and determines the credibility of witnesses. Procito v. Unemployment Comp. Bd. of Review, 945 A.2d 261 (Pa. Cmwlth. 2008). The Board's findings are conclusive and binding on review, if supported by substantial evidence in the record, taken as a whole. Diehl. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Procyson v. Unemployment Comp. Bd. of Review, 4 A.3d 1124 (Pa. Cmwlth. 2010).

employer's abusive conduct against her, on her health, as her reason for resigning?

4. Did the Referee erroneously limit testimony and evidence to events surrounding a disagreement about time off around New Years, 2010?

Claimant's Br., at 2.

### **III. Discussion**

A claimant is entitled to a fair hearing, which includes notification of the rights to counseled representation, presentation of evidence and witnesses, and cross-examination of witnesses of the other party. 34 Pa. Code §101.21 (Conduct of hearings); Miller v. Unemployment Comp. Bd. of Review, 476 A.2d 495 (Pa. Cmwlth. 1984). In an administrative hearing, the parties may "present evidence and testimony which they believe is necessary to establish their rights" within the discretion of the referee. 34 Pa. Code §101.21(b).

The Board's regulations require the referee to provide an unrepresented claimant "every assistance compatible with the impartial discharge of [her] official duties." 34 Pa. Code §101.21(a). The referee's role is to ensure the facts of the case necessary for the decision are adequately developed. Coates v. Unemployment Comp. Bd. of Review, 676 A.2d 742 (Pa. Cmwlth. 1996). Whether the referee fulfills this important role and whether prejudice exists from the referee's conduct are examined on a case by case basis. Linke v. Unemployment Comp. Bd. of Review, 450 A.2d 312 (Pa. Cmwlth. 1982).

A referee may exclude irrelevant evidence. Procito v. Unemployment Comp. Bd. of Review, 945 A.2d 261 (Pa. Cmwlth. 2008). The referee is not

required to advise a claimant on evidentiary matters or to help develop alternate theories of law. Lauffer v. Unemployment Comp. Bd. of Review, 434 A.2d 249 (Pa. Cmwlth. 1981). Absent a showing the referee improperly refused to admit competent and material evidence, a claimant is not deprived of due process. Id.

Further, the referee is not the claimant's advocate. McFadden v. Unemployment Comp. Bd. of Review, 806 A.2d 955 (Pa. Cmwlth. 2002). A layperson assumes the risk of lack of experience and expertise at legal proceedings "will prove his undoing." Groch v. Unemployment Compensation Bd. of Review, 472 A.2d 286, 288 (Pa. Cmwlth. 1984).

A referee denies an unrepresented claimant a full and fair hearing where the referee fails to advise the claimant of basic rights and fails to question the claimant in order to develop the record. See Tate v. Unemployment Comp. Bd. of Review, 477 A.2d 54, 56 (Pa. Cmwlth. 1984) (the claimant was confused about the issue being addressed, and the referee failed to ask the claimant important questions regarding her motives for terminating her employment suggested by her testimony); Bennett v. Unemployment Comp. Bd. of Review, 445 A.2d 258 (Pa. Cmwlth. 1982) (hearing transcript was two pages, and less than half a page pertained to the applicable section of the Law). In such cases, remand is the appropriate redress. Id.

On the other hand, a referee's duties are satisfied pursuant to 34 Pa. Code §101.21 where she asks an unrepresented claimant questions necessary to adequately develop the record and limits testimony not directly related to the

separation from employment. See Procito (finding the referee performed the required duties where the referee limited irrelevant testimony concerning why claimant's partner quit); Platz v. Unemployment Comp. Bd. of Review, 709 A.2d 450, 453 (Pa. Cmwlth. 1998) (finding no violation of fair hearing where referee instructed a claimant "not to allow her testimony to go beyond specific incidents alleged to be her cause for quitting").

Here, Claimant argues the referee improperly limited her testimony regarding the ongoing effects of Employer's conduct on her health and restricted Claimant's sister's testimony concerning her observations of Claimant's health. The Board counters the referee properly restricted testimony concerning issues from years prior, which had not proximately caused Claimant's resignation. The Board asserts Claimant failed to raise health issues at the hearing.

In making a determination regarding good cause, we look to "the factual matrix at the time of separation." Hussey Copper Ltd. v. Unemployment Comp. Bd. of Review, 718 A.2d 894, 899 (Pa. Cmwlth. 1998). "[T]he relevant inquiry in determining the cause of a claimant's unemployment is confined to the surrounding circumstances existing at the time of the claimant's departure." Id. Even assuming medical reasons compelled Claimant's termination, the operative time period remains the time of resignation. Deiss v. Unemployment Comp. Bd. of Review, 475 Pa. 547, 381 A.2d 132 (1977); Ann Kearney Astolfi DMD, PC v. Unemployment Comp. Bd. of Review, 995 A.2d 1286 (Pa. Cmwlth. 2010). Although a claimant may establish the fact of terminating employment for medical

reasons by testimonial evidence, the evidence needs to explain and support health reasons as they existed at the time of resignation. Deiss.

Review of the record indicates that the referee apprised Claimant of her basic rights, and Claimant understood them. Original Record, Item #8, Notes of Testimony, 3/10/10 (N.T.) at 2. In reviewing the record, we find the referee aided Claimant in presenting her case, and Claimant actively participated in the hearing by testifying, and cross-examining Employer.

At hearing, Claimant explained that she terminated her employment because Employer “talked to me in not a very nice tone” on January 1, 2010. Id. at 7. During the discussion, Claimant felt disrespected by Employer. Id. at 22. According to Claimant, the conversation with Employer concerned Claimant’s request to work a half day, instead of a full day, and vacation days. Id. at 7-8. Claimant was upset by the conversation and “the way [Employer] kept talking to me like I didn’t deserve – two days [vacation].” Id. at 8.

The referee questioned Claimant several times regarding the cause of her voluntary termination. Id. at 7, 9, 22. The referee repeatedly inquired whether the Claimant wanted to add anything else, and Claimant had the opportunity to do so. Id. at 9, 10, 22. The referee entered Claimant’s letter of resignation into the record. N.T. at 4-5; Ex. 18. Beyond the testimony of Claimant and her sister, there is no indication that Claimant had any other evidence to present.



After Claimant testified that the conversation with Employer compelled her to quit in 2010, the referee instructed Claimant and her sister to focus on the time period around when Claimant resigned. N.T. at 9; see N.T. at 15 (referee limited sister's testimony regarding events in 2002).

Claimant failed to offer testimony of particular health ailments at the time of her resignation, which allegedly resulted from her work situation. Claimant offered a few generalized statements. See id. at 9 (Claimant stated she was sick all week and had an upset stomach); 15 (Claimant's sister stated Claimant's health deteriorated, and Claimant was "under stress, anxiety, emotional.")

Similar to Platz, the referee properly limited the testimony to the time period surrounding the quit.<sup>5</sup> We discern no denial of a full and fair hearing. Based on the foregoing, we decline to disturb the Board's order.

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ROBERT SIMPSON, Judge

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<sup>5</sup> Moreover, we discern no error in the Board's decision regarding the merits. In showing good cause for a voluntary quit, a claimant must establish that she made a reasonable effort to preserve her employment. Platz. Thus, a claimant needs to "take common sense action to obviate the problem so that ... she does not have to terminate employment." First Fed. Sav. Bank v. Unemployment Comp. Bd. of Review, 957 A.2d 811, 817 (Pa. Cmwlth. 2008).

Here, Employer testified that during the conversation about vacation days Claimant did not express any dissatisfaction with the terms of her employment. N.T. at 20. It was undisputed that Employer indicated she would get back to Claimant about the vacation days. Id. at 13, 19. Claimant acknowledged she did not give Employer a chance to get back to her before resigning. Id. at 4, 13; Ex. 18 (letter of resignation dated 1/5/10). Therefore, Claimant failed to meet her burden by failing to make a reasonable effort to preserve her employment.

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Board of Review,	:	
	:	
Respondent	:	

**ORDER**

**AND NOW**, this 18<sup>th</sup> day of March, 2011, the order of the Unemployment Compensation Board of Review, dated June 10, 2010, in the above-captioned matter is **AFFIRMED**.

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ROBERT SIMPSON, Judge