

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Lisa Portwood, :
 :
 : Petitioner :
 :
 : v. : No. 1355 C.D. 2010
 :
 : Unemployment Compensation : Submitted: April 1, 2011
 : Board of Review, :
 : Respondent :

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY

FILED: May 5, 2011

Lisa Portwood (Claimant), *pro se*, petitions for review of an order of the Unemployment Compensation Board of Review (Board) denying her claim for unemployment compensation benefits pursuant to Section 402(b) of the Unemployment Compensation Law (Law)¹ and determining that she has a fault overpayment pursuant to Section 804(a) of the Law² that is subject to recoupment. We affirm.

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. §802(b). Section 402(b) provides that an employee who voluntarily terminates her employment without cause of a necessitous and compelling nature is ineligible for benefits.

² 43 P.S. §874(a). Section 804(a) of the Law provides that any person who, by reason of his or her fault, has received any sum as compensation under the Law to which he or she was not

(Continued....)

Claimant filed a claim for unemployment compensation benefits with the Philadelphia UC Service Center (Service Center) wherein she stated that she took a leave of absence from her employment with Wachovia Bank (Employer) on October 30, 2009, for health reasons. By decision mailed February 3, 2010, the Service Center determined that Claimant had voluntarily quit her employment due to health reasons; however, she failed to inform Employer of her work limitations. Accordingly, the Service Center denied Claimant benefits pursuant to Section 402(b) of the Law. A notice of determination of a fault overpayment of benefits in the amount of \$415.00 was also issued to Claimant. The notice informed Claimant that it was a fault overpayment because she voluntarily quit her employment with Employer and did not notify the Service Center.

Claimant appealed and a combined hearing regarding the Service Center's February 3, 2010, determination and the notice of the fault overpayment ensued before a Referee on March 16, 2010. Claimant appeared *pro se* and testified on her own behalf. Employer did not appear at the hearing. By decision mailed March 18, 2010, the Referee affirmed the Service Center's determination, denied Claimant benefits pursuant to Section 402(b) of the Law, and found that Claimant had a fault overpayment in the amount of \$415.00 to be recouped under Section 804(a) of the Law. Claimant appealed the Referee's decision to the Board. The Board made the following findings of fact.

Claimant had previously worked as a full-time service center processor for Employer from August 24, 1987, until May 4, 2009. Claimant was laid off for lack of work and began to receive unemployment compensation

entitled, shall be liable to repay a sum equal to the amount so received by him or her plus interest.

benefits. Claimant was then recalled to work on June 22, 2009, to a temporary position and worked for Employer from June 22, 2009, through October 29, 2009. Claimant had no sick leave or vacation leave on October 29, 2009. Claimant alleged that she was having stomach problems. If Claimant were to take unpaid leave to attend to her alleged medical issues, she would have been put on probation.

Claimant told Employer that she was quitting for alleged medical issues. Claimant voluntarily quit her job to attend to her alleged medical issues. Claimant did not receive medical care for her alleged stomach problems.

After her last day of work on October 29, 2009, Claimant reopened her claim for benefits and did not tell the Unemployment Compensation Service Center that she had quit her employment. Claimant never requested a leave of absence, either medical or personal. After quitting her employment, Claimant was diagnosed with carpal tunnel. Claimant had carpal tunnel surgery on January 6, 2010, and was released to return to work on March 3, 2010.

Based on the foregoing findings, the Board concluded that Claimant did not have good cause to quit her work because she did not have medical issues at the time that she voluntarily quit. Accordingly, the Board denied Claimant benefits pursuant to Section 402(b) of the Law and determined that Claimant has a fault overpayment that is subject to recoupment. This appeal followed.

Initially, we note that this Court's review of the Board's decision is set forth in Section 704 of the Administrative Agency Law, 2 Pa.C.S. §704, which provides that the Court shall affirm unless it determines that the adjudication is in violation of the claimant's constitutional rights, that it is not in accordance with law, that provisions relating to practice and procedure of the Board have been violated, or that any necessary findings of fact are not supported by substantial evidence. Porco

v. Unemployment Compensation Board of Review, 828 A.2d 426 (Pa. Cmwlth. 2003). Findings of fact are conclusive upon review provided that the record, taken as a whole, contains substantial evidence to support the findings. Taylor v. Unemployment Compensation Board of Review, 474 Pa. 351, 378 A.2d 829 (1977). Substantial evidence is relevant evidence that a reasonable mind might consider adequate to support a conclusion. Hercules v. Unemployment Compensation Board of Review, 604 A.2d 1159 (Pa. Cmwlth. 1992).

The Board is the ultimate fact finder and is, therefore, entitled to make its own determinations as to witness credibility and evidentiary weight. Peak v. Unemployment Compensation Board of Review, 509 Pa. 267, 501 A.2d 1383 (1985). It is irrelevant whether the record contains evidence to support findings other than those made by the fact-finder; the critical inquiry is whether there is evidence to support the findings actually made. Ductmate Industries, Inc., v. Unemployment Compensation Board of Review, 949 A.2d 338 (Pa. Cmwlth. 2008) (citing Minicozzi v. Workers' Compensation Appeal Board (Industrial Metal Plating, Inc.), 873 A.2d 25 (Pa. Cmwlth. 2005)).

The question of whether particular facts constitute a voluntary quit is a question of law fully reviewable by this Court. Chamoun v. Unemployment Compensation Board of Review, 542 A.2d 207 (Pa. Cmwlth. 1988). The claimant bears the burden of proving a necessitous and compelling reason for voluntarily terminating the employment relationship. Mutual Pharmaceutical Company, Inc. v. Unemployment Compensation Board of Review, 654 A.2d 37 (Pa. Cmwlth. 1994).

A determination that a claimant voluntarily quit is not an absolute bar to the recovery of unemployment compensation benefits. Monaco v. Unemployment Compensation Board of Review, 523 Pa. 41, 565 A.2d 127 (1989).

A claimant may prove necessary and compelling reasons that could excuse the voluntary action of the claimant. Id. A cause of necessitous and compelling nature is one that results from circumstances which produce pressure to terminate employment which is both real and substantial and which would compel a reasonable person under the circumstances to act in the same manner. Id. However, to establish health problems as a compelling reason to quit, a claimant must (1) offer competent testimony that adequate health reasons existed to justify the voluntary termination, (2) have informed the employer of the health problems and (3) be available to work if reasonable accommodations can be made. Wivell v. Unemployment Compensation Board of Review, 673 A.2d 439 (Pa. Cmwlth. 1996); Lee Hospital v. Unemployment Compensation Board of Review, 637 A.2d 695 (Pa. Cmwlth. 1994). Failure to meet any one of these conditions bars a claim for unemployment compensation benefits. Wivell.

Herein, Claimant's sole argument on appeal is that she left her temporary position with Employer to take care of a medical issue and believed, based on Employer's assurance via email, that her benefits would not be affected if she terminated her employment. Claimant does not offer any argument with respect to the Board's determination that she has a fault overpayment that is subject to recoupment.

We first point out that the Board is charged with determining whether a claimant has met his or her burden of proving a necessitous and compelling reason to terminate employment based on the provisions the Law. Therefore, despite Employer's alleged assurances that Claimant's entitlement to unemployment compensation benefits would not be affected if she voluntarily quit her temporary position, unemployment compensation benefits are available only when the Law allows. Unangst v. Unemployment Compensation Board of

Review, 690 A.2d 1305, 1306-07 (Pa. Cmwlth. 1997) (“[I]n spite of employer’s position, claimant was still required to prove she was entitled to benefits under the [L]aw.”); see also Sill-Hopkins v. Unemployment Compensation Board of Review, 563 A.2d 1288, 1289 (Pa. Cmwlth. 1989) (An employer and employee cannot determine the employee’s entitlement to benefits by subsequent agreement, which is contrary to a Board determination when the Law, as applied to the facts, supports ineligibility for benefits.). Thus, Employer and Claimant could not agree that she would receive benefits when the Law precludes such benefits. Id. Therefore, it is irrelevant whether Employer in this instance assured Claimant that her benefits would not be affected if she voluntarily terminated her employment.

With respect to Claimant’s assertion that she voluntarily quit her employment due to a medical reason, the record in this matter reveals that Claimant failed to meet her burden in this regard. Claimant offered no evidence other than her own testimony that she was suffering from stomach problems. Claimant testified that her doctor did not advise her to leave her employment. Certified Record, Transcript of Testimony at 11. Claimant testified further that she quit her employment because she did not have any paid time off for doctor’s visits, that if she took time off she would be placed on probation and that she did what she thought was in her best interest. Id. at 10-13. In addition, rather than give Employer an opportunity to reasonably accommodate her by providing suitable work or request a leave of absence, Claimant simply quit her job.

Accordingly, Claimant failed to establish health problems as a compelling reason to quit; therefore, the Board properly concluded that Claimant did not have good cause to voluntarily quit her employment. The Board's order is affirmed.

JAMES R. KELLEY, Senior Judge

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	:	
Petitioner	:	
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v.	:	No. 1355 C.D. 2010
	:	
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 5th day of May, 2011, the order of the Unemployment Compensation Board of Review in the above-captioned matter is affirmed.

JAMES R. KELLEY, Senior Judge