

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Matthew Jackson, :
Petitioner :
v. : No. 1417 C.D. 2010
Unemployment Compensation : Submitted: November 12, 2010
Board of Review, :
Respondent :

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

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE LEAVITT

FILED: January 19, 2011

Matthew Jackson (Claimant), *pro se*, petitions for review of an adjudication of the Unemployment Compensation Board of Review (Board) denying his claim for unemployment compensation benefits. The Board found that Claimant voluntarily quit his job without cause of a necessitous and compelling nature, rendering him ineligible for benefits under Section 402(b) of the Unemployment Compensation Law (Law).¹ Discerning no error in the Board’s adjudication, we affirm.

Claimant was employed by Comcast Cablevision Corporation (Employer) as a technical support representative, responsible for taking telephone

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §802(b). It provides, in relevant part, that “[a]n 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.*

complaints from Employer's customers. Claimant resigned on January 25, 2010, and sought unemployment benefits, claiming the stress of the workplace was causing him to suffer anxiety attacks. The Duquesne UC Service Center determined that Claimant had voluntarily quit his job without cause of a necessitous and compelling nature and was ineligible for benefits under Section 402(b) of the Law, 43 P.S. §802(b). Claimant appealed, and a hearing was held before the Referee. Employer did not appear for the hearing.

Claimant testified that he began working for Employer in September 2007. Thereafter, changes in the working conditions, such as a reduction in health and retirement benefits, made for a stressful work environment. Claimant explained that the most stressful part of his employment was dealing with Employer's customers. The customers, frustrated by service outages or technical difficulties, sometimes used vulgar language and became abusive toward Claimant, causing him to "go into uncontrollable shakes" and "begin to sweat, choke, [and] cough." Notes of Testimony, 4/05/10, at 12 (N.T.____). These anxiety attacks caused Claimant to fall behind in his job duties, prompting Employer to warn him that he was taking too long between calls.²

Claimant explained that he applied for four positions with Employer in other departments, but he was not hired. On January 24, 2010, Claimant sent an email to his supervisor, advising her that he was suffering a "major flare-up with [his] medical/health issues, relating to anxiety and anxiety attacks." Certified Record Item No. 2, at 3 (C.R.____). He explained that the customers' verbal abuse triggered his anxiety attacks and requested that Employer accommodate his

² The Board found that Claimant was not in imminent danger of discharge despite the performance write-up he received. Board Adjudication at 2, Finding of Fact No. 8.

situation by assigning him to a position that did not require direct telephonic contact with customers.

His supervisor responded that she could not “automatically transition” him to another position but would ask Human Resources if it had a solution. *Id.* The following day, Human Resources notified Claimant’s supervisor that Claimant would have to apply and interview for a position before he could be transferred. Human Resources offered to meet with Claimant. However, that same day Claimant submitted his resignation effective immediately, leaving before his shift was over.

Claimant admitted that his doctor wanted him to take anti-anxiety drugs, but he refused them because he was “against using medications for those types of things.” N.T. at 15. Claimant also acknowledged that the doctor did not advise him to quit his job.

Claimant presented the testimony of John Arnold, who works for Employer in the same department where Claimant was employed. Arnold testified that he had witnessed Claimant’s anxiety attacks when he was talking with customers by telephone. He explained that during his employment, Employer changed its policy regarding how employees should handle phone calls with irate customers. Before the policy change, employees did not have to endure verbal abuse and could terminate the call. Under the new policy, employees were no longer permitted to hang up on a customer under any circumstances. Arnold also noted that supervisors were often not available to take calls from customers, which further aggravated the customers. He testified that, like Claimant, he has received warnings from Employer about taking too long between calls.

The Referee found that Claimant voluntarily quit his employment without cause of a necessitous and compelling nature and was ineligible for benefits under Section 402(b) of the Law, 43 P.S. §802(b). Claimant appealed to the Board. The Board affirmed the Referee's decision. The Board found that Claimant did not make a good faith effort to preserve the employment relationship and did not allow sufficient time for Employer to "pursue an accommodation" when he abruptly resigned after being invited to discuss his concerns with Employer. Board Adjudication at 3. Claimant now petitions this Court for review.

On appeal,³ Claimant argues that the Board erred in concluding that he failed to sustain his burden of proving a necessitous and compelling reason for quitting his job. Specifically, Claimant contends that his anxiety attacks, provoked by the stress of his work environment, made him unable to perform his job. Claimant argues that he acted in good faith by requesting that Employer reassign him to a less stressful position and had applied, unsuccessfully, for four positions. The Board counters that Claimant did not explain his medical condition sufficiently and did not give Employer enough time to accommodate his request.

In a voluntary quit case, the claimant has the burden to prove that he resigned for necessitous and compelling reasons. *Draper v. Unemployment Compensation Board of Review*, 718 A.2d 383, 385 (Pa. Cmwlth. 1998). To establish health problems as a compelling reason to quit, the claimant must (1) offer competent testimony that adequate health reasons existed to justify the

³ Our scope of review is limited to determining whether the Board's adjudication is in violation of constitutional rights, errors of law were committed, or whether findings of fact are supported by substantial evidence. *Kirkwood v. Unemployment Compensation Board of Review*, 525 A.2d 841, 843 (Pa. Cmwlth. 1987). Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Peak v. Unemployment Compensation Board of Review*, 509 Pa. 267, 275, 501 A.2d 1383, 1387-88 (1985).

voluntary termination, (2) have informed the employer of the health problems and (3) be available to work if reasonable accommodations can be made. *Genetin v. Unemployment Compensation Board of Review*, 499 Pa. 125, 451 A.2d 1353 (1982). Failure to meet any one of these conditions bars a claim for unemployment compensation. In addition, claimant must have acted with ordinary common sense in leaving his employment; made reasonable efforts to preserve his employment; and had no other real choice but to quit. *Craighead-Jenkins v. Unemployment Compensation Board of Review*, 796 A.2d 1031, 1033 (Pa. Cmwlth. 2002).

This case is similar to *Wivell v. Unemployment Compensation Board of Review*, 673 A.2d 439 (Pa. Cmwlth. 1996). There, the claimant suffered health problems caused by exposure to the second-hand smoke produced by co-workers and clients. The claimant notified her employer of the problem, and the employer agreed to transfer her to a smoke-free facility upon receipt of medical verification. When the claimant's doctor declined to provide the claimant with this note, the claimant quit. This Court found that the claimant failed to take necessary steps to preserve her employment.

In *Nolan v. Unemployment Compensation Board of Review*, 797 A.2d 1042 (Pa. Cmwlth. 2002), the claimant aggravated a pre-existing knee condition, which required permanent light-duty work. Her employer, the Pennsylvania Liquor Control Board, which could not offer her such a position, notified her that the State Civil Service Commission would assist her in finding "other Commonwealth employment ... that would not be affected by [the claimant's] medical condition." *Id.* at 1044. The claimant did not submit the civil service application and did not contact the Commission, reasoning that there were no jobs

available. We rejected the claimant's reasoning and held that the claimant failed to demonstrate a good faith effort to preserve her employment.

In the case at bar, the Board found that Claimant suffered anxiety attacks provoked by telephone contact with customers. The Board found that Claimant informed Employer of his anxiety attacks and requested employment "off the phones." Board's Adjudication at 2, Finding of Fact No. 11.⁴ Stated otherwise, Claimant established that he had health problems aggravated by workplace conditions.

However, the Board then concluded that Claimant failed to make reasonable efforts to preserve his employment. Claimant requested an accommodation on January 24, 2010, and his supervisor promptly responded. Human Resources contacted Claimant the following day and invited him to meet for the purpose of discussing his concerns "in more detail." C.R. Item No. 2, at 3. Claimant spurned the invitation and immediately resigned, depriving Employer of the opportunity to devise an appropriate accommodation. The Board correctly found, therefore, that Claimant did not make a good faith effort to preserve his employment.

For these reasons, we affirm the decision of the Board.

MARY HANNAH LEAVITT, Judge

⁴ The Board concluded that Claimant did not adequately explain his medical problems to Employer prior to resigning because he merely stated that he was having a "major flare-up" related to anxiety. The Board's conclusion is not supported by the record, since Claimant clearly stated in his email that the anxiety attacks were provoked by telephone conversations with Employer's customers, and he provided a note from his doctor explaining that his anxiety stemmed from the stressful workplace. Further, the record shows that Employer clearly understood the motive behind Claimant's request to move from his current department.

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ORDER

AND NOW, this 19th day of January, 2011, the order of the Unemployment Compensation Board of Review in the above-captioned matter, dated June 14, 2010, is hereby AFFIRMED.

MARY HANNAH LEAVITT, Judge