



The facts, as found by the Board, are as follows:

1. For purposes of this appeal, the claimant was last employed on October 3, 2008, as a full-time telephone operator for Urological Associates of Lancaster, earning \$11.39 per hour.
2. On September 15, 2008, the employer advised the claimant that they were eliminating her position as a telephone operator.
3. The employer offered the claimant a position as a scheduler that would begin on or about October 3, 2008.
4. The claimant performed the position of a scheduler in the past.
5. On October 3, 2008, the claimant voluntarily resigned her position with Urological Associates of Lancaster because she did not wish to return to a scheduler position.
6. The claimant informed the employer that she did not want to perform the scheduling position because it was too hard and she did not want to remember all of the insurances.
7. The claimant alleged that she was not qualified for the position.
8. The claimant alleged that the employer informed her to say she was laid off due to lack of work to the department.
9. The employer did not inform the claimant that she should state that she was laid off due to lack of work to the department.
10. The claimant filed for and received \$8,034 in unemployment compensation benefits for claim weeks ending October 18, 2008 through and including April 11, 2009.

11. The employer continues to have scheduling positions open and available.

12. The claimant intentionally misled the UC authorities to obtain these benefits.

Board Opinion, June 4, 2010, (Opinion), Findings of Fact Nos. 1-12 at 1-2.

The Board determined:

Based on the record before the Board, the Board concludes that the claimant has failed to establish a necessitous and compelling reason to quit her employment. Here, the record is undisputed that the employer was ending the claimant's current job as telephone operator and offered the claimant a job as a scheduler that she had done in the past. The claimant refused to take the scheduler job because she considered it too hard and she did not want to remember all the insurances. The claimant did not credibly establish that she could not perform this position. Rather it is clear that the claimant simply did not want to perform it again. This fails to establish a necessitous and compelling reason to quit and the claimant is ineligible for benefits under Section 402(b) of the Law. The Board accepts as credible that the employer did not inform the claimant to state that she was laid off due to lack of work to the department. Furthermore, the claimant clearly understood that it was not because of lack of work that she was no longer employed but rather her refusal to accept the changes in the work that the employer offered to her. An employer has a right to make reasonable changes to a job. The Board concludes that the claimant intentionally misled the Department by indicating that she was laid off due to lack of work. As such the Board concludes that Section 804(a) is the applicable section of law.

Opinion at 2-3.<sup>3</sup>

Claimant contends that the Board erred when it determined that she refused suitable work and voluntarily quit her job without a necessitous and compelling reason and when it determined there was substantial evidence to prove that Claimant deliberately misrepresented the circumstances of her separation from employment to gain benefits.<sup>4</sup>

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 1281 (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

---

<sup>3</sup> Apparently, Claimant was initially approved for unemployment compensation benefits by the Unemployment Compensation Service Center. She received benefits and EUC benefits. When she applied for additional benefits after the expiration of her EUC benefits, an investigation revealed that there may not have been a lack of work for Claimant. Therefore, she would have been initially ineligible for benefits.

<sup>4</sup> 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).

and substantial and which would compel a reasonable person under the circumstances to act in the same manner. Philadelphia Parking Authority v. Unemployment Compensation Board of Review, 654 A.2d 280 (Pa. Cmwlth. 1995).

This Court has held that Section 402(b) of the Law is the proper section to analyze a claim where a claimant is offered and refuses another position within the same company when a present job is terminated. Rich v. Unemployment Compensation Board of Review, 479 A.2d 668 (Pa. Cmwlth. 1984). In evaluating whether a claimant had a necessitous and compelling reason for leaving employment, the Board must consider whether the job was suitable.

Section 4(t) of the Law, 43 P.S. §753(t), defines “suitable work” in pertinent part as:

all work which the employe is capable of performing. In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to his health, safety and morals, his physical fitness, prior training and experience, and the distance of the available work from his residence.

Claimant asserts that she did not voluntarily leave her position because it was terminated. Claimant confuses the termination of her position with the termination of her employment. The Board found that Claimant’s position as a telephone operator was ending, but Urological Associates of Lancaster (Employer) offered her another position. Claimant refused to accept this position. The issue in determining whether a claimant is eligible for unemployment compensation

benefits is not whether a particular job is terminated but the circumstances by which employment is terminated. Claimant's argument misses the mark.

Claimant next contends that her reasons for declining the position of scheduler established that she had a necessitous and compelling reason for turning down the job offer and leaving employment. Claimant testified before the referee that she was offered the scheduler position which included some additional duties besides her previous telephone operator duties. She testified that she declined the job because of "the lack of training for the position." Notes of Testimony, March 4, 2010, (N.T.) at 12.

Tina Spellman (Spellman), administrator with Employer, testified that because of a change in the phone system, the telephone operator position was being eliminated. Spellman testified that Claimant previously had served as a scheduler and offered her that position. N.T. at 15-16. Spellman testified that Claimant told her "I don't want to do it. . . . It's too hard. I don't want to remember all the insurances." N.T. at 16. When Spellman informed Claimant that there would be no other position for her, Claimant told her "well there's [sic] jobs out there. I'm not worried about it." N.T. at 17.

Here, Claimant was offered a position which she had performed before and for which Employer reasonably believed she was qualified. The Board did not accept Claimant's assertions that the job was "too hard." 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 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 did not err when it found Claimant did not have a necessitous and compelling reason for terminating her employment.

Claimant also contends that she innocently characterized her separation from employment as a “lay off” because Spellman did not instruct her concerning her application for benefits.

Where a claimant withholds information that would have led to a denial of benefits then liability for a fault overpayment is appropriate. Carter v. Unemployment Compensation Board of Review, 442 A.2d 1245 (Pa. Cmwlth. 1982). “Conduct that is designed improperly and intentionally to mislead the unemployment compensation authorities is sufficient to establish a fault overpayment.” Kelly v. Unemployment Compensation Board of Review, 840 A.2d 469, 473 (Pa. Cmwlth. 2004).

Here, the Board found that Claimant was aware that she was not laid off but quit her job because she didn’t like the job she was offered. As a result, the Board found that Claimant intentionally misled the unemployment service center. These facts support a fraud overpayment of EUC benefits. Further, this Court

notes that an employer has no duty to advise and instruct a claimant how to apply for unemployment.<sup>5</sup>

Accordingly, this Court affirms.

---

BERNARD L. McGINLEY, Judge

---

<sup>5</sup> Section 4005(a) of the EUC Act, 26 U.S.C. §3304 note, provides: If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received an amount of emergency unemployment compensation under this title to which such individual was not entitled, such individual –

(1) shall be ineligible for further emergency unemployment compensation under this title in accordance with the provisions of the applicable State unemployment compensation.



IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Rosemary Klugh,	:
	:
Petitioner	:
	:
v.	:
	:
Unemployment Compensation	:
Board of Review,	:
	:
Respondent	:
	:

No. 1437 C.D. 2010

**ORDER**

AND NOW, this 7<sup>th</sup> day of January, 2011, the order of the Unemployment Compensation Board of Review in the above-captioned matter is affirmed.

---

BERNARD L. MCGINLEY, Judge