IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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| Robert Pyatt, | : | |
| Petitioner | : | |
| | : | |
| v. | : | No. 1535 C.D. 2009 |
| | : | Submitted: April 9, 2010 |
| Unemployment Compensation | : | |
| Board of Review, | : | |
| Respondent | : | |

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE LEAVITT FILED: July 16, 2010

Robert Pyatt (Claimant), *pro se*, petitions for review of an adjudication of the Unemployment Compensation Board of Review denying his claim for benefits under the Unemployment Compensation Law (Law).[1] In doing so, the Board affirmed the decision of the Referee that Claimant was ineligible for benefits under Section 402(b) of the Law, 43 P.S. §802(b),[2] because he voluntarily quit his job without cause of a necessitous and compelling nature. We affirm.

Claimant was employed by Capital Manufacturing (Employer) as a full-time project manager from May 12, 2008, until his last day of work on

[1] Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended,* 43 P.S. §§751 – 914.

[2] Section 402(b) states 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." 43 P.S. §802(b).

September 12, 2008. Claimant applied for unemployment compensation benefits, which were denied by the UC Service Center under Section 402(b) of the Law, 43 P.S. §802(b). Claimant appealed to the Referee.

Claimant testified that he was responsible for supervising the installation of ornamental metal work at a restaurant construction site in New York City. For the ten days prior to his last day of work, Claimant worked 12-hour shifts beginning at 5:00 p.m. and ending at 5:00 a.m. Claimant's annual salary was $100,000, and he was authorized to incur expenses for lodging and parking in New York, which Employer would reimburse within two weeks. Claimant elected to commute each day from his home in East Stroudsburg, Pennsylvania, to New York.

Claimant testified that he telephoned Employer's office at 5:20 a.m. or 5:30 a.m. after the end of his shift on September 12, 2008. Bill Stalnecker, Employer's shop foreman, instructed Claimant to return to the job site. According to Claimant, Stalnecker told him to "turn around, go back to work. If you don't go back to work, just pack your things up and leave. You're done." Notes of Testimony, February 23, 2009, at 11 (N.T. __). Claimant was already in New Jersey en route to his home in East Stroudsburg, and he refused to return to the job site.

David Keene, Employer's president, appeared on behalf of Employer. Keene testified that on the morning of September 12, 2008, Employer dispatched a team of ten new employees to the project site. Stalnecker directed Claimant to return to the job site for the purpose of meeting with the new employees and instructing them on what needed to be done. Keene estimated that the employees would have arrived between 9:00 a.m. and 12:00 p.m., requiring Claimant to work

four to seven additional hours after the end of his shift. Keene testified that Employer would not normally expect an employee to work a 19-hour shift, but he did not consider this an extraordinary request because the job was behind schedule and Employer had received complaints from the general contractor that work was not being completed. Keene reiterated that Employer would have reimbursed Claimant for a hotel rental if he had elected to stay in New York until the beginning of his next scheduled shift, which was at 5:00 p.m. that afternoon.

The Referee held that Claimant voluntarily left his employment and, because Claimant asserted he had been discharged, he could not contend that he had good cause for quitting. Accordingly, the Referee denied benefits. Claimant appealed to the Board, and the Board affirmed. Claimant now petitions this Court for review.[3]

Before this Court, Claimant contends that the Board erred in holding that he voluntarily quit his employment. Claimant maintains that he was discharged for his refusal to return to New York as directed. We disagree.

In order for an employer's actions to constitute a discharge, the claimant must demonstrate that the employer's actions had the immediacy and finality of a "firing." *Monaco v. Unemployment Compensation Board of Review*, 523 Pa. 41, 47, 565 A.2d 127, 130 (1989). Whether a claimant's separation from employment was voluntary or a discharge is a question of law for this Court to determine from the totality of the record. *Iaconelli v. Unemployment Compensation Board of Review*, 892 A.2d 894, 896 (Pa. Cmwlth. 2006). An

[3] Our review in this matter is limited to determining whether constitutional rights have been violated, errors of law committed, or whether essential findings of fact are supported by substantial evidence. *Iaconelli v. Unemployment Compensation Board of Review*, 892 A.2d 894, 896 n.2 (Pa. Cmwlth. 2006).

employer is always entitled to modify employment specifications with regard to time, place and manner. *Monaco*, 523 Pa. at 46, 565 A.2d at 129. The only restriction upon that privilege is the requirement that the employer act reasonably and in good faith. *Id*.

The instant case is analogous to other cases involving a dispute between an employer and an employee where the employee is given the option to retain his or her employment but chooses not to do so. For example, in *Monaco*, two employees threatened to leave work and go to union headquarters after a dispute erupted with their manager over their pay scale. The manager replied that

> they could leave if they did not like the situation, "there's the door." He also stated "as soon as you walk out from that door, out of my place, you quit the job."

*Id*. at 44, 565 A.2d at 129. The employees left the premises and were later denied unemployment benefits. The Court held that under the circumstances in the record the employer's language did not provide the finality and immediacy required to establish a discharge because the employer allowed the employees the opportunity to remain employed by completing their shift but reasonably declined to allow them to leave during their shift.

Similarly, in *Bell v. Unemployment Compensation Board of Review*, 921 A.2d 23 (Pa. Cmwlth. 2007), a conflict developed between claimant, a truck driver, and his supervisor. During their arguments, claimant asked several times to be laid off. The supervisor refused to do so and responded that if claimant did not like working for him or the employer, then "I suggest you put your truck out front and go home." *Id*. at 25. Claimant parked his company truck in front of employer's shop, removed his belongings, and did not attempt to return to work. This Court rejected claimant's claim that he had been discharged because the

language used by the supervisor provided claimant with an option to continue his employment.

In the instant case, Employer gave Claimant a choice: continue his employment by returning to New York or pack up his tools and leave. Claimant chose not to return to the job site. Although Claimant's shift had already ended when this conversation occurred, Employer's request for overtime was reasonable because exigent circumstances required Claimant to direct an incoming crew of workers, lest the job fall further behind schedule. Claimant had the option of renting a hotel room in New York at Employer's expense but chose not to do so. Considering the totality of the circumstances, we hold that Employer acted reasonably and in good faith, and that Claimant voluntarily quit his job without cause of a necessitous and compelling nature.[4]

For all of the foregoing reasons, the order of the Board is affirmed.

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MARY HANNAH LEAVITT, Judge

[4] Because Claimant contends that he was discharged, he does not specifically address whether he had cause of a necessitous and compelling nature for leaving his employment. Claimant suggests in his brief that he had good cause for refusing to return to New York, *i.e.*, he had already worked a 12-hour shift and was on his way home when he received the instruction to extend his shift. However, it was Claimant's personal choice to commute two hours each way to the job site, and on the day in question he had the option of resting at a hotel room in New York at Employer's expense until the start of his next scheduled shift at 5:00 p.m. Claimant's arguments in his brief that Employer did not, in fact, offer reimbursement for lodging and had failed to issue his last reimbursement check are unsupported by the record.

However, even if Claimant's separation from employment was considered a discharge, it would not change the outcome. Claimant did not offer good cause for refusing to follow Employer's directive.

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**O R D E R**

AND NOW, this 16th day of July, 2010, the order of the Unemployment Compensation Board of Review in the above-captioned matter, dated June 3, 2009, is hereby AFFIRMED.

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MARY HANNAH LEAVITT, Judge