

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Ricardo J. Cortes,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
Unemployment Compensation	:	
Board of Review,	:	No. 1561 C.D. 2010
	:	
Respondent	:	Submitted: December 3, 2010

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

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER

FILED: January 6, 2011

Ricardo J. Cortes (Claimant) petitions, pro se, for review of the July 8, 2010 order of Unemployment Compensation Board of Review (UCBR) affirming the Referee’s determination denying Emergency Unemployment Compensation (EUC) benefits pursuant to Section 402(b) of the Unemployment Compensation Law (Law),¹ on the basis that Claimant voluntarily quit his employment without a necessitous and compelling reason for so doing. The issues before this Court are: 1) whether there was substantial evidence to support the Referee’s findings concerning whether Claimant contacted Employer about his work restrictions; and 2) whether Claimant had necessitous and compelling cause for quitting his position. For the reasons that follow, we affirm the order of the UCBR.

¹ Act of December 5, 1936, Second Ex.Sess., P.L. (1937) 2897, as amended, 43 P.S. § 802(b).

Claimant worked for Get Hip, Inc. (Employer) as a full-time warehouse worker for approximately three and one-half years. His last day of work was March 23, 2009. Claimant sustained an injury to his knee and sought medical treatment. The record is silent as to how, when or where Claimant sustained his knee injury. Claimant attempted to contact Employer to determine his eligibility for workers' compensation benefits, but Employer never responded to his inquiries. On November 2, 2009, Claimant's physician released him to return to work with certain medical restrictions. Claimant failed to inform Employer that he was able to return to work because he believed Employer would not return his calls. Claimant also subjectively believed that he could not return to his position as a warehouse worker because the working conditions might aggravate his injury.

Claimant filed for EUC benefits through the Duquesne Unemployment Compensation (UC) Service Center. The UC Service Center determined that Claimant was qualified to receive benefits under Section 401(d)(1) of the Law,² but was ineligible for benefits under Section 402(b) of the Law³ and Section 4001(d)(2) of the EUC Act of 2008 (EUC Act).⁴ Claimant appealed the decision, and a hearing was held before a Referee. Claimant attended the hearing, but Employer did not. The Referee issued an order affirming the UC Service Center's decision allowing EUC benefits under Section 401(d)(1) of the Law, but denying EUC benefits under

² 43 P.S. § 801(d)(1) (claimant must be able to work and available for suitable work).

³ 43 P.S. § 802(b) (claimant is ineligible for benefits where he voluntarily leaves work without cause of a necessitous and compelling nature).

⁴ Title IV of the Supplemental Emergency Appropriations Act of 2008, P.L. 110-252, 122 Stat. 2323, Section 4001, 26 U.S.C. § 3304 (stating generally, "[t]he terms and conditions of the State law which apply to claims for regular compensation and to the payment thereof (including terms and conditions relating to availability for work, active search for work, and refusal to accept work) shall apply to claims for emergency unemployment compensation and the payment thereof").

Section 402(b) of the Law for Claimant's voluntarily leaving work without cause of a necessitous and compelling nature. Claimant appealed to the UCBR. The UCBR affirmed the Referee's order and modified it by noting the additional basis of denying EUC benefits under the EUC Act. Claimant appealed to this Court.⁵

Claimant argues that the UCBR erred in determining that he made no attempt to contact Employer after being released to light duty work. We disagree. "Findings of fact are conclusive upon review provided that the record, taken as a whole, contains substantial evidence to support the findings. Substantial evidence is relevant evidence that a reasonable mind might consider adequate to support a conclusion." *Walsh v. Unemployment Comp. Bd. of Review*, 943 A.2d 363, 368 (Pa. Cmwlth. 2008) (citation omitted).

Claimant states for the first time in his brief to this Court that he tried calling his supervisor after being cleared for work, but was unable to reach the supervisor's voicemail extension. Claimant also claims in his brief that he wrote his supervisor a letter explaining his situation, but received no response. Finally, Claimant states in his brief that prior to appealing to the UCBR, he discovered his supervisor's direct phone extension, and used it to leave a message explaining his situation. He states he never received a response from Employer.⁶

According to the record of the hearing before the Referee, however, when asked if he informed Employer of his availability to work with medical restrictions, Claimant testified that he did not report his availability to Employer

⁵ "Our scope of review in unemployment compensation cases is limited to determining whether constitutional rights were violated, whether errors of law were committed or whether findings of fact are supported by substantial evidence." *Lindsay v. Unemployment Comp. Bd. of Review*, 789 A.2d 385, 389 n.4 (Pa. Cmwlth. 2001).

⁶ Claimant provides no information concerning the dates on which he attempted to contact Employer, nor does he provide a copy of the letter he claims to have sent.

because: 1) Claimant believed he would not receive a response if he called, since Employer had not returned calls concerning a possible workers' compensation claim; 2) when Claimant discussed his responsibilities as a warehouse worker, his physician advised him that he should not return to his old position and should find a healthier environment in which to work; 3) his workers' compensation attorney instructed him not to have any contact with Employer; and 4) a chiropractor who treated Claimant also informed him that he should look elsewhere for more suitable employment for his condition. Notes of Testimony, April 1, 2010 (N.T.) at 7-8.

Claimant's testimony of record contradicts the facts set forth in his brief. "[T]he [UCBR] is restricted to the facts and the law pertinent to the issues involved on the basis of evidence *previously* submitted." *Croft v. Unemployment Comp. Bd. of Review*, 662 A.2d 24, 28 (Pa. Cmwlth. 1995). Thus, because the assertion of record is that Claimant failed to contact Employer after being cleared to work with restrictions, there was substantial evidence to support the UCBR's finding that Claimant failed to contact Employer about his work restrictions once he was released to light-duty work.

Next, Claimant argues that Claimant had a necessitous and compelling cause for quitting his position. We disagree.

An employee who claims to have left employment for a necessitous and compelling reason must prove that: (1) circumstances existed which produced real and substantial pressure to terminate employment; (2) such circumstances would compel a reasonable person to act in the same manner; (3) the claimant acted with ordinary common sense; and, (4) the claimant made a reasonable effort to preserve her employment.

Brunswick Hotel & Conference Ctr., LLC v. Unemployment Comp. Bd. of Review, 906 A.2d 657, 660 (Pa. Cmwlth. 2006). "It is well established that medical problems

can create necessitous and compelling cause to leave employment.” *Lee Hosp. v. Unemployment Comp. Bd. of Review*, 637 A.2d 695, 698 (Pa. Cmwlth. 1994). As this Court has stated, however:

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 voluntary termination, (2) have informed the employer of the health problems and (3) be available to work if reasonable accommodations can be made. Failure to meet any one of these conditions bars a claim for unemployment compensation. . . .

Ann Kearney Astolfi DMD PC. v. Unemployment Comp. Bd. of Review, 995 A.2d 1286, 1290 (Pa. Cmwlth. 2010)(citation omitted)(quoting *Lee Hosp.*, 637 A.2d at 698). As stated previously, Claimant’s testimony clearly establishes that he did not contact Employer once he became available to work. N.T. at 7-8. Thus, Claimant did not offer testimony of adequate health reasons for termination of employment, Claimant did not appropriately inform Employer regarding his medical restrictions, and Claimant did not make himself available to work with reasonable accommodations on the part of Employer. Therefore, the UCBR did not err in determining that he did not establish his medical condition as a necessitous and compelling reason for quitting his employment.

For the reasons stated above, the order of the UCBR is affirmed.

JOHNNY J. BUTLER, Judge

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ORDER

AND NOW, this 6th day of January, 2011, the July 8, 2010 order of Unemployment Compensation Board of Review is affirmed.

JOHNNY J. BUTLER, Judge