

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Steven C. Dommés,	:	
Petitioner	:	
	:	
v.	:	No. 1590 C.D. 2010
	:	Submitted: February 25, 2011
Unemployment Compensation	:	
Board of Review,	:	
Respondent	:	

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FRIEDMAN

FILED: May 24, 2011

Steven C. Dommés (Claimant) petitions for review of that portion of the July 7, 2010, order of the Unemployment Compensation Board of Review (UCBR), reversing the referee’s decision to grant Claimant benefits pursuant to section 402(b) of the Unemployment Compensation Law (Law).¹ We reverse.

Claimant worked as a lead pressman for Letica Corporation (Employer) from April 28, 2009, until December 14, 2009. (UCBR’s Findings of Fact, No. 1.) On December 14, 2009, Claimant reported to Employer’s human resources manager

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §802(b). Section 402(b) of the Law provides that an employee 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.”

that several employees, including the lead operator and the production manager, were calling him “dumb ass.” (UCBR’s Findings of Fact, Nos. 2-3.) Claimant provided the resource manager with a four-page written complaint detailing various incidents. (UCBR’s Findings of Fact, No. 4.) The human resources manager told Claimant that the complaint would be investigated and sent Claimant home, directing him not to return until contacted by Employer. (UCBR’s Findings of Fact, No. 5.) After Claimant’s meeting with the human resources manager, Claimant felt anxious and was experiencing physical symptoms, which he attributed to the stress of the situation. (UCBR’s Findings of Fact, No. 6.) Claimant sought medical treatment and, on December 28, 2009, contacted Employer and resigned, citing health reasons. (UCBR’s Findings of Fact, No. 7.)

Claimant filed a claim for unemployment benefits, which was denied by the local service center. Claimant appealed to the referee, who held an evidentiary hearing on the matter. Claimant stated that he quit on December 28, 2009, for health reasons due to anxiety caused by Employer and co-workers who constantly tormented Claimant regarding his name and called him “dumb ass.” Claimant testified that he informed Employer and his co-workers on many occasions that he did not want to be called “dumb ass,” but they ignored him, laughed at him and continued to call him “dumb ass.”²

² Employer presented as witnesses six co-workers who testified that they did not call Claimant “dumb ass.”

Claimant also presented letters from a psychologist and a physician indicating that Claimant was being treated for work-related stress and anxiety. The letter from Michael A. Church, Ph.D., a licensed psychologist, recommended that Claimant not return to work for Employer, stating that, if he did, it “would be done at the jeopardy of his mental and physical health.” (Church Letter, at 1.) The letter from James J. Kosik, D.O., P.C., Claimant’s physician, also recommended that Claimant “cease work under the current conditions in order to aid in his medical and psychological care.” (Kosik Letter, at 1.)

Based on the evidence, the referee found that: (1) “[C]laimant became upset and began manifesting physical signs of stress and anxiety, such as nausea and sweating, and consulted with his physician,” (Referee’s Findings of Fact, No. 6); (2) “[C]laimant’s physician advised the claimant to quit his employment with [Employer],” (Referee’s Findings of Fact, No. 7); and (3) “[n]o other alternatives were available to [Claimant] prior to quitting,” (Referee’s Findings of Fact, No. 8). The referee stated as follows:

Based upon the testimony provided and the competent evidence contained in the record, the referee finds and concludes that the claimant had good cause for quitting due to the stress and anxiety which was manifesting itself through nausea and sweating. Additionally, the referee resolves issues of credibility in favor of the claimant.

(Referee’s Decision, at 2.) Thus, the referee granted Claimant benefits.

Employer appealed to the UCBR, which reversed. In doing so, the UCBR “discredit[ed] [Claimant’s] testimony, as well as the opinion of his doctor, that [Claimant] was compelled to quit his employment due to health issues.” (UCBR Op.

at 3.) The UCBR gave no reason for its disregard of the referee's contrary finding. Claimant now petitions for review of the UCBR's decision.³

Claimant argues that the UCBR erred in disregarding the referee's finding that Claimant needed to end his employment for health reasons without stating its reasons for doing so. We agree.

Although the weight to be given the evidence and the credibility to be afforded the witnesses are within the province of the UCBR as the fact-finder, the UCBR is not free to ignore the overwhelming evidence in favor of a contrary result not supported by the evidence. *Borello v. Unemployment Compensation Board of Review*, 490 Pa. 607, 618-19, 417 A.2d 205, 211 (1980). "The [UCBR] may not . . . simply disregard findings made by the referee which are based upon consistent and uncontradicted testimony without stating its reasons for doing so." *Treon v. Unemployment Compensation Board of Review*, 499 Pa. 455, 461, 453 A.2d 960, 962 (1982). Where the UCBR does so, the remedy is to reinstate the finding of the referee. *Id.* at 461, 453 A.2d at 962-63.

Here, the UCBR disregarded the referee's finding that Claimant needed to quit his job with Employer for health reasons. The finding is supported by consistent and competent evidence, uncontradicted in the record, and the UCBR

³ Our scope of review is limited to determining whether constitutional rights were violated, an error of law was committed, or findings of fact were unsupported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

offered no reason for its disregard of that finding. Thus, under *Treon*, the referee's finding is reinstated.

Claimant next argues that the UCBR erred in concluding that he lacked a necessitous and compelling reason to quit. We agree.

Health problems may amount to a compelling reason to quit when the claimant offers competent testimony that adequate health reasons existed to justify the voluntary termination, that the claimant informed the employer of the health problems, and that the claimant remained available to work if employer made reasonable accommodations. *Genetin v. Unemployment Compensation Board of Review*, 499 Pa. 125, 130-131, 451 A.2d 1353, 1356 (1982). Once the employee communicates his health problems to the employer, he can do no more. *Id.* at 131, 451 A.2d at 1356. The employer is responsible for contacting the employee and offering him suitable work; to insist that the employee initiate a quest for an alternative position would require a meaningless ritual. *Id.* If the employee declines such work, the employee will be ineligible for benefits. *Id.* at 132, 451 A.2d at 1356.

Here, Claimant offered competent evidence that he was suffering from health problems as a result of the verbal abuse he suffered at work. Claimant informed Employer about the verbal abuse and its effect on his health in the four-page complaint he gave to Employer two weeks before Claimant quit. Employer never addressed the complaint, never contacted Claimant regarding an investigation and never offered Claimant suitable employment.

Accordingly, we reverse that portion of the UCBR's order denying Claimant benefits.

ROCHELLE S. FRIEDMAN, Senior Judge

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ORDER

AND NOW, this 24th day of May, 2011, the order of the Unemployment Compensation Board of Review, dated July 7, 2010, is hereby reversed to the extent that it denied unemployment compensation benefits to Steven C. Dommès.

ROCHELLE S. FRIEDMAN, Senior Judge