IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Kristy L. Jacoby, Petitioner	:	
	:	No. 1597 C.D. 2010
v.	:	
	:	Submitted: February 4, 2011
Unemployment Compensation Board of Review, Respondent	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McCULLOUGH FILED: June 1, 2011

Kristy L. Jacoby (Claimant) petitions for review of the June 16, 2010, order of the Unemployment Compensation Board of Review (Board), which affirmed the referee's determination that Claimant was ineligible for benefits pursuant to section 402(b) of the Unemployment Compensation Law (Law).[1]

Claimant was employed as a bank teller by Bank of America (Employer). (Finding of Fact No. 1.) Employer granted Claimant twelve weeks of maternity leave, effective June 8, 2009.[2] (Findings of Fact Nos. 2, 3.) Claimant

[1] Act of December 5, 1936, Second Ex. Sess., P.L. (1937), 2897, as amended, 43 P.S. §802(b). Section 402(b) provides that an employee shall be ineligible for compensation for any week in which her unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature.

[2] Claimant actually stopped working on May 26, 2009, on the advice of her physician. (Finding of Fact No. 3.)

subsequently extended her maternity leave to twenty-six weeks, the maximum amount of time permitted by Employer, and her leave was scheduled to expire on December 4, 2009. (Finding of Fact No. 5.) Employer notified Claimant through Aetna, its insurance administrator, that she was required to contact Aetna and her manager at least seven business days prior to returning to work to confirm her start date and that a failure to return to work after the end of her scheduled leave would be treated as a voluntary resignation. (Findings of Fact Nos. 6, 7.)

Claimant did not contact Employer seven days before the date of her expected return to work, December 7, 2009, (Finding of Fact No. 8), and she never returned to work. On December 27, 2009, Claimant applied for unemployment compensation benefits. Claimant asserted in her claim application that she had been informed by her manager, John Weber, that her job was no longer available and that her position was filled. (Certified Record, Item No. 2.) The local service center denied benefits pursuant to section 402(b) of the Law.

Claimant appealed the service center's determination to the referee, who conducted a hearing on March 25, 2010.[3] In support of her appeal, Claimant testified as follows:

> R. So when were you planning to go back to work?
>
> C. December 4th I was to return to work.
>
> R. All right so then what happened.
>
> C. Well … I called my boss John Webber (phonetic) in August and I told him that I was extending my leave. Originally I was for 12 weeks. And I told him I was extending it to the full 26 weeks which Bank of America

[3] Neither Claimant nor Employer was represented by legal counsel at the hearing.

> provides. And later *in August, early September* I'm not sure, I talked to him again. He told me that my position with Bank of America was filled unless someone contacted me with a job position, I no longer have a job. So my maternity leave ended December 4th, no one contacted me and at that time John left Bank of America. I wasn't told, nobody notified me of any changes....
>
> ….
>
> R. Okay so are you telling me that he said they will contact you? You didn't need to contact anyone?
>
> C. Well he said that I can also look on the computer and if I see any positions available for me to take that I have to apply to get those jobs unless I'm placed somewhere within the bank.
>
> ….
>
> R. Did you contact anyone at the bank at all?
>
> C. Well I did contact them; I called them I guess it was *mid-December*.
>
> R. And who did you call?
>
> C. ...I asked to speak to whoever was in charged [sic.]. ...[S]he confirmed that the bank no longer has a job for me available.

(Notes of Testimony (N.T.) at 3-6) (emphasis added).

Claimant also introduced two letters from Aetna, which set forth the terms of her maternity leave. The letters state that Claimant was required to contact her manager and Aetna at least seven business days before her scheduled return to work to confirm her return date and that her failure to return to work at the end of leave would be considered a voluntary resignation. (Exhibit C-1.)

Employer presented the testimony of a manager, Eric Drucker, who testified that Claimant's official date to return to work was December 7, 2009. However, Drucker stated that Claimant did not contact Employer until December 29, 2009, and that Employer concluded that Claimant resigned her employment. (N.T. at 7.) Drucker also testified that Employer sent Claimant a letter on December 15, 2009, regarding her return to work and directing her to respond in ten days, but that Claimant did not respond within that time period. (N.T at 7, 9.)

After reviewing the evidence, the referee denied Claimant benefits pursuant to section 402(b) of the Law, reasoning as follows:

> …Both letters claimant received from Aetna … made it clear that claimant was to contact her manager and Aetna at least seven business days before her scheduled return to work date to confirm the date she would return to work. Although she spoke with her previous manager in or around September 2009, claimant never contacted Aetna or [Employer] just prior to expected return to work date of 12/7/09.
>
> Here claimant had the burden of informing employer when she expected to be ready to resume work. The employer has a right to be so informed to plan for the regular operations of the business. In this case, the employer was forced to replace the claimant because there was no definite information concerning the claimant's intentions. The claimant's actions were not consistent with a bona fide desire to maintain the employment relationship.

(Referee's Decision at 2.)

Claimant appealed to the Board, which affirmed the referee and adopted his findings of fact and conclusions of law. The Board resolved all conflicts in the evidence in favor of Employer.

On appeal to this Court,[4] Claimant contends that the Board erred because it wrongfully decided the case based on information provided by Employer and not on her testimony and arguments. Claimant asserts that Weber told her that she no longer had a job and, for that reason, she followed Weber's instructions and never contacted Aetna.[5]

Before considering the merits of this appeal, we address the Board's argument that Claimant's appeal should be quashed because her *pro se* brief does not comply with Pa. R.A.P. 2119, which requires an appellant to develop arguments and cite relevant authority and the facts of record. However, although it is true that Claimant failed to cite legal authority in her brief, this Court is generally inclined to construe *pro se* filings liberally. Smithley v. Unemployment Compensation Board of Review, 8 A.3d 1027 (Pa. Cmwlth. 2010). We are able to discern Claimant's argument, and it is clear from Claimant's brief that she made an attempt to comply

[4] Our scope of review is limited to determining whether constitutional rights were violated, errors of law were committed, or whether findings of fact are supported by substantial evidence. Procyson v. Unemployment Compensation Board of Review, 4 A.3d 1124 (Pa. Cmwlth. 2010).

[5] The question of whether an employee has cause of a necessitous and compelling nature to quit employment is a legal conclusion subject to appellate review. Brown v. Unemployment Compensation Board of Review, 780 A.2d 885 (Pa. Cmwlth. 2001). In order to show necessitous and compelling cause, the claimant must establish that: circumstances existed which produced real and substantial pressure to terminate the claimant's employment; like circumstances would compel a reasonable person to act in the same manner; the claimant acted with ordinary common sense; and the claimant made a reasonable effort to preserve his or her employment. Id.

Moreover, a claimant has the burden to prove that his or her separation from employment was a discharge. Pennsylvania Liquor Control Board v. Unemployment Compensation Board of Review, 648 A.2d 124 (Pa. Cmwlth. 1994). A determination of whether a claimant's separation from employment was a voluntary resignation or a discharge is made by examining the facts surrounding the claimant's termination of employment, and such determination is a question of law to be made based upon the Board's findings. Id.

with the Rules of Appellate Procedure. Therefore, we decline to quash Claimant's appeal.

Turning to the merits, we address Claimant's contention that the Board erred by not accepting her version of the facts. We disagree. The Board is the ultimate fact-finder and is empowered to make credibility determinations. Russo v. Unemployment Compensation Board of Review, 13 A.3d 1000 (Pa. Cmwlth. 2010). It is free to reject the testimony of any witness, even testimony that is uncontradicted. Id. Here, exercising its exclusive authority to assess the weight and credibility of the evidence, the Board resolved the conflicts in testimony in favor of Employer and rejected Claimant's testimony that she was informed by her manager in August or September of 2009 that Employer had eliminated her job. Questions of credibility and the resolution of evidentiary conflicts are matters within the discretion of the Board and are not subject to re-evaluation by this Court on appeal. Duquesne Light Co. v. Unemployment Compensation Board of Review, 648 A.2d 1318 (Pa. Cmwlth. 1994).

The Board found as fact that: (1) Claimant had a duty to contact Employer seven days business days prior to the end of her maternity leave to arrange for her return to work; (2) Claimant failed to contact Employer to arrange for her return to work; and (3) Claimant did not return to work on December 7, 2009, as expected by Employer.[6] (Findings of Fact Nos. 6, 7, and 8.) Moreover, Claimant admitted that she never contacted Employer in November or early December of 2009 to arrange for her return to work, and Drucker testified that Claimant did not contact Employer until December 29, 2009, weeks after the expiration of her maternity leave.

[6] Claimant does not assert that the Board's findings of fact are unsupported by substantial evidence and, accordingly, they are binding on this Court. Salamak v. Unemployment Compensation Board of Review, 497 A.2d 951 (Pa. Cmwlth. 1985).

In our view, the record demonstrates that Claimant failed to make a reasonable effort to preserve her employment and abandoned her job. See Kassab Archbold & O'Brien v. Unemployment Compensation Board of Review, 703 A.2d 719 (Pa. Cmwlth. 1997) (holding that, where the claimant never contacted her employer anytime after she went on maternity leave to inform the employer of the date on which she would be returning to work and failed to return to work, the claimant made no attempt to preserve her position and voluntarily terminated her employment); see also Unemployment Compensation Board of Review v. Metzger, 368 A.2d 1384 (Pa. Cmwlth. 1977) (holding that a claimant's failure to contact her employer following a leave of absence to inform the employer when and if she was returning to work constituted an abandonment of the employment relationship). Therefore, we conclude that the Board correctly disallowed benefits under section 402(b) of the Law.

Accordingly, the Board's order is affirmed.

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PATRICIA A. McCULLOUGH, Judge

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v.	:	
Unemployment Compensation Board of Review,	:	

ORDER

AND NOW, this 1st day of June, 2011, the June 16, 2010, order of the Unemployment Compensation Board of Review is hereby AFFIRMED.

PATRICIA A. McCULLOUGH, Judge