

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Delmy C. Martinez-Perez,	:	
Petitioner	:	
v.	:	No. 1615 C.D. 2010
	:	Submitted: April 1, 2011
Unemployment Compensation Board of Review,	:	
Respondent	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE BROBSON**

FILED: August 1, 2011

Petitioner Delmy Martinez-Perez (Claimant), acting *pro se*, petitions for review of an order of the Unemployment Compensation Board of Review (Board). The Board adopted the findings of fact and conclusions of law developed by an unemployment compensation referee, thereby reversing a determination by the Indiana Unemployment Compensation Service Center (Service Center) granting unemployment compensation benefits to Claimant. We affirm.

The factual findings of the Board, which Claimant does not challenge in this appeal, can be summarized as follows.¹ Claimant worked for Express Enterprises (Employer) as a manager from October 2007 through September 26, 2009. Employer hired a new employee in August 2009, following which Claimant

¹ Accordingly, those findings of fact are binding on appeal. *Campbell v. Unemployment Comp. Bd. of Review*, 694 A.2d 1167, 1169 (Pa. Cmwlth. 1997).

began to notice cash shortages in the store she managed. Claimant reported her observations regarding the shortages to Employer, and Employer began to engage in surveillance activities. Employer determined that one shortage was caused by its bank, and that the new employee was responsible for other shortages. The new employee repaid Employer for those shortages. On September 25, 2009, Claimant noticed shortages with Employer's money order machine. The following day, Claimant learned that the new employee had previously worked for Employer. Claimant also learned that during the new employee's previous period of employment, Employer had also experienced instances where money was missing. Claimant's continued employment was not threatened as a consequence of the cash shortages. On September 26, 2009, Claimant elected to terminate her employment relationship because she "no longer felt comfortable and [her] reputation was at risk." (Certified Record (C.R.) Item 2.) Two days later, Claimant flew to California and elected to seek employment there. The Board concluded that Claimant voluntarily terminated her employment without cause of a necessitous and compelling reason and reversed the determination of the Service Center.

On appeal to this Court, Claimant essentially argues that she had cause of a necessitous and compelling nature to voluntarily quit her employment because Employer created a hostile work environment by failing to correct a situation involving an unreliable or dishonest employee who Claimant supervised.² In unemployment compensation cases involving an employee's voluntary termination of her employment, a claimant bears the burden to prove that she had

² This Court's standard of review is limited to determining whether constitutional rights were violated, whether an error of law was committed, or whether necessary findings of fact are supported by substantial evidence. 2 Pa. C.S. § 704. Substantial evidence is relevant evidence that a reasonable mind might consider adequate to support a conclusion. *Hercules, Inc. v. Unemployment Comp. Bd. of Review*, 604 A.2d 1159, 1161 (Pa. Cmwlth. 1992).

cause of a necessitous and compelling nature to terminate her employment. Section 402(b) of the Unemployment Compensation Law (Law), Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. § 802(b); *Du-Co Ceramics, Co. v. Unemployment Comp. Bd. of Review*, 546 Pa. 504, 686 A.2d 821 (1996). “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 & Conf. Ctr., LLC v. Unemployment Comp. Bd. of Review*, 906 A.2d 657, 660 (Pa. Cmwlth. 2006).

As noted above, and as stated in the argument section of her brief, Claimant’s sole argument is that she felt that her position was threatened by the cash shortages, and she worried that her reputation at work was at risk because of the shortages. The undisputed facts in this case indicate that Claimant was concerned that the shortages she discovered could cause her reputation to be in jeopardy. The Board made no findings, however, that she conveyed this concern to Employer prior to her resignation. Rather, Claimant testified as follows:

Referee: Okay. When you quit on the 26th of September 2009, did you tell anyone that you were not going to be returning back to work?

Claimant: Yes.

Referee: And who did you tell?

Claimant: I told the manager . . . And that I submitted my resignation. And I faxed it over to the main office.

. . .

Referee: When you submitted your resignation, did you put any reason on there?

Claimant: Yes, that I was no longer comfortable working on that, on that atmosphere.

Referee: Okay. Did you ask them if there was another store where you could transfer to, or another position you could work in elsewhere so you wouldn't have to work in that condition?

Claimant: I don't think that would have been possible because I, I really don't --- I don't drive.

(C.R. Item 8, Notes of Testimony at 12.) Thus, Claimant did not indicate to Employer that she had concerns about her reputation before she submitted her resignation. Consequently, the Board did not err in concluding that Claimant failed to prove that she had cause of a necessitous and compelling nature to terminate her employment, because she did not make any effort to preserve her employment by discussing her concerns with Employer before she resigned.³

Accordingly, we affirm the order of the Board denying Claimant's application for unemployment compensation benefits.

P. KEVIN BROBSON, Judge

³ We also note that this Court could alternatively affirm the Board's order because of the insufficiency of Claimant's brief. Although the Court may overlook the shortcomings of a pro se litigant's brief, the brief in this case contains no legal argument and no citations to legal authority. *D.Z. v. Bethlehem Area Sch. Dist.*, 2 A.3d 742, 750 n.8 (Pa. Cmwlth. 2010) (issue waived where appellant failed to develop legal argument or cite relevant legal authority in support of issue); Pa. R.A.P. 2119.

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Unemployment Compensation Board	:	
of Review,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 1st day of August, 2011, the order of the Unemployment Compensation Board of Review is AFFIRMED.

P. KEVIN BROBSON, Judge