



able to perform work and was not available for suitable work due to his medical conditions. For the reasons that follow, we affirm.

Claimant began his employment with the United States Postal Service (Employer) as a full-time mail handler on October 15, 1990, where he worked until he took a leave of absence on March 18, 2010, after his physician advised him not to work. He filed for unemployment compensation benefits with the Department of Labor and Industry's Service Center (Service Center) stating that his health problems included surgery to both of his knees, surgery on his left heel, an injury to his right ankle, and a spinal injury, none of which were work-related. He indicated that he was not able to work and was not available for work. The Service Center found him eligible for benefits under Section 402(b) of the Law, 43 P.S. §802(b),<sup>2</sup> because his leave of absence was due to his health problems, but denied him benefits under Section 401(d)(1) of the Law because he was not able to work and was not available to work. The Service Center explained that where a claimant was ruled both eligible and ineligible for benefits under different sections of the Law, the disqualifying section took precedence over the eligible section and,

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<sup>2</sup> Section 402(b) of the Law provides, in relevant part:

An employe shall be ineligible for compensation for any week-

(b) In which his unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature, irrespective of whether or not such work is in "employment" as defined in this act: Provided, That a voluntary leaving work because of a disability if the employer is able to provide other suitable work, shall be deemed not a cause of a necessitous and compelling nature.

therefore, Claimant was ineligible for benefits. Claimant filed an appeal from that determination, and a hearing was held before a Referee.

At the hearing, Claimant testified that he was advised by his physician not to work in any capacity and to rest as much as possible. He could not do any kind of physical exercises that aggravated his back, knees or ankles. He explained that he had a right ankle that shattered in 1982, a surgery on his left heel in the late 1990s, and then around 2000, he had a surgery on his left knee. Around 2001, he stated that he had surgery on his right knee which was extensive because doctors had to drill into his tibia. Currently, he was in need of knee replacements. He stated that in March 2009, because he was walking around with braces on his legs, his back started bothering him, and he found out that he had a herniated disc and infringed nerves. Claimant stated that his doctor told him none of these problems were work-related but if he returned to work, he would suffer an injury on the job. He stated that he was not able to work and that he was currently sitting on a pillow at the hearing. He had tension on his back and was wearing a back brace. He had knee braces on both knees, ankle braces on both ankles, and he was heavily medicated from the time he woke up until the time he went to sleep because of the constant pain.

Employer's witness, George Ruffin, Manager of Distribution Operations, testified that because Claimant's injury was not job-related, it was Employer's policy that if Claimant ever had the ability to return to work, he could request a light-duty position. Employer had not taken Claimant off of the "rolls" [sic]. He is still an employee of United States Postal Service, full-time, with all of

his benefits. If his doctor were to clear him today he could be back to work this afternoon.” (October 14, 2010 Hearing Transcript at 8.)

The Referee affirmed the Service Center’s determination that Claimant had a necessitous and compelling reason for voluntarily leaving work under Section 402(b) of the Law and that he was eligible for benefits. Regarding Section 401(d)(1) of the Law, because Claimant stated that he was currently not able to work due to his symptoms and medication, the Referee concluded that he was not currently eligible for benefits and had not been since opening his claim. “Nonetheless, the Service Center shall continue to review whether the claimant becomes able and available for work to determine whether the claimant is eligible for benefits for any future week during which the claimant becomes able to work.” (Referee’s October 14, 2010 decision at 2.) Claimant filed an appeal with the Board, which affirmed the Referee’s decision, and this appeal followed.<sup>3</sup>

Claimant contends that the Board erred in denying him benefits under Section 401(d)(1) of the Law because his physician provided him with a valid reason to leave work, and the Referee found that he had met the criteria under Section 402(b) of the Law for leaving work for a necessitous and compelling reason. Therefore, the Board contradicted itself when it determined that he was not entitled to benefits under Section 401(d)(1) of the Law.

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<sup>3</sup> Our scope of review of the Board’s decision is limited to determining whether an error of law was committed, constitutional rights were violated or findings of fact were supported by substantial evidence. *Frazier v. Unemployment Compensation Board of Review*, 833 A.2d 1181 (Pa. Cmwlth. 2003).

While Section 402(b) deals with voluntarily leaving work for a necessitous and compelling reason, and clearly Claimant had such reasons and was found eligible for benefits under that section, Section 401(d)(1) requires a completely different analysis – the claimant must prove that he or she is able to work and available to work. Even though he may have proven that he had a reason to voluntarily leave his employment for medical reasons, Claimant still had to prove that he was able to work and was available for work. Unemployment compensation is not health insurance, *Carter v. Unemployment Compensation Board of Review*, 442 A.2d 1245 (Pa. Cmwlth. 1982), so if a claimant cannot work due to medical conditions, there is no contradiction in refusing to provide such compensation if the claimant is not available for work.<sup>4</sup>

There is no serious dispute that Claimant failed to meet the requirements of Section 401(d)(1) – in his questionnaire that he provided to the Service Center, Claimant stated that he was not able or available for work; at the hearing, Claimant testified that he followed his physician’s advice and was not available even for light-duty work; and Claimant admits in his brief that he was heavily medicated and was physically unable to work. Because Claimant does not contest that he is unable and unavailable to work, the Board did not err in refusing to grant him benefits under Section 401(d)(1) of the Law.

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<sup>4</sup> Claimant’s filing of his claim with the Service Center also created a presumption of availability. *Hamot Medical Center v. Unemployment Compensation Board of Review*, 645 A.2d 466 (Pa. Cmwlth. 1994). That presumption was rebuttable by evidence that his physical condition limited the type of work which he was available to accept. *Molnar v. Unemployment Compensation Board of Review*, 397 A.2d 869 (Pa. Cmwlth. 1979). However, Claimant’s testimony indicated that he could perform no work whatsoever.

Accordingly, the order of the Board is affirmed.

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DAN PELLEGRINI, JUDGE

