

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Michael Whitaker, :
 :
 Petitioner :
 :
 :
 v. : No. 1717 C.D. 2010
 : Submitted: May 20, 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 SENIOR JUDGE FRIEDMAN

FILED: June 16, 2011

Michael Whitaker (Claimant) petitions for review of the August 2, 2010, order of the Unemployment Compensation Board of Review (UCBR), which affirmed the decision of a referee to deny unemployment compensation (UC) benefits to Claimant under section 402(b) of the Unemployment Compensation Law (Law).¹ We affirm.

Claimant worked full time as a heavy equipment operator for Stockton Anthracite Coal (Employer). On June 2, 2009, Employer's superintendent did not like the way Claimant was pushing rocks with a bulldozer and told Claimant to stop pushing

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §802(b). Under section 402(b) of the Law, a claimant is ineligible for compensation for any week in which his unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature.

the rocks the wrong way. Employer’s foreman later approached Claimant and told him the same thing. Claimant left work and did not contact Employer afterward. (UCBR’s Findings of Fact, Nos. 1-4.)

Claimant applied for UC benefits, but the application was denied under section 402(b) of the Law. Claimant filed an appeal, and a hearing was held before a referee. At the hearing, Claimant testified: (1) “I wasn’t doing something right, so I was told to go the hell home,” (N.T., 5/17/10, at 3); and (2) “there were safety issues involved . . . [so] I wasn’t that broken up when I was told that I should go home. . . ,” (*id.* at 5). Employer’s witness testified: (1) he told Claimant to stop pushing rocks into a particular area of the worksite, (*id.* at 6); and (2) “I don’t think I told him to leave, honestly the truth,” (*id.*).

After considering the evidence, the referee did not believe Claimant’s testimony that he was told to leave. The referee found that Claimant abandoned his work and, thus, denied Claimant benefits. Claimant appealed to the UCBR, which concluded that Claimant voluntarily quit his job without cause of a necessitous and compelling nature. Claimant now petitions this court for review.²

Claimant argues that the testimony of Employer’s witness, i.e., “I don’t think I told him to leave,” does not constitute substantial evidence to support a finding that Employer did not tell Claimant to leave. We disagree.

² Our scope of review is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with the law and whether the necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Peak v. Unemployment Compensation Board of Review*, 509 Pa. 267, 275, 501 A.2d 1383, 1387 (1985). The witness testified, “I don’t think I told him to leave, honestly the truth.” These words indicate that Employer’s witness is aware of Claimant’s contrary testimony and is denying that he told Claimant to leave. Employer’s witness ends with “honestly the truth” to stress that his testimony, not Claimant’s, is true. A reasonable person might conclude from the testimony of Employer’s witness that he did not tell Claimant to leave the worksite.

Accordingly, we affirm.

ROCHELLE S. FRIEDMAN, Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Michael Whitaker,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1717 C.D. 2010
	:	
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 16th day of June, 2011, the order of the Unemployment Compensation Board of Review, dated August 2, 2010, is hereby affirmed.

ROCHELLE S. FRIEDMAN, Senior Judge