

another perceived mistake in her paycheck. Because that employee was not available, Claimant spoke to William Kelley, Employer's manager of business development, and then to Maurice DuBose, a payroll specialist. During her conversations with each of these individuals, Claimant used profanity and made remarks of a threatening nature. When Scott Schroeder, Employer's general manager, learned of Claimant's conduct, he telephoned Claimant and warned her that she would be terminated if she made such comments again. (Board's Findings of Fact, Nos. 1-3, 5-10.)

Schroeder also determined that Claimant's conduct warranted a demotion. He did not immediately inform Claimant of his decision but assigned her the task of training her intended replacement. On December 29, 2008, Lynn McNeill, Employer's human resources representative, informed Claimant that she was being demoted. McNeill offered Claimant two positions, one as a flex officer at the rate of \$13.50 per hour, and another as a security officer at the rate of \$10.00 per hour. Claimant declined both of these positions and voluntarily quit her employment on that date. (Board's Findings of Fact, Nos. 11-17.)

The local service center disapproved Claimant's application for benefits pursuant to section 402(b) of the Law. Claimant appealed, and the referee held a hearing at which Claimant, Kelley, DuBose, Schroeder and McNeill testified. Claimant stated that she did not quit her job but was discharged by McNeill. Claimant explained that McNeill informed her that she was being demoted for cursing at other employees; McNeill also told Claimant that she was being offered a demotion instead of being discharged because she was a good worker. Claimant testified that when she informed McNeill she could not afford to take a reduction in pay, McNeill responded that Employer had no other position

available for her. Claimant admitted using profanity when she spoke with Kelley and acknowledged that her demotion was an appropriate consequence; however, Claimant disagreed that a cut in pay was warranted as well. (N.T. at 4-5, 19-20.) Employer's witnesses disputed Claimant's assertion that she was repeatedly underpaid, but otherwise they confirmed Claimant's version of the facts.

The referee resolved conflicts in testimony in Employer's favor and rendered the findings summarized above. After determining that Claimant voluntarily quit her employment due to the proposed demotion and attendant loss of pay, the referee correctly observed that the question of whether a claimant is entitled to benefits under these circumstances depends on whether the demotion was justified. *Allegheny Valley School v. Unemployment Compensation Board of Review*, 548 Pa. 355, 697 A.2d 243 (1997). Considering Claimant's use of profanity and threatening remarks, the referee concluded that Claimant's demotion was warranted and, therefore, she was ineligible for benefits under section 402(b) of the Law.

Claimant appealed to the Board, which affirmed the referee's decision and adopted all but one of the referee's findings.² The Board reasoned that, even accepting that mistakes had been made in Claimant's paychecks, Claimant's profanity and use of threats were inappropriate, and, therefore, Employer's demotion of Claimant was justified.

² As set forth in Finding of Fact No. 4, the referee determined that Claimant's paychecks were correct. The Board specifically deleted that finding from its decision, stating that it appeared Employer was not paying Claimant the correct amount for the overtime she worked.

On appeal to this Court,³ Claimant essentially argues that the evidence does not support the Board's findings but, instead, reflects that Claimant's conduct was justified. However, Claimant did not quit her employment because of discrepancies in her pay, and, therefore, her contentions in this regard are not relevant. Claimant also asserts that she acted with ordinary common sense and made a reasonable effort to preserve her employment, rendering her eligible for benefits. We disagree.

The threshold inquiry under section 402(b) of the Law is whether a claimant had necessitous and compelling reason to terminate her employment. 43 P.S. §802(b). Where a claimant quits her job after being demoted, the existence of a necessitous and compelling reason depends *solely* upon whether the demotion was justified. *Allegheny Valley School; Korpics v. Unemployment Compensation Board of Review*, 833 A.2d 1217 (Pa. Cmwlth. 2003). Thus, although the record might provide support for Claimant's contentions that she had been underpaid, the Board appropriately focused its inquiry on Employer's reason for demoting Claimant. We conclude that Claimant's admitted use of profanity when speaking to other employees supports the Board's determination that the demotion was justified.

Accordingly, we affirm.

PATRICIA A. McCULLOUGH, Judge

³ Our scope of review is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with the law, or whether the necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Dorothy L. Banner-Pratt,	:	
Petitioner	:	
	:	No. 1864 C.D. 2009
v.	:	
	:	
Unemployment Compensation Board	:	
of Review,	:	
Respondent	:	

ORDER

AND NOW, this 14th day of April, 2010, the order of the Unemployment Compensation Board of Review, dated June 10, 2009, is hereby affirmed.

PATRICIA A. McCULLOUGH, Judge