IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Deborah L. Dubbs Baer, Petitioner	:	
v.	:	No. 1878 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[1] **FILED: June 22, 2011**

Presently before the Court is the appeal of Petitioner Deborah L. Dubbs Baer (Claimant), challenging the August 26, 2010 Decision and Order of the Unemployment Compensation Board of Review (Board). The Board held that Claimant voluntarily quit her position as a service manager with Cintas Corporation (Employer),[2] thus precluding benefits under Section 402(b) of the

[1] The majority opinion was reassigned to the authoring judge on May 25, 2011.

[2] The Board identifies this conclusion as a finding of fact (No. 13). Our case law, however, is clear that the issue of whether a claimant has voluntarily left work is one of law. *See Roberts v. Unemployment Comp. Bd. of Review*, 432 A.2d 646, 648 (Pa. Cmwlth. 1981).

Unemployment Compensation Law (Law).[3] For the reasons that follow, we affirm the Board's decision.

Claimant applied for unemployment compensation benefits on May 3, 2010. The local job center determined that Employer initiated the separation, and Claimant was eligible for benefits under Section 402(e) of the Law.[4] Employer appealed, and the Referee affirmed. On further appeal by Employer, the Board reversed the Referee's decision, deciding the matter under Section 402(b). The Board issued the following findings of fact:

> 1. For the purposes of this appeal, the claimant last worked for Cintas Corporation as a Service Manager in a full-time position at a final yearly salary of $54,000 for 4 ½ years, her last day of work being June 19, 2009.
> 2. On May 18, 2009, the claimant had her regularly scheduled bi-weekly afternoon meeting with her supervisor.
> 3. The claimant informed her supervisor that she had a meeting with her youngest child's school the previous week.
> 4. The claimant informed her supervisor that she had realized that her "short term, five year plan" with the employer was not exactly what she was hoping for and that she wanted to realign her goals.

[3] Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. § 802(b). Section 402(b) of the Law provides that an employee is ineligible for unemployment compensation benefits "for any week . . . [i]n which his unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature."

[4] 43 P.S. § 802(e). Section 402(e) of the Law provides that a claimant shall be ineligible for benefits for any week in which her unemployment is due to discharge from work for willful misconduct connected with her work.

> 5. Specifically, the claimant did not think it was in her children's, age 6 and 11, best interest to work her regular 80-90 hours a week.
>
> 6. One of the claimant's children was having issues in school.
>
> 7. The employer had allowed the claimant to change her morning schedule to accommodate getting her children to school.
>
> 8. The claimant informed her supervisor that she did not want to stay with the employer as a service manager working those hours.
>
> 9. Claimant also informed the employer that the only two jobs with the employer that she did not want to be "demoted into" were service sales representative and service training coordinator, prior positions she held, but which carries the same number of hours of work as her current position.
>
> 10. Claimant asked for a different position.
>
> 11. The employer informed the claimant there was no other position.
>
> 12. On May 19, 2009, claimant signed a resignation and received her severance pay.

(Certified Record (C.R.), No. 11 at 1-2.) Claimant does not specifically challenge any of these factual findings. They are, therefore, conclusive on appeal.[5] *Hessou v. Unemployment Comp. Bd. of Review*, 942 A.2d 194, 199 (Pa. Cmwlth. 2008).

In concluding that Claimant was ineligible for benefits under Section 402(b) of the Law, the Board reasoned:

> Here it is clear that the claimant informed the employer that she no longer wanted to work as a service manger [sic] for the employer because of the number of hours of work involved. The Board agrees that the claimant quit

[5] At page 13 of her brief, Claimant challenges the "implication" of the Board's Finding of Fact No. 8. She does not, however, argue that the finding is not supported by substantial evidence.

> her employment. The Board agrees that claimant informing the employer that she was no longer willing to work in her current position established that she quit that position.

(C.R., No. 11 at 2 (emphasis added).) The Board also reasoned that Claimant did not establish a necessitous and compelling cause to quit. (*Id.*) The Board denied Claimant's request for reconsideration. Claimant's appeal to this Court followed.

On appeal,[6] Claimant argues that the Board's legal conclusion that Claimant voluntarily quit her employment without necessitous and compelling reason was not supported by substantial evidence.[7] Claimant contends that the Board's findings of fact paint an incomplete picture of the circumstances surrounding her separation from employment. Had the Board considered the totality of the circumstances, including what Claimant contends is unrebutted testimony in the record, the legal error of the Board's conclusion that Claimant voluntarily quit becomes evident. In other words, though Claimant does not dispute specific findings of fact by the Board, Claimant maintains that the Board

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[6] This Court's scope 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. Section 704 of the Administrative Agency Law, 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 (Pa. Cmwlth. 1992). Findings made by the Board are conclusive on appeal where the findings are supported by substantial evidence of record. *Lindsay v. Unemployment Comp. Bd. of Review*, 789 A.2d 385, 389 (Pa. Cmwlth. 2001). On appellate review, we must "examine the testimony in the light most favorable to the party in whose favor the Board has rendered its decision, giving that party the benefit of all inferences that can logically and reasonably be drawn from the testimony, to see if substantial evidence for the Board's conclusion exists." *Taylor v. Unemployment Comp. Bd. of Review*, 474 Pa. 351, 355, 378 A.2d 829, 831 (1977).

[7] We note that at no point in the proceedings before the Referee, the Board, or this Court has Claimant argued that she voluntarily quit, but had necessitous and compelling reasons to do so. Accordingly, the only question before this Court relative to the application of Section 402(b) in this case is whether Claimant voluntarily terminated her employment.

capriciously disregarded evidence in the record that shows Claimant did not voluntarily end her employment; rather, the evidence shows that Employer fired Claimant.

As noted above, the issue of whether a claimant has voluntarily left work is one of law. *Roberts*, 432 A.2d at 648. Likewise, "[w]hether a claimant was discharged is a question of law to be determined *based upon the Board's factual findings*." *Fekos Enters. v. Unemployment Comp. Bd. of Review*, 776 A.2d 1018, 1021 (Pa. Cmwlth. 2001) (emphasis added); *see Ganley's Pub and Deli v. Unemployment Comp. Bd. of Review*, 639 A.2d 1313, 1314 (Pa. Cmwlth. 1994) ("Whether an employee's conduct constitutes a voluntary termination is a question of law, the resolution of which is *dependent on the facts found by the Board*." (Emphasis added.)). Voluntary departure from work has been defined as leaving on one's own motion, without any action by an employer. *Roberts*, 432 A.2d at 648. In addition,

> [a] finding of voluntary termination is essentially precluded unless the claimant has a conscious intention to leave his employment. In determining the intent of the employee, the totality of the circumstances surrounding the incident must be considered.

Id. (citations omitted).

Applying this standard, the Board's findings of fact indicate a conscious intent on Claimant's part to resign her position as a service manager. The Board found as fact that Claimant informed Employer that she no longer wanted to work with Employer as a service manager and inquired about other positions. The Board found as fact that Employer informed Claimant that no other positions were available. And, the Board found as fact that Claimant signed a resignation letter and received severance pay. All of these findings, conclusive on

appeal, indicate a conscious intent on Claimant's part to resign her position as a service manager with Employer and thus warrant a legal determination that Claimant voluntarily terminated her employment.

We now turn to Claimant's contention that the Board failed to consider the totality of the circumstances—*i.e.*, that it capriciously disregarded evidence, thereby painting an incomplete picture of the circumstances surrounding the end of Claimant's employment. Claimant notes that based on all of the record testimony, including hers and that of Employer's General Manager, Doug Sweitzer (Sweitzer), the Referee found that Employer chose to sever the employment relationship, not Claimant. (C.R. No. 9 (Referee Decision) at 1.) The Referee also found that Claimant only signed the resignation notice because she was required to do so if she wished to receive her severance package. (*Id.* at 1-2.) Claimant reasons that the Board ignored the evidence upon which the Referee based his findings. For this reason, we should reverse the Board. Upon review of the record under our standard and scope of review, we disagree.

"The law is clear that the Board is the ultimate finder of fact and arbiter of witness credibility." *Bruce v. Unemployment Comp. Bd. of Review*, 2 A.3d 667, 671 (Pa. Cmwlth.) *appeal denied*, ___ Pa. ___, 12 A.3d 753 (2010). "[Q]uestions of credibility, resolution of conflicts in the evidence presented, and the weight to be given evidence are matters for the Board, as the ultimate factfinder, to resolve." *Ruiz v. Unemployment Comp. Bd. of Review*, 887 A.2d 804, 808 (Pa. Cmwlth. 2005). The Board, however, is not free to disregard findings of the referee based upon consistent and uncontradicted evidence without providing the reasons for its reversal. *Treon v. Unemployment Comp. Bd. of Review*, 499 Pa.

455, 461, 453 A.2d 960, 962 (1982). In *Treon*, the Pennsylvania Supreme Court explained:

> [T]he Board did not have the right to arbitrarily and capriciously disregard the findings of the referee after the referee had listened to the testimony of the only witness and observed his demeanor, and had made findings of fact based upon that uncontradicted testimony.
>
> If particular findings are inconsistent, incredible or unsupported by the evidence, then the Board must so indicate. The Board may not, however, simply disregard findings made by the referee which are based upon consistent and uncontradicted testimony without stating its reasons for doing so.

Id.

Claimant's argument is focused on what transpired on May 18, 2009, when she had her regularly scheduled bi-weekly afternoon meeting, during which, the Board concluded, she quit her job. With respect to that meeting, Sweitzer testified on direct examination as follows:

> [Q] Doug, could you please go back and to the best of your knowledge recall the conversation between you and Ms. Dubbs on May 19th of 2009? Did you term or fire Debbie?
>
> [A] No, I did not.
>
> [Q] Did you ever tell her she was fired or that you were going to fire her?
>
> [A] I did not.
>
> . . .
>
> [Q] Why did you pay her benefits and pay through June 19th even though at Cintas our policy is if someone gives their notification that we are required to pay them through two weeks?
>
> [A] Some of the circumstances that led up to Debbie's resignation were I knew there were issues at home with her two children and taking that into account

> and what I would expect somebody to do for me in the same circumstances would allow them to resign on the 15th but pay her for a full month and benefits for full month to give her a chance to get back on her feet.
>
> . . .
>
> [Q] And what, to the best of your knowledge, do you recall Debbie told you is the reason why that she was resigning on May 19th?
>
> [A] It was personal.

(C.R., No. 8 (Hearing Tr.) at 7-8.)

On cross-examination by Claimant,[8] Sweitzer testified that he did not recall if the meeting with Claimant was set to discuss issues with Claimant's children, if Claimant asked for other positions that might have suited her family life better, or if Claimant ever specifically stated that she quit. (*Id.* at 9.) He testified that he did hand Claimant a resignation form to sign. (*Id.* at 9). This prompted the following exchange:

> C When you handed me that resignation form, did you say this is so that I can be paid until June 19th of 2009?
>
> EW2 No. . . .

(*Id.* at 9-10.)

Claimant testified on her own behalf. Her recollection of the relevant portion of the meeting with Sweitzer was as follows:

> And then at the end of discussing business as it was, he had asked as he always does, is there anything else that you would like to discuss. Is there anything else, you know, we need to discuss. And I brought up that I had a meeting the previous week with my youngest son's

[8] Though represented by counsel in this appeal, Claimant appeared *pro se* before the Referee.

> school that it made me realize that maybe my short-term, five year plan was not exactly what I was hoping for and I wanted to change or realign my goals. I love Cintas and I wanted to remain with the company and if there's anything else that he thought I could be better suited for since I did receive extensive training in sales, as well as human resources and I also had a human resources background with American Telegraphics; is there anything else that he feels that I could do at Cintas. The reason not wanting to stay as a service manager is within the five years I had a child that was six years old and a child that was 11 years old. And it probably wasn't in their best interest for me to be working 80, 90 hours a week. It's something that I wanted to maybe tailor and to change and maybe be there more for my children from being a single mother.

(*Id.* at 10-11.) Claimant further testified that she would not accept two positions that she previously held, as the number of hours she would have to work would be the same. She also testified that she "had no issue with the position I was in at the time. I wanted to discuss other opportunities." (*Id.* at 11.)

The Referee asked Claimant the result of her discussion with Sweitzer, to which Claimant responded: "The result was I wanted another position. Doug simply said there was no other position for me at Cintas. . . . I thought okay, well then that doesn't negate the fact that I still need to change my next five years; that I need to try to tailor my interest." (*Id.*) Claimant testified that Sweitzer then informed her that he did not want anyone working at the company who did not want to be there. She testified that she told Sweitzer that he misunderstood her, that she loved the company, and that she wanted to be at the company. But, Sweitzer told her to collect her things and that the company would give her four weeks of severance. (*Id.*)

Claimant testified that she left Sweitzer's office and went directly to Employer's Human Resource Director, Deb Cerifko (Cerifko). Claimant testified

that she asked Cerifko if Sweitzer could terminate her employment. Claimant claims that Cerifko responded by saying that Claimant was an at-will employee, that Sweitzer could fire her with or without cause, and the Claimant could receive unemployment compensation benefits. (*Id.*) But Cerifko also testified at the hearing before the Referee. She testified that Claimant was not terminated; rather, Claimant voluntarily resigned her position on May 19, 2009. (*Id.* at 5, 7.)

Based on the foregoing, there is conflicting testimony in the record as to what transpired during the May 18, 2009 meeting between Claimant and Sweitzer and the subsequent meeting between Claimant and Cerifko. There is also conflicting testimony as to whether Claimant voluntarily signed the resignation document or was compelled to do so in order to receive her severance package. *Treon*, therefore, does not apply.

Also, we cannot say that the Board failed to consider the totality of the circumstances surrounding Claimant's severance from employment. Though Claimant expressed a strong desire to remain with Employer, she expressed *no* desire to remain with employer in her current position. Instead, Claimant's testimony can reasonably be interpreted as reflecting her desire to stay with Employer only *if* she could secure another position that (a) had better hours, (b) was not a demotion, and (c) was not one of two positions that she previously held.

True, Claimant's testimony could also be interpreted to show merely a failed effort by Claimant to secure another position with Employer that was better suited to her family circumstances. That, however, is not how the Board interpreted the testimony. We will not reweigh the evidence on appeal.

For these reasons, we affirm the Board in this case.

P. KEVIN BROBSON, Judge

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v.	:	No. 1878 C.D. 2010
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O R D E R

AND NOW, this 22nd day of June, 2011, the order of the Unemployment Compensation Board of Review is hereby AFFIRMED.

P. KEVIN BROBSON, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Deborah L. Dubbs Baer, Petitioner	:	
v.	:	No. 1878 C.D. 2010
	:	Submitted: April 1, 2011
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BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

DISSENTING OPINION
BY SENIOR JUDGE FRIEDMAN FILED: June 22, 2011

I respectfully dissent. The majority holds that the UCBR properly concluded that Deborah L. Dubbs Baer (Claimant) consciously intended to quit her employment on May 18, 2009, at a regularly scheduled bi-weekly meeting with her supervisor, Doug Sweitzer.[1] For the reasons that follow, I cannot agree.

The only evidence in the record about the meeting is the testimony of Claimant and the testimony of Sweitzer. Sweitzer's response to most of the questions asked of him about the meeting was that he could not recall. Sweitzer could only

[1] A finding of voluntary termination is effectively precluded unless the claimant possessed the conscious intention to leave her employment. *Roberts v. Unemployment Compensation Board of Review*, 432 A.2d 646, 648 (Pa. Cmwlth. 1981).

remember that he handed Claimant a resignation form and that he did not fire her. (N.T., 6/7/10, at 7-8.) Claimant's testimony about whether she consciously intended to leave her employment is undisputed.

Claimant testified that: (1) she "had no issue" with her position, but she wanted to discuss other opportunities with Sweitzer, (*id.* at 11); (2) Sweitzer told her that there were no other positions, (*id.*); (3) when Sweitzer suggested that he did not want anyone working at the company who did not want to be there, Claimant told Sweitzer that he misunderstood her, that she loved the company and that she wanted to be with the company, (*id.*); and (4) she interpreted Sweitzer's statements to mean that she was fired, (*id.* at 12).

In other words, although Sweitzer did not believe that he fired Claimant, Claimant believed that he did. Indeed, Claimant did not come to the meeting with a completed resignation, and at no time during their discussion did Claimant ask Sweitzer for a resignation form. Sweitzer forced the issue by handing the resignation form to Claimant. Otherwise, Claimant had no conscious intention of quitting.

Moreover, I find the fact that Claimant received severance benefits as conclusive that, although Sweitzer believed otherwise, Sweitzer fired Claimant. In *Kelly v. Workers' Compensation Appeal Board (US Airways Group, Inc.*), 605 Pa. 568, 581, 992 A.2d 845, 853 (2010) (citing Black's Law Dictionary (8th ed. 2004)) (emphasis in original), our supreme court defined "severance pay" as "[m]oney (apart from back wages or salary) paid by an employer to a *dismissed* employee." Indeed,

employers typically do not continue to provide pay and benefits to employees who quit.[2]

Accordingly, I would reverse.

ROCHELLE S. FRIEDMAN, Senior Judge

[2] Sweitzer attempted to alter the character of Claimant's severance benefits by stating, essentially, that he provided undeserved severance benefits to Claimant out of the goodness of his heart. However, there is no finding of fact in that regard.