

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Matthew J. Hersch,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1916 C.D. 2009
	:	SUBMITTED: April 16, 2010
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE JIM FLAHERTY, Senior Judge**

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER**

FILED: June 11, 2010

Matthew J. Hirsch (Claimant) petitions for review of the order of the Unemployment Compensation Board of Review (Board), which denied him unemployment compensation benefits on the ground that he voluntarily terminated his employment without a necessitous and compelling reason. Claimant contends that he had a necessitous and compelling reason to quit because the work was not suitable for him and because Intervenor North Penn Pipe and Supply, LLC (Employer) substantially and unilaterally changed the terms of employment after he was hired. We affirm.

The Board's findings of fact are as follows. Claimant was hired in 2009 by Employer to serve as Vice President for an annual salary of \$140,000.

Employer is a parts supplier in the oil and gas industry that had recently been acquired by another company, Fairmont Supply. In conjunction with the acquisition, Robert Metzgar, Employer's long-serving president, was in the process of leaving the company, but remained to assist in the selection and training of his replacement. After several interviews with Metzgar and Fairmont, Claimant was selected for the position.

Claimant had previously worked in management, but had never before run a company, nor did he have any experience in the oil and gas industry. He acknowledged both of these facts in his interviews, but was assured that they would not pose a problem. He was told that he would be trained by Metzgar, who would continue working for Employer for six months full-time and four months part-time for that purpose. Less than two months into the training period, Metzgar told Claimant that he was making progress in training and that he would therefore reduce some of his oversight of Claimant. The next day, Claimant abruptly resigned his position.

Claimant testified before the Referee that he resigned because he was frustrated with his progress in training and felt that he could not be an effective leader of the company. He also testified that the job was different than what he had been led to expect in several ways: the oil and gas industry was more complex and involved more specialized terminology; the company's fortunes had taken a turn for the worse; he was facing unexpected oversight from Fairmont, the new parent company; and Employer was opening a retail store, an activity it had never engaged in before.

Metzgar testified for Employer, confirming most of Claimant's testimony. Metzgar testified that he had been satisfied with Claimant's progress in

training, and had complete confidence in him. Metzgar did not know that Claimant was unhappy with his progress in training, nor did he have any advance warning that Claimant was considering leaving the company.

Both the Referee and the Board found that Claimant was ineligible for benefits because he had voluntarily quit his position. Finding Metzgar's testimony credible, the Board found that Claimant quit because of his own frustration with his inability to learn the business. On appeal, Claimant asserts that the work he was given was unsuitable, and Employer substantially and unilaterally changed the terms of employment after he was hired.¹ The Board did not specifically address this issue, but the facts as found by the Board do not support this assertion.

Pursuant to Section 402(b) of the Unemployment Compensation Law,² an employee is ineligible for compensation for any week in which his or her unemployment is due to "voluntarily leaving work without cause of a necessitous and compelling nature." A claimant bears the burden of proving necessitous and compelling reasons for leaving his or her job. *Wivell v. Unemployment Comp. Bd. of Review*, 673 A.2d 439 (Pa. Cmwlth. 1996). In order to show necessitous and compelling cause, the claimant must establish that circumstances existed which produced real and substantial pressure to terminate the claimant's employment; like circumstances would compel a reasonable person to act in the same manner; the claimant acted with ordinary common sense; and the claimant made a reasonable effort to preserve his or her employment. *Brown v. Unemployment*

¹ Claimant also raises a challenge to one of the Referee's findings of fact. However the findings of the Referee are not at issue here, as this is an appeal from the determination of the Board. The finding Claimant challenges was not relied upon or adopted by the Board, nor do we rely upon it here. Therefore, we see no need to address this issue.

² Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. § 802(b).

Comp. Bd. of Review, 780 A.2d 885, 888 (Pa. Cmwlth. 2001); *Fitzgerald v. Unemployment Comp. Bd. of Review*, 714 A.2d 1126, 1129 (Pa. Cmwlth. 1998).

Although acceptance of a job offer raises the presumption that the job is suitable, the imposition of a substantial unilateral change in the terms of employment can rebut that presumption and constitute a necessitous and compelling cause for an employee to terminate employment. *Brunswick Hotel & Conference Ctr., LLC v. Unemployment Comp. Bd. of Review*, 906 A.2d 657 (Pa. Cmwlth. 2006); *Speck v. Unemployment Comp. Bd. of Review*, 680 A.2d 27 (Pa. Cmwlth. 1996). However, personal dissatisfaction with job qualifications does not constitute a cause of a necessitous and compelling nature for leaving work where the employer was satisfied with the claimant's job performance. *Brunswick Hotel & Conference Ctr.; Clark v. Unemployment Comp. Bd. of Review*, 411 A.2d 879, (Pa. Cmwlth. 1980).

Claimant's argument fails for several reasons. First, Claimant clearly did not make a reasonable effort to preserve his employment. Although Claimant testified that on one occasion he told Metzgar he was frustrated with his progress in training, the Board found credible Metzgar's testimony that he believed training was going well, and that he had no indication Claimant was considering quitting. At a minimum, a reasonable effort to preserve employment would require Claimant to inform Employer of his concerns, and allow Employer attempt to find solutions, such as a modification of the training schedule or of Claimant's job responsibilities. Claimant, however, made no such effort.

Claimant's argument also fails because he has not met his burden of establishing a substantial unilateral change to the job, or that the work he was given was unsuitable. While there were some aspects of the job that were different

from Claimant's expectations, such as oversight from the parent company, the complexity of the industry and the opening of a new store, these are the type of changes and problems that a highly compensated executive should reasonably expect to deal with on the job. Additionally, there is no indication in the record that Claimant was unable to handle the responsibilities of the job, only that Claimant felt he was unable. The Board found credible Metzgar's testimony that Employer had full confidence in Claimant, and because Claimant left less than two months into a ten-month training program, how Claimant actually would have performed once on his own is unknowable. Because of this, it is clear that Claimant quit based on a personal dissatisfaction with his own qualifications, which is not a cause of a necessitous and compelling nature. *Clark*.

For all the foregoing reasons, we affirm.

BONNIE BRIGANCE LEADBETTER,
President Judge

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Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 11th day of June, 2010, the order of the Unemployment Compensation Board of Review in the above-captioned matter is hereby AFFIRMED.

BONNIE BRIGANCE LEADBETTER,
President Judge