

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Mary Ward,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
Unemployment Compensation	:	
Board of Review,	:	No. 1994 C.D. 2009
	:	
Respondent	:	Submitted: February 12, 2010

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE JOHNNY J. BUTLER, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER

FILED: March 16, 2010

Mary E. Ward (Claimant) petitions this Court for review of the July 29, 2009 order of the Unemployment Compensation Board of Review (UCBR) affirming in part, and reversing in part the decision of the Referee, and denying benefits. Claimant raises two issues before the Court: (1) whether Claimant was able and available to work, and (2) whether Claimant voluntarily left her employment. For reasons that follow, we affirm the UCBR.

Claimant was employed by Honesdale Volunteer Ambulance (Employer) for three and a half years, ending March 24, 2009. On January 26, 2009, Claimant suffered a seizure while working as an emergency medical technician (EMT). Employer subsequently assigned Claimant to the position of dispatcher. On March 24, 2009, Claimant suffered a second seizure that required hospitalization.

Employer removed Claimant from the work schedule because she had not yet received a definitive diagnosis of her medical condition.

Claimant subsequently applied for unemployment compensation (UC) benefits. On August 19, 2009, the Scranton UC Service Center mailed a notice of determination disqualifying Claimant for UC benefits under Section 401(d)(1) of the Unemployment Compensation Law (Law).¹ Claimant appealed, and a hearing was held by a Referee. On May 20, 2009, the Referee mailed his decision affirming in part and reversing in part, the decision of the UC Service Center, and approving benefits under Sections 402(b) and 401(d)(1) of the Law. Employer appealed to the UCBR. The UCBR affirmed in part, and reversed in part, the decision of the Referee, and denied benefits. Claimant appealed, pro se, to this Court.²

Claimant argues that the UCBR erred in concluding that she was not able and available to work. Specifically, Claimant contends she should prevail because she presented substantial evidence to support her claim because she testified at the May 19, 2009 hearing (hearing) before the Referee that she was available to work and that she had applied for work on three separate occasions, and Dr. Daniel Schere substantiated that she was able to work on two separate occasions.³ We disagree. The standard of review is not whether Claimant has presented substantial evidence to support her claim, but whether the UCBR's findings of fact were supported by substantial evidence. *Johnson v. Unemployment Comp. Bd. of Review*, 869 A.2d 1095 (Pa. Cmwlth. 2005). "Substantial evidence is such relevant evidence

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. § 801(d)(1). The Service Center did, however, find her eligible under Section 402(b) of the Law, 43 P.S. § 802(b).

² This Court's review is limited to determining whether the findings of fact were supported by substantial evidence, whether constitutional rights were violated, or whether errors of law were committed. *Johnson v. Unemployment Comp. Bd. of Review*, 869 A.2d 1095 (Pa. Cmwlth. 2005).

³ Dr. Schere did not testify at the hearing. Claimant attached his report to her brief.

as a reasonable mind might accept as adequate to support a conclusion.” *Coal Gas Recovery, L.P. v. Franklin Twp. Zoning Hearing Bd.*, 944 A.2d 832, 838 n.9 (Pa. Cmwlth. 2008).

At the hearing, Claimant testified that her doctor told her he would prefer if she did not work. When the Referee pursued that line of questioning, Claimant testified, “once I spoke to [my doctor] about it, I haven’t pursued any other employment.” Certified Record, Item No. 9 (C.R.) at 5. Again, when specifically asked, “did you say before you’re not looking for work anymore?” Claimant responded, “[Y]es.” C.R. at 9. In addition, when asked if she provided medical information, doctor’s notes or reports to the UC Service Center concerning her ability to work, Claimant responded, “No.” C.R. at 6. Finally, Claimant testified that she applied for social security disability.

Section 401(d)(1) of the Law states that compensation shall be payable to any employe who is or becomes unemployed and who: “*Is able to work and available for suitable work*” (Emphasis added). Clearly, based on Claimant’s testimony, the UCBR had substantial evidence to find that she was not able or available to work.

Claimant next argues that the UCBR erred when it concluded that Claimant voluntarily resigned from employment. However, the UCBR held that Claimant was in fact “*not* ineligible for benefits under the provisions of Section 402(b)” (Emphasis added). Section 402(b) of the Law states: “An employe shall be ineligible for compensation for any week-- In which his unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature” Clearly, the UCBR did not conclude that Claimant voluntarily left her employment.

For all of the above reasons, the order of the UCBR is affirmed.

JOHNNY J. BUTLER, Judge

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ORDER

AND NOW, this 16th day of March, 2010, the July 29, 2009 order of the Unemployment Compensation Board of Review is affirmed.

JOHNNY J. BUTLER, Judge