

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Donna L. Wilps,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
Unemployment Compensation	:	
Board of Review,	:	No. 2016 C.D. 2009
	:	
Respondent	:	Submitted: February 26, 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 29, 2010

Donna L. Wilps (Claimant) petitions this Court for review of the August 13, 2009 order of the Unemployment Compensation Board of Review (UCBR) affirming the decision of the Referee and denying benefits. Essentially there are two issues before the court: (1) whether Claimant was available for work not inimical to her health, and (2) whether Claimant was able and available for suitable work. For reasons that follow, we affirm the UCBR's order.

Claimant was employed by Seven Dolors Parish (Employer) as a housekeeper, beginning August 15, 2008 and ending February 10, 2009. Claimant felt the job was too strenuous due to injuries she sustained previously in a car accident in 2004. She discussed this with a priest at the parish who offered to have her schedule varied, but she declined, and provided Employer her two weeks notice. Claimant subsequently applied for Unemployment Compensation (UC) benefits. On

May 11, 2009, the Philadelphia UC Service Center mailed a notice of determination denying benefits under Section 402(b) of the Unemployment Compensation Law (Law).¹ Claimant appealed and a hearing was held by a Referee. On June 16, 2009, the Referee mailed her decision affirming the determination of the UC Service Center, as modified, denying benefits under Section 402(b) and Section 401(d)(1) of the Law.² Claimant appealed to the UCBR. The UCBR affirmed the decision of the Referee finding Claimant ineligible for benefits under Section 402(b), and disqualified from receiving benefits under Section 401(d)(1). Claimant appealed, pro se, to this Court.³

Claimant argues that the UCBR erred in finding that she did not meet the requirements of Section 402(b). Specifically, she argues that she met her burden in proving that she is available for work not inimical to her health. We disagree.

When the reason for voluntarily terminating employment is health related, the claimant must offer competent testimony that adequate health reasons existed at the time of the termination to justify the termination. Additionally, the claimant must have informed the employer of the health problem and have been available for work not inimical to the claimant's health. The claimant's failure to meet any one of these conditions will bar a claim for unemployment compensation.

Allen v. Unemployment Comp. Bd. of Review, 501 A.2d 1169, 1170 (Pa. Cmwlth. 1985) (citation omitted). In the instant case, when Claimant informed her Employer that the work was too strenuous for her, the parish priest offered to let her vary her

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. § 802(b).

² 43 P.S. § 801(d)(1).

³ 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).

schedule so as to relieve the strain on her physically. Claimant declined without any evidence that the varied schedule would not alleviate her pain.

A claimant has a “responsibility to remain available to the employer if reasonable accommodations can be made by the employer which are not inimical to the [claimant’s] health.” *Bonanni v. Unemployment Comp. Bd. of Review*, 519 A.2d 532, 536 (Pa. Cmwlth. 1986). By not attempting to work the varied work schedule, Claimant failed to make a reasonable effort to maintain her employment. *Sankey v. Unemployment Comp. Bd. of Review*, 425 A.2d 52 (Pa. Cmwlth. 1981). Thus, the UCBR did not err in finding that Claimant did not meet the requirements of Section 402(b).

Claimant next argues that she is able and available for suitable work, and she is realistically attached to the labor market. We disagree.

Section 401(d)(1) 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). At the hearing, Claimant testified that she did not know what type of work she would be able to perform. She further testified that maybe she could work as a part-time clerk; however, she has not done that type of work before. Claimant presented no evidence of what jobs she could perform, or that she was actively seeking work since she left her employment. “[T]o be available for work, a claimant must be ready and able to accept employment, and be actually and currently attached to the labor force.” *Ruiz v. Unemployment Comp. Bd. of Review*, 911 A.2d 600, 603 (Pa. Cmwlth. 2006). Further, “a claimant must minimally show he is able to do some type of work, and that there is a reasonable opportunity for securing such work.” *Id.* Clearly, based on Claimant’s testimony, the UCBR had

substantial evidence to find that she was not available for work. Accordingly, the UCBR did not err in denying Claimant UC benefits pursuant to Section 401(d)(1).

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 29th day of March, 2010, the August 13, 2009 order of the Unemployment Compensation Board of Review is affirmed.

JOHNNY J. BUTLER, Judge