

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Lurlena A. Burnett, :
Petitioner :
 :
v. : No. 2019 C.D. 2010
 : Submitted: January 28, 2011
Unemployment Compensation :
Board of Review, :
Respondent :

OPINION NOT REPORTED

MEMORANDUM OPINION
PER CURIAM

FILED: February 22, 2011

Lurlena A. Burnett (Claimant) appeals *pro se* from an order of the Unemployment Compensation Board of Review (Board) affirming the decision of the Referee denying her unemployment compensation benefits because she voluntarily terminated her employment without a necessitous and compelling reason pursuant to Section 402(b) of the Unemployment Compensation Law (Law).¹

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

An employe shall be ineligible for compensation for any week –

(b) In which his unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature irrespective of whether or not such work is in “employment” as defined in this act.

Claimant was employed by Grace Montessori School (Employer) as an assistant teacher with her last day being March 9, 2010. On that date, after a meeting with Employer at which Claimant was criticized regarding her techniques of disciplining students, Claimant voluntarily terminated her employment. She then filed for unemployment compensation benefits providing the Department of Labor and Industry, Office of UC Benefits (Office of UC Benefits) with a statement indicating that she left her job due to a hostile work environment and because she suffered from “mental disorganization” and depression. Employer stated on its questionnaire that Claimant left the job of her own accord after handing the program director a thank-you note, never to return, and then she was terminated after failing to report to work.

Initially, the Office of UC Benefits issued a notice of determination finding that Claimant voluntarily quit because she felt the work environment had become hostile but denied benefits because Claimant failed to show that she exhausted all alternatives prior to voluntarily leaving the job. Upon receiving that determination, Claimant sent the Office of UC Benefits a request for redetermination specifically mentioning her medical condition. The Office of UC Benefits contacted Employer, which told the Office of UC Benefits that Claimant’s health issues were never discussed with Employer and all that was discussed at the March 9, 2010 meeting was some inappropriate classroom behavior. Nonetheless, the Office of UC Benefits then issued a notice of redetermination granting Claimant benefits under Section 402(b) of the Law after finding that she voluntarily quit because of circumstances beyond her control and because she exhausted all alternatives prior to quitting. Employer filed an appeal from that

decision alleging that Claimant never attempted to resolve any problems at work before walking out without any explanation. With its appeal, Employer filed wage information and a note from Claimant to Employer saying “Thank You For Everything!” which it received the day after Claimant quit.

Before the Referee, only Claimant appeared. She testified that there was a meeting on March 9, 2010, regarding her work performance and a certain incident was discussed where Employer felt her behavior was unprofessional, but then the meeting also included multiple incidents regarding her behavior and ultimately the meeting ended with her in tears. Claimant said she was not fired at the end of that meeting, but she decided that she was not returning to work because she believed that the work environment had become hostile and she could not work in that kind of situation. She also stated that giving Employer the “Thank You” note had nothing to do with her quitting. Claimant admitted that she had no contact with Employer after she left the meeting as to whether she was going to return to work. Claimant made no mention of any mental disorders that made her quit her job. However, Claimant testified that she had applied for social security disability beginning in October 2008 which was approved to be paid starting April 2009. She admitted that she had not been ill or injured other than the chronic condition (which remained unnamed) for which she was receiving social security disability.

The Referee denied benefits finding that Claimant voluntarily quit her employment by handing in a “Thanks For Everything” note the day after her last day of work, thereby abandoning her employment without any advance notice

because she was upset over a verbal reprimand received on her last day of work in a meeting with Employer's management. The Referee also found that Claimant never proved a "hostile" work environment.² Claimant filed an appeal with the Board, which affirmed. She then requested reconsideration which was denied, and this appeal followed.³

Claimant first contends that she had a compelling and necessitous health reason for terminating her employment because she is receiving social security disability. The only evidence of record is her testimony that she had been approved for social security disability and that her medical condition foreclosed her ability to work. (*See* June 17, 2010 Hearing Transcript at 7-8.)⁴ Although she

² As for whether she was entitled to any partial payment, the Referee noted that Claimant "quit a part-time job and *Fabric v. Unemployment Compensation Board of Review*, 354 A.2d 905 (Pa. Cmwlth. Ct. 1976), may be applicable i.e., when a claimant voluntarily leaves part-time employment that he/she is rendered ineligible for benefits only to the extent that his/her benefits are decreased by virtue of his/her part-time earnings. The *FABRIC* Court precedent is inapplicable here, especially as claimant's potential gross weekly earnings exceeded her combined weekly benefit rate on her application." (Referee's July 8, 2010 decision at 2.) *Fabric*, however, is inapplicable to this case because the claimant in that case was already collecting unemployment compensation benefits from one job when he obtained another job which he voluntarily quit. Here, Claimant is only attempting to collect unemployment compensation benefits from one job.

³ Our scope of review of the Board's decision is limited to determining whether an error of law was committed, constitutional rights were violated or findings of fact were supported by substantial evidence. *Frazier v. Unemployment Compensation Board of Review*, 833 A.2d 1181 (Pa. Cmwlth. 2003).

⁴ While Claimant argues that there is evidence on the first page of a SSD Mental Health Determination issued on May 25, 2010, which is attached to her brief as Attachment 2 supporting her contention that she suffers from mental health issues, the provided attachment – Attachment 1a – is from the Social Security Administration, provides no reason for her receiving disability and is not in the record.

testified that she was approved for social security disability for some chronic health issue, she never testified before the Referee that she suffered from any “mental disorganization” and depression as she alleged on her forms requesting unemployment compensation benefits. Because this issue was never presented before the Referee or the Board as the reason she terminated her employment, it cannot be considered on appeal and is waived. *See Pa. R.A.P. 1551.*

Claimant also argues that because the Referee agreed with her during the hearing that he understood the “seemingly unorthodox method of disciplining at the school and suggested that the claimant should try for a job in the Allentown Public School” and “seemed alarmed that the School’s director...had in the presence of the claimant apologized to the student for the claimant’s errors in disciplining him,” the Referee’s decision should be reversed. Our review of the record reveals that the Referee said no such things. The Referee found that Claimant had not proven a necessitous and compelling reason for terminating her employment because she quit solely due to a verbal reprimand. Because Claimant has failed to prove that she terminated her employment for any other reason, Claimant’s argument is without merit.

Accordingly, the order of the Board is affirmed.

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Board of Review,	:
Respondent	:

PER CURIAM

ORDER

AND NOW, this 22nd day of February, 2011, the order of the Unemployment Compensation Board of Review, dated August 27, 2010, is affirmed.