

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Linda E. Ravitz, :
 :
 Petitioner :
 :
 v. :
 :
 Unemployment Compensation :
 Board of Review, : No. 2026 C.D. 2010
 Respondent : Submitted: March 18, 2011

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY

FILED: May 11, 2011

Linda E. Ravitz (Claimant) challenges the order of the Unemployment Compensation Board of Review (Board) which affirmed the referee's denial of benefits under Section 402(b) of the Unemployment Compensation Law (Law).¹

The facts as found by the Board are as follows:

1. The claimant was last employed with Fornance Physician Services as a fulltime practice manager at a pay rate of \$60,000 per year. The claimant was employed from November 23, 2009 and her last day of work was March 31, 2010.
2. An incident occurred between the claimant and one of the physicians a month prior to the claimant's last day of work; the physician blew up at the claimant and threw a chart.

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

3. When informed management had the physician replaced.
4. During the course of her employment, the claimant had lost control of her subordinates in the performance of their duties.
5. When management was approached, the claimant was instructed to take care of their behavior.
6. The claimant never disciplined or reprimanded the subordinates causing the difficulties.
7. An incident occurred between the claimant and a subordinate about a week before the claimant's last day of work; the claimant felt physically threatened by the subordinate.
8. The claimant was yelled at and lunged at by a subordinate (a medical receptionist) over a scheduling error making her feel physically threatened by the subordinate.
9. The claimant spoke to the individual and disciplined her, calming the situation.
10. There is no indication she had additional problems with this individual.
11. The claimant voluntarily terminated her employment when continuing work was available due to her general dissatisfaction with working conditions.

Board Opinion, August 26, 2010, (Opinion), Findings of Fact Nos. 1-11 at 1-2.

The Board determined that Claimant did not have cause of a necessitous and compelling nature for quitting her employment:

Here, the claimant argued that there were two incidents that occurred, the first occurred a month before she left when a physician threw a chart and the second incident

where she felt physically threatened, occurred the week before she left. The claimant continued to work after the physician threw a chart. The claimant argued that she spoke to the director of practice management who did nothing.

The director of practice management presented credible testimony that she instructed the claimant to discipline her employees but the claimant did not comply. The claimant has not demonstrated that the employment situation was intolerable. The claimant's voluntary separation from work was for reasons that do not rise to the level of compulsion or necessity as required under the provisions of Section 402(b) of the Law.

Opinion at 2-3.

Claimant faults the Board's failure to find: 1) she was harassed by staff members and a physician to the extent there was real and substantial pressure to terminate her employment and that Claimant tried to preserve her employment by counseling staff members and reporting to her supervisor, and 2) she voluntarily separated from work with necessitous and compelling reasons.²

Whether a termination of employment is voluntary is a question of law subject to this Court's review. The failure of an employee to take all reasonable steps to preserve employment results in a voluntary termination. [Westwood v. Unemployment Compensation Board of Review](#), 532 A.2d 1281 (Pa. Cmwlth. 1987). An employee who voluntarily terminates employment has the burden of proving that such termination was necessitous and compelling. The question of

² This Court's review in an unemployment compensation case is limited to a determination of whether constitutional rights were violated, errors of law were committed, or findings of fact were not supported by substantial evidence. [Lee Hospital v. Unemployment Compensation Board of Review](#), 637 A.2d 695 (Pa. Cmwlth. 1994).

whether a claimant has a necessitous and compelling reason³ to terminate employment is a question of law reviewable by this Court. [Willet v. Unemployment Compensation Board of Review](#), 429 A.2d 1282 (Pa. Cmwlth. 1981).

Where an employee voluntarily quits because of a personality conflict with another employee which makes the working conditions intolerable, there is a necessitous and compelling cause for terminating employment. However, when an employee is dissatisfied with working conditions or resents the criticism of a supervisor or has a personality conflict without an intolerable work atmosphere, necessitous and compelling reasons for a voluntary quit do not exist. [Uniontown Newspapers, Inc. v. Unemployment Compensation Board of Review](#), 558 A.2d 627 (Pa. Cmwlth. 1989).

This Court has consistently held that mere dissatisfaction with wages or working conditions is not sufficient to establish necessary and compelling reasons to quit employment. [See, Kellenbenz v. Unemployment Compensation Board of Review](#), 454 A.2d 1202 (Pa. Cmwlth. 1983) (dissatisfaction with hours of work and rate of pay was not necessitous and compelling reason to quit); [DeNofa v. Unemployment Compensation Board of Review](#), 413 A.2d 786 (Pa. Cmwlth. 1980) (a transfer to a new location where the work was substantially the same was not a necessitous and compelling reason to quit). However, employees are

³ Good cause for voluntarily leaving one's employment results from circumstances which produce pressure to terminate employment that is both real and substantial and which would compel a reasonable person under the circumstances to act in the same manner. [Philadelphia Parking Authority v. Unemployment Compensation Board of Review](#), 654 A.2d 280 (Pa. Cmwlth. 1995).

permitted to collect unemployment benefits after they have voluntarily ceased employment on the grounds that the wages or working conditions have substantially changed, to the point that voluntary termination is necessary. See National Freight, Inc. v. Unemployment Compensation Board of Review, 382 A.2d 1288 (Pa. Cmwlth. 1978).

Claimant asserts that she established real and substantial circumstances existed that would compel a reasonable person to terminate her employment. Claimant argues that the record clearly demonstrated that she had to rearrange or cut employee work hours due to a lack of patients, and because she did so, she was harassed by staff on a daily basis. Claimant also asserts that “the physician who physically attacked Employee [Claimant] continued to work until his contract terminated. Physician was never disciplined for his actions.” Claimant’s Brief at 13. Claimant asserts that when employees under her direction refused to correct their behavior at her behest, she went to her supervisor for assistance but was just told to “work it out.” Claimant’s Brief at 13. Claimant further asserts that she was not provided with the training or authority to make the decisions necessary to manage the workplace.

It is clear that Claimant found her work situation less than ideal. However, mere dissatisfaction with working conditions is an insufficient basis to establish a necessitous and compelling reason for terminating employment. Claimant testified that there were numerous incidents where “staff members were once again, continuously just disappearing, not taking any responsibility for their positions and after many attempts, it came to the point, because of other situations, that . . . there were compelling reasons that I would no longer be functioning as an employee there.” Notes of Testimony, June 7, 2010, (N.T.) at 4.

Claimant testified regarding an incident with a medical receptionist:

The last thing that happened was an incident with an employee who I managed whose title was medical receptionist who, basically, over a scheduling error, lunged at me into my office and I was physically threatened by this person.

....

I did speak to Ms. Jones [her supervisor] who told me to work it out.

N.T. at 4-5.

After Claimant called the employee into her office and spoke with her “it was calmer and the situation was at an impasse.” N.T. at 7.

Maria Jones (Ms. Jones), director of practice management for Fornance Physician Services (Employer) and Claimant’s supervisor, testified regarding Claimant’s job duties:

As the Practice Manager, she was told to work through counseling employees since they were her employees and none of that was followed up on. There was no documentation in the files regarding any discussion with the employees. There was a formed [sic] to be used when you counsel an employee. There was nothing in the file and the employee states that no discussion ever took place.

N.T. at 8.

Ms. Jones also testified that “she [Claimant] did actually bring up the incidents as they occurred and I did speak individually to the employees and their statements were very different than the alleged statements.” N.T. at 9.

Claimant was unhappy with her work environment. She also had a conflict with one physician and conflicts with others under her direction. Ms.

Jones, testified that she instructed Claimant to discipline her employees, but claimant did not follow directions. The Board explicitly found Jones credible. In unemployment compensation proceedings, the Board is the ultimate fact-finding body empowered to resolve conflicts in evidence, to determine the credibility of witnesses, and to determine the weight to be accorded evidence. Unemployment Compensation Board of Review v. Wright, 347 A.2d 328 (Pa. Cmwlth. 1975). Findings of fact are conclusive upon review provided that the record, taken as a whole, provides substantial evidence to support the findings. Taylor v. Unemployment Compensation Board of Review, 474 Pa. 351, 378 A.2d 829 (1977).

It was Claimant's burden to establish that she had a necessitous and compelling reason for quitting her job due to abusive conduct. Claimant failed to meet this burden. Jones testified that Claimant was hired as practice manager and was given authority to discipline the staff under her direction. She either failed to do so or did not attempt to do so. There was nothing in the record to show that Claimant did not receive support from her supervisor when she complained about her working conditions. Claimant failed to establish that her working conditions were intolerable or had undergone a substantial, unilateral change. The Board determined that Claimant did not meet her burden. This Court agrees.

Accordingly, this Court affirms.

BERNARD L. MCGINLEY, Judge

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Petitioner	:
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Unemployment Compensation	:
Board of Review,	:
	:
Respondent	:

No. 2026 C.D. 2010

ORDER

AND NOW, this 11th day of May, 2011, the order of the Unemployment Compensation Board of Review in the above-captioned matter is affirmed.

BERNARD L. MCGINLEY, Judge