

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Cobby Thompson, :
 :
 Petitioner :
 :
 v. :
 :
 Unemployment Compensation :
 Board of Review, : No. 2032 C.D. 2010
 Respondent : Submitted: May 27, 2011

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY

FILED: June 30, 2011

Cobby J. Thompson (Claimant), *pro se*, 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 and under the American Recovery and Reinvestment Act of 2009.²

The facts, as initially found by the referee and confirmed by the Board, are as follows:

1. The claimant worked full time for the employer beginning in 2007 until his last day worked on April 8,

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

² American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009).

2010 at a final rate of pay of approximately \$17.00 per hour.

2. On April 5, 2010 the claimant returned to work after a seasonal layoff. The claimant worked for the employer for approximately four days until April 8, 2010.

3. On April 8, 2010 the claimant called the employer to discuss some issues the claimant had at a job site.

4. The claimant then informed the employer: "He was done." The claimant informed the employer he did not want to do this type of work anymore.

5. The claimant voluntarily terminated his employment at that time.

6. During the week of April 12, 2010, the claimant called the employer and offered to return to his position at a rate of pay of \$20.00 per hour. The claimant also requested that the employer pay half of the cost of the claimant's health insurance.

7. The employer rejected the claimant's offer and informed him: "That's not gonna [sic] happen."

8. The claimant did not offer a counter proposal.

9. The claimant also did not return to his position.

10. The claimant voluntarily terminated his employment.

11. The claimant received Unemployment Compensation (UC) Benefits in the total amount of \$369.00 for claim week ending April 10, 2010.

12. The claimant received \$25.00 for week ending April 10, 2010 in Federal Additional Compensation (FAC) Benefits paid under the American Recovery and Reinvestment Act of 2009.

Referee's Decision, June 15, 2010, (Decision), Findings of Fact Nos. 1-12 at 1-2.

The referee determined:

In the present case, the claimant voluntarily terminated his employment because he was dissatisfied with the working conditions including the amount of pay he was receiving per hour and the fact that he did not receive medical benefits. After resigning his position, the claimant made an offer to the employer under which the claimant would return to his prior position at a higher rate of pay and if the employer would pay half of his medical benefits. The employer rejected the claimant's offer. The claimant did not offer a counter proposal nor did the claimant return to the position he had vacated the prior week. Based on the testimony presented at hearing, the claimant voluntarily terminated his employment and has not established a necessitous and compelling reason for doing so. The claimant is, therefore, ineligible to receive benefits under Section 402(b) of the Law.

Section 804(a) of the Law provides for the repayment of compensation to which a claimant was not entitled, if such compensation was received as the result of the fault on the claimant's part. It has not been established that the overpayment herein involved was the result of fault on the claimant's part. However, since the claimant received benefits to which the claimant was not entitled, a non-fault overpayment is imposed under the provisions of Section 804(b)(1) of the Law.

Because the claimant is ineligible to receive benefits under Section 402(b) of the Pennsylvania State Unemployment Compensation Law, he is likewise ineligible to receive benefits payable under the American Recovery and Reinvestment Act of 2009.

Decision at 2.

The Board affirmed the referee's decision that there was insufficient evidence to establish that Claimant's employer, Thunder Wash Pressure Washing (Employer), failed to commit to a fair agreement regarding Claimant's rate of pay.³

Essentially, Claimant contends that he had a necessitous and compelling reason for terminating his employment with Employer. 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 voluntarily terminating employment has the burden of proving that such termination was necessitous and compelling. The question of whether a claimant has a necessitous and compelling reason to terminate employment is a question of law reviewable by this Court. Willet v. Unemployment Compensation Board of Review, 654 A.2d 280 (Pa. Cmwlth. 1995).

A necessitous and compelling 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). In order to prove that a claimant had a necessitous and compelling reason for quitting employment, a claimant must establish that circumstances

³ This Court's review in an unemployment case is limited to a determination of whether constitutional rights were violated, errors of law were committed, or essential findings of fact were not supported by substantial evidence. Lee Hospital v. Unemployment Compensation Board of Review, 637 A.2d 695 (Pa. Cmwlth. 1994).

existed which produced real and substantial pressure to terminate employment, that like circumstances would force a reasonable person to act in the same manner, that the claimant acted with ordinary common sense, and that the claimant made a reasonable effort to preserve his employment. The Western and Southern Life Insurance Company v. Unemployment Compensation Board of Review, 913 A.2d 331 (Pa. Cmwlth. 2006). Mere dissatisfaction with one's working conditions is not a necessitous and compelling reason for terminating one's employment. McKeown v. Unemployment Compensation Board of Review, 442 A.2d 1257 (Pa. Cmwlth. 1982).

Claimant asserts that he had no choice but to quit his employment because Employer refused to increase his hourly rate of pay even though Claimant was performing additional work. Claimant further asserts that he was willing to continue working at the same rate of pay as the previous year if his workload remained the same. Based on a letter dated July 26, 2009, on Employer's letterhead, submitted with Claimant's Appeal materials, Claimant argues he was to work 40 hours per week at \$17.00 per hour.

Mark Cummins (Cummins), owner of Employer, testified that Claimant was, from the time of his initial hiring, scheduled to work six days per week so that his workload was not increased. Cummins also testified regarding Claimant's separation from employment:

R: ...Now, let's talk about April of this year, of 2010. What happened around April 8th? Did you speak with the

Claimant about his, his wanting health benefits and/or raise?

E: No.

.....

R: When did you speak with him about that?

E: ... April 8th, ... I got a phone call that night saying that he was done, he was finished working for me.

.....

... [W]e just talked about the job. It's – at the end of the conversation, he said that he was finished, he didn't want to do this anymore.

.....

R: ...When in 2010 did you and Mr. Thompson discuss his desire to have health insurance?

.....

E: This is the following week.

R: ...April 8th? Okay.

E: He had a desire to come back, but it was under those conditions.

R: What were the conditions?

E: He needed more money.

R: And did he propose a figure?

E: ... I gave him a figure, that I would keep at \$17 an hour, and I would pay half his benefits. ...

.....

And he accepted that offer.

R: Did he come back to work?

E: He was going to come back the following day. The following morning, he called me and said that that was no longer good enough, that he wanted \$20 an hour without benefits. ...

.....

R: Now, all these discussions, and before what occurred on the 8th... between January and April 7th, did you and Mr. Thompson discuss health benefits?

E: No.

R: ... or raises?

E: No.

R: So the first time this was raised was after he quit?

E: Correct.

.....

R: When did you [Employer] tell the Claimant you needed him to work six days?

E: From day one.

R: Was he working six days?

E: Occasionally.

Notes of Testimony, June 14, 2010, at 15-18.

The Board implicitly credited Employer's testimony over that of Claimant. 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).

In this case, this Court agrees with the Board that Claimant failed to establish a necessitous and compelling reason for voluntarily quitting, and affirms the determination that "the claimant voluntarily terminated his employment because he was dissatisfied with the working conditions, including the amount of pay he was receiving per hour and the fact that he did not receive benefits." Decision at 2. It is clear that Claimant was dissatisfied with his hourly pay rate and his lack of benefits, however, dissatisfaction with one's wages is insufficient justification for terminating employment for purposes of Section 402(b) of the Law. A-Positive Elec. v. Unemployment Compensation Board of Review, 654 A.2d 299 (Pa. Cmwlth. 1995).

Employees may collect unemployment benefits after they have voluntarily ceased employment if wages or working conditions have substantially changed, to the point that voluntary termination is necessary. Monaco v. Unemployment Compensation Board of Review, 523 Pa. 41, 565 A.2d 127 (1989). In the instant case, Claimant's contention that because he had been given raises in the past, he was entitled to a raise when he returned to his seasonal job does not constitute a substantial change in wages. Claimant's argument that he was asked to work six days a week did not constitute a substantial change in working conditions. The record reflects Claimant was told at time of hire that he would work six days a week, and occasionally did so.⁴

Accordingly, this Court affirms.

BERNARD L. McGINLEY, Judge

⁴ Claimant also contends that certain unspecified findings of fact were unsupported by substantial evidence. Claimant, however, failed to address this issue in the argument section of his brief. Consequently, it is waived. See Pa.R.A.P. 2116(a); Van Duser v. Unemployment Compensation Board of Review, 642 A.2d 544 (Pa. Cmwlth. 1994). (Issues not briefed are waived).

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ORDER

AND NOW, this 30th day of June, 2011, the order of the Unemployment Compensation Board of Review in the above-captioned matter is affirmed.

BERNARD L. MCGINLEY, Judge