

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Willie J. Phillips, Jr.,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
Unemployment Compensation	:	
Board of Review,	:	No. 2037 C.D. 2010
	:	
Respondent	:	Submitted: February 4, 2011

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge  
HONORABLE PATRICIA A. McCULLOUGH, Judge  
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY  
JUDGE BUTLER

FILED: February 25, 2011

Willie J. Phillips, Jr. (Claimant) petitions this Court, pro se, for review of the September 14, 2010 order of the Unemployment Compensation Board of Review (UCBR) affirming the Referee’s determination that he is ineligible for benefits under Section 402(b) of the Unemployment Compensation Law (Law).<sup>1</sup> The issue for this Court’s review is whether the UCBR erred in finding that Claimant voluntarily quit his employment without a necessitous and compelling reason. For reasons that follow, we affirm the UCBR’s order.

Claimant was employed by the Commonwealth of Pennsylvania’s Department of Agriculture (Employer) as a full-time food sanitarian beginning on March 12, 2001. His job duties included inspecting restaurants and food manufacturing facilities. On February 13, 2010, Claimant was admitted to the

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

hospital, having been diagnosed with Methicillin-Resistant Staphylococcus Aureus (MRSA), a highly antibiotic-resistant staph infection. That day, he notified his supervisor, John Rupert, he had been hospitalized. Thereafter, he regularly kept Mr. Rupert informed of his status. On February 23, 2010, when Claimant was released from the hospital, he was provided a doctor's note that he would be off work until March 10, 2010, during which he was to undergo antibiotic treatments at home. He was unable to perform the food inspection portions of his job due to the communicable nature of his medical condition, but he was able to perform other work as of March. Following a doctor's visit, on March 4, 2010, Claimant supplied to Employer a doctor's note indicating that he could return to work on March 30, 2010. That same day, Mr. Rupert contacted Employer's human resource analyst, Michelle Jennings, who told him that Employer would supply Claimant with a Family and Medical Leave Act (FMLA) for Sick, Parental or Family Care (SPF) absence package, and would provisionally authorize his absence and continue Claimant's medical benefits.

Because Claimant exhausted his paid leave as of February 19, 2010, and he had not received any documentation from Employer regarding his leave or benefits, on March 8, 2010, Claimant met with a representative from the Pennsylvania State Employees' Retirement System (SERS) and applied for disability retirement. It was his understanding that, by doing so, he would receive temporary financial assistance, but would be eligible to return to work when he was able to do so. On March 20, 2010, Claimant received from Employer a notice that he was eligible for leave under the FMLA/SPF, but that he must complete the necessary paperwork and return it to Employer by April 3, 2010. Claimant was familiar with the FMLA/SPF process because he had availed himself of it in the past. On March

22, 2010, Claimant took the FMLA/SPF forms to his treating physician to be completed.

On March 23, 2010, Ms. Jennings and Assistant Director of the Bureau of Food Safety and Lab Services, Lydia Johnson, contacted Claimant and told him that he need not return the FMLA/SPF forms since his disability retirement had been approved and, as a result, Employer was obligated to process his retirement, with his last day of employment being March 26, 2010.<sup>2</sup> When Claimant asked if he could keep his job, Ms. Johnson told him that she did not have the authority to give his job back at that point. Claimant began to cry and hung up the phone. Ms. Jennings contacted SERS in order to clarify Claimant's situation. The SERS representative told her that Claimant had until the close of business on March 26, 2010 to rescind his disability retirement.

Mr. Rupert retrieved Employer's equipment from Claimant on March 25, 2010. Also on March 25, 2010, Claimant contacted Ms. Jennings and apologized for breaking down during their previous conversation. Both SERS and Ms. Jennings informed Claimant that he could decline disability retirement and proceed under the FMLA/SPF, but that he would need to make the decision before his retirement became effective the next day. According to the record, Claimant took no further action regarding his employment. Claimant's retirement became effective March 26, 2010. On March 30, 2010, Claimant's doctor released him to return to work without restriction effective March 31, 2010.

Claimant applied for unemployment compensation (UC) benefits. The UC Service Center deemed Claimant eligible for benefits under Section 402(b) of the Law because Employer failed to offer Claimant alternate work after being informed

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<sup>2</sup> Claimant was not aware at the time of her call but, after speaking to Ms. Jennings that day, Claimant checked his mailbox at the post office and found the March 19, 2010 notice from SERS that he had been granted temporary disability.

of Claimant's work limitations. Employer appealed, and a hearing was held before a Referee. As of the time of the hearing, Claimant had received one disability retirement payment, and he had not yet notified SERS that he was eligible to return to work. On July 16, 2010, the Referee issued a decision reversing the UC Service Center's determination. Claimant appealed to the UCBR. By order mailed September 14, 2010, the UCBR adopted and incorporated the Referee's findings and conclusions and affirmed the decision of the Referee.<sup>3</sup> Claimant appealed, pro se, to this Court.<sup>4</sup>

Section 402 of the Law provides, in relevant part, that a person "shall be ineligible for compensation for any week . . . [i]n which his unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature . . . ."

An employee who claims to have left employment for a necessitous and compelling reason must prove that: (1) circumstances existed which produced real and substantial pressure to terminate employment; (2) such circumstances would compel a reasonable person to act in the same manner; (3) the claimant acted with ordinary common sense; and, (4) the claimant made a reasonable effort to preserve [his] employment.

*Brunswick Hotel & Conference Ctr., LLC v. Unemployment Comp. Bd. of Review*, 906 A.2d 657, 660 (Pa. Cmwlth. 2006). The resolution of the issue of whether an employee voluntarily quit his job requires a determination of the intent of the employee. *Monaco v. Unemployment Comp. Bd. of Review*, 523 Pa. 41, 565 A.2d 127 (1989). A finding of voluntary quit is precluded unless there was a conscious

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<sup>3</sup> Claimant's request that the record be remanded for additional testimony was also denied by the UCBR's order.

<sup>4</sup> 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. *Brunswick Hotel & Conference Ctr., LLC v. Unemployment Comp. Bd. of Review*, 906 A.2d 657 (Pa. Cmwlth. 2006).

intention to leave employment on the part of the claimant. *Id.* Such intent is determined by considering the totality of the circumstances surrounding the incident in question. *Id.* “Whether Claimant voluntarily terminated [his] employment with [Employer] is a question of law subject to review by this Court and dependent upon the facts found by the compensation authorities.” *Chinn v. Unemployment Comp. Bd. of Review*, 426 A.2d 1250, 1251 (Pa. Cmwlth. 1981).

On appeal, Claimant contends that he was confused by Employer’s leave procedure and disability retirement, and that he did not intend to quit his job. While he claims to have been confused about how FMLA/SPF worked, there is evidence in the record that he received such benefits in the past. Moreover, even if he was confused, as of March 25, 2010, he was well aware that he had the option of continuing his employment. He offered absolutely no necessitous or compelling justification for failing to timely rescind his disability retirement if he truly intended to maintain his employment. This is borne out by the fact that, even as of the time of the hearing in June of 2010, Claimant had yet to notify SERS that he was no longer disabled. Given the totality of the circumstances presented, we hold that the Referee and UCBR committed no error in concluding that Claimant voluntarily quit his job without a necessitous and compelling reason. Because Claimant’s unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature, he is not eligible to receive unemployment compensation benefits.

For these reasons, the order of the UCBR is affirmed.

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JOHNNY J. BUTLER, Judge

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ORDER

AND NOW, this 25<sup>th</sup> day of February, 2011, September 14, 2010 order of the Unemployment Compensation Board of Review is affirmed.

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JOHNNY J. BUTLER, Judge