

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Dennis A. Oft,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 2088 C.D. 2009
	:	SUBMITTED: May 7, 2010
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE JIM FLAHERTY, Senior Judge**

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER**

FILED: June 11, 2010

Petitioner, Dennis A. Oft, proceeding *pro se*, appeals from the order of the Unemployment Compensation Board of Review (Board) denying him unemployment compensation benefits pursuant to Section 402(b) of the Unemployment Compensation Law,¹ 43 P.S. § 802(b). We affirm.

Petitioner was employed by Gustine Associates from August 10, 2008 through March 10, 2009, as a building engineer. On February 24, 2009, Petitioner completed all six of his assigned work orders. Petitioner then attempted

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §§ 751-914.

to notify his supervisor, Mary Kapral, of the completed work orders via email. Petitioner encountered difficulties with the email program. As a result of Petitioner's difficulties, Kapral received only 5 completion confirmations. On February 25, Petitioner received an email from Kapral inquiring whether the sixth work order had been completed. Petitioner emailed Kapral that the sixth work order had been completed. Kapral then contacted Petitioner via the shop intercom system and notified him that she and Gary Tinney, lead engineer, were coming down to the shop to meet with him. Upon arrival in the shop, Kapral said to Petitioner: "When are you going to get it? You have to step it up. You have been here for six months now." *See* Board Order and Decision at No. 4. Petitioner responded that he felt it was not working out and that he was giving his two weeks notice. *Id.* at No. 5. Kapral then requested that Petitioner submit his resignation in writing and Petitioner complied. Petitioner states that he quit because of the personality conflict between him and Kapral, a lack of appreciation for his work, and poor working conditions, including a lack of tools and the provision of substandard tools. *Id.* at No. 6. Subsequently, Petitioner apologized to Kapral and tried to withdraw his resignation. Kapral denied his request to withdraw his resignation because she had already filled his position.

Petitioner filed an unemployment compensation claim, which was denied because he lacked a necessitous and compelling reason for quitting. Petitioner filed an appeal and a referee conducted an evidentiary hearing at which Petitioner, Kapral and Tinney testified. The referee affirmed the notice of determination denying benefits. Petitioner appealed to the Board, which affirmed the denial of benefits. This appeal followed.

As a threshold matter, the Board asserts that Petitioner’s brief should be quashed for failure to comply with Pennsylvania Rule of Appellate Procedure 2119(a), (c).² The Board contends that the argument section of Petitioner’s brief is deficient because he fails to provide specific citation to the record to support his factual contentions and to cite legal authority to support his position. We decline to quash Petitioner’s appeal on this basis. “This court will quash appeals when substantially defective briefs impede us from conducting meaningful appellate review.” *Shaffer v. Unemployment Comp. Bd. of Review*, 928 A.2d 391, 393 (Pa. Cmwlth. 2007). When a brief is inadequate to present specific issues for review, the court will not consider the merits of the case. *Id.* In this case, it is clear that Petitioner is arguing that that his working conditions provided a necessitous and compelling reason to quit. Therefore, we conclude that Petitioner has adequately presented a specific issue for this court to review.

As noted, Petitioner contends that the Board erred in finding that he did not have necessitous and compelling reason to quit. Section 402(b) of the Law provides in pertinent part that an employee shall be ineligible for compensation for any week “in which his unemployment is due to [his] voluntarily leaving work without a cause of necessitous and compelling nature[.]” *Porco v. Unemployment Comp. Bd. of Review*, 828 A.2d 426, 428 (Pa. Cmwlth. 2003). The claimant has the burden to demonstrate that his cause for terminating his employment was of a necessitous and compelling nature. *First Fed. Sav. Bank v. Unemployment Comp. Bd. of Review*, 957 A.2d 811, 816 (Pa. Cmwlth. 2008) [quoting *Taylor v.*

² Appellate Rule 2119(a) provides that an argument “shall be divided into as many parts as there are questions to be argued . . . followed by such discussion and citation of authorities as are deemed pertinent.” Pa. R.A.P. 2119(a). Appellate Rule 2119(c) requires that a party provide specific citation to the record to support its contentions.

Unemployment Comp. Bd. of Review, 474 Pa. 351, 355, 378 A.2d 829, 831 (1977)]. In showing a necessitous and compelling cause, the claimant must establish that:

1. circumstances existed which produced real and substantial pressure to terminate employment;
2. like circumstances would compel a reasonable person to act in the same manner;
3. he acted with ordinary common sense; and
4. he made a reasonable effort to preserve his employment.

Central Dauphin Sch. Dist. v. Unemployment Comp. Bd. of Review, 893 A.2d 831, 832 (Pa. Cmwlth. 2006) (citation omitted). Good cause 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. *Taylor*, 474 Pa. at 358-59, 378 A.2d at 832-33. Mere dissatisfaction with one's working conditions is not a necessitous and compelling reason for terminating one's employment. *Spadaro v. Unemployment Comp. Bd. of Review*, 850 A.2d 855, 860 (Pa. Cmwlth. 2004); *Gioia v. Unemployment Comp. Bd. of Review*, 661 A.2d 34, 37 (Pa. Cmwlth. 1995). A claimant need not indefinitely subject himself to unjust accusations and abusive conduct. *Berardi v. Unemployment Comp. Bd. of Review*, 458 A.2d 668, 670 (Pa. Cmwlth. 1983). However, "[r]esentment of a reprimand, absent unjust accusations, profane language or abusive conduct ... mere disappointment with wages and personality conflicts, absent intolerable working atmosphere do not amount to necessitous and compelling causes." *Lynn v. Unemployment Comp. Bd. of Review*, 427 A.2d 736, 737 (Pa. Cmwlth. 1981).

While the court acknowledges that Petitioner found his working conditions to be extremely difficult and his relationship with Kapral problematic, Petitioner was not subject to unjust accusation, profane language or abusive conduct such that his working atmosphere was intolerable. In addition, prior to submitting his resignation, Petitioner failed to take any steps, such as contacting management regarding his concerns, to preserve his employment. Therefore, we conclude that the Board did not err in finding that Petitioner lacked a necessitous and compelling reason to terminate his employment.

BONNIE BRIGANCE LEADBETTER,
President Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Dennis A. Oft,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 2088 C.D. 2009
	:	
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 11th day of June, 2010, the order of the Unemployment Compensation Board of Review in the above-captioned matter is hereby AFFIRMED.

BONNIE BRIGANCE LEADBETTER,
President Judge