IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Theresa D. Rizzuto, Petitioner	:	
v.	:	No. 2089 C.D. 2009
Unemployment Compensation Board of Review, Respondent	:	Submitted: February 26, 2010

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE JOHNNY J. BUTLER, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY FILED: March 29, 2010

Theresa D. Rizzuto (Claimant), *pro se*, petitions for review of an order of the Unemployment Compensation Board of Review (Board) reversing the Referee's decision and denying her unemployment compensation benefits pursuant to Section 402(b) of the Unemployment Compensation Law (Law).[1] We affirm.

Claimant was last employed as a part-time day shift manager/retail clerk by Field Goal Sportswear (Employer) in Scranton, Pennsylvania, and her last day of work was October 31, 2008. Thereafter, Claimant filed a claim for unemployment compensation benefits. By determination mailed March 13, 2009, the Erie UC

[1] Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. §802(b). Section 402(b) provides that an employee who voluntarily terminates her employment without cause of a necessitous and compelling nature is ineligible for benefits.

Service Center (Service Center) determined that Claimant was eligible for benefits pursuant to Section 402(b) of the Law. The Service Center found that Claimant voluntarily quit her employment because she needed to relocate for her daughter's health and that there were no alternatives to resolve the situation.

Employer appealed the Service Center's determination and a hearing was held before the Referee. In support of her claim, Claimant testified on her own behalf. In opposition to the claim, Employer's owner appeared and testified. Based on Claimant's testimony, the Referee concluded that Claimant met her burden of proof under Section 402(b) of the Law and affirmed the Service Center's determination. Employer appealed the Referee's decision to the Board.

The Board made the following findings of fact. Claimant's twelve year old daughter suffered from asthma since she was four years old. Claimant decided that living in Scranton, Pennsylvania was not good for her daughter's asthma. Claimant alleged that the air quality is better for asthma sufferers in Florida than in Scranton.

Claimant had an opportunity to relocate to Florida with a friend. Claimant gave Employer notice and voluntarily left her job on October 31, 2008. Continuing work was available had Claimant not quit her employment.

Based on the foregoing, the Board concluded that:

> Here, the claimant testified that, due to her daughter's asthma, she decided to move to Florida because the air quality in Florida is better. However, the claimant did not offer medical or meteorological evidence to substantiate that Cape Canaveral, Florida was better for her daughter's medical condition. Although the claimant did submit into the record a photocopied article from TIME for Kids indicating that Scranton, Pennsylvania is the worst city for asthma sufferers, the Board nonetheless finds the article neither competent nor credible. Therefore, the Board finds that the claimant's decision to move to Florida was a

> personal preference. Accordingly, the claimant has not shown a necessitous and compelling reason to quit her employment.

Board Opinion at 2. Thus, the Board reversed the Referee's decision and denied Claimant benefits pursuant to Section 402(b) of the Law.

In her *pro se* appeal to this Court, Claimant raises the issue of whether she is eligible for unemployment compensation benefits pursuant to Section 402(b) of the Law when she left her employment due to her minor daughter's worsening medical condition. In support of this issue, Claimant argues that she lived in Scranton, Pennsylvania for seven years during which time her daughter suffered with severe asthma. Claimant contends that a friend gave her the opportunity to move to Cape Canaveral, Florida, where the air quality is great and the warm air is conducive for asthma sufferers, and her daughter's asthma has greatly improved.

Claimant contends that she submitted an article at the Referee hearing from TIME for Kids stating that Scranton, Pennsylvania is the worst city to live in for asthma sufferers. Claimant argues further that she also submitted a list of medications her daughter was taking while in Scranton and copies of her daughter's report cards from Kindergarten through fifth grade showing the amount of days she missed school or was late to school due to asthma attacks and the need for breathing treatments.

Claimant states that she is now submitting to this Court; (1) the original article referenced in TIME for Kids; (2) an article setting forth the best cities in America for asthma sufferers, which lists five cities in Florida; (3) a letter from her Florida physician stating that her daughter's asthma has improved significantly since moving to Florida; (4) copies of her daughter's Florida report cards showing that she has not missed one day of school since moving to Florida in

November 2008; and (5) another article listing the facts of childhood asthma. Claimant asks this Court to reverse the Board's decision based on the evidence she has provided.

Initially, we note that this Court cannot consider the documents that Claimant has attached to her brief as exhibits in this matter. It is well settled that an appellate court cannot consider anything which is not part of the certified record in a case. Smith v. Smith, 637 A.2dd 622, 623-24 (Pa. Super. 1993), petition for allowance of appeal denied, 539 Pa. 680, 652 A.2d 1325 (1994). See also Fotta v. Workmen's Compensation Appeal Board (U.S. Steel/USX Corporation Maple Creek Mine), 534 Pa. 191, 196 n.2, 626 A.2d 1144, 1147 n.2 (1993) ("[T]he report is not part of the record and our review is limited to the evidence contained in the record. *Humphrey v. W.C.A.B. (Super Market Service)*, [514 A.2d 246, 251 (Pa. Cmwlth. 1986].").

Thus, we may not consider any exhibits that were not submitted into the certified record either prior to or during the Referee's hearing. We now turn to the merits of Claimant's appeal.

This Court's review of the Board's decision is set forth in Section 704 of the Administrative Agency Law, 2 Pa.C.S. §704, which provides that the Court shall affirm unless it determines that the adjudication is in violation of the claimant's constitutional rights, that it is not in accordance with law, that provisions relating to practice and procedure of the Board have been violated, or that any necessary findings of fact are not supported by substantial evidence. See Porco v. Unemployment Compensation Board of Review, 828 A.2d 426 (Pa. Cmwlth. 2003). Findings of fact are conclusive upon review provided that the record, taken as a whole, contains substantial evidence to support the findings. Taylor v. Unemployment Compensation Board of Review, 474 Pa. 351, 378 A.2d 829 (1977).

Substantial evidence is relevant evidence that a reasonable mind might consider adequate to support a conclusion. Hercules v. Unemployment Compensation Board of Review, 604 A.2d 1159 (Pa. Cmwlth. 1992). The Board is the ultimate fact finder and is, therefore, entitled to make its own determinations as to witness credibility and evidentiary weight. Peak v. Unemployment Compensation Board of Review, 509 Pa. 267, 501 A.2d 1383 (1985).

The question of whether particular facts constitute a voluntary quit is a question of law fully reviewable by this Court. Chamoun v. Unemployment Compensation Board of Review, 542 A.2d 207 (Pa. Cmwlth. 1988). The claimant bears the burden of proving a necessitous and compelling reason for voluntarily terminating the employment relationship. Mutual Pharmaceutical Company, Inc. v. Unemployment Compensation Board of Review, 654 A.2d 37 (Pa. Cmwlth. 1994). A cause of necessitous and compelling nature is one that results from circumstances which produce pressure to terminate employment which is both real and substantial and which would compel a reasonable person under the circumstances to act in the same manner. Monaco v. Unemployment Compensation Board of Review, 523 Pa. 41, 565 A.2d 127 (1989).

In Steck v. Unemployment Compensation Board of Review, 467 A.2d 1378 (1983), this Court granted benefits to a claimant who quit her job to move with her husband and children to a warmer and drier climate due to the husband's medical condition. This Court stated that its primary concern in the case was the reason for the family's move. Since the claimant's husband did not move out of personal whim or choice, but rather at the explicit direction of his physician to relocate, and the claimant could not retain her employment and simultaneously remain with her family, this Court determined that the claimant's decision to quit was reasonable and undertaken in good faith.

In the present appeal, the record does not support Claimant's assertion that she had a necessitous and compelling reason to leave her employment due to her minor daughter's worsening medical condition. As pointed out by the Board, Claimant did not offer medical or meteorological evidence to substantiate that Cape Canaveral, Florida was better for her daughter's medical condition. The Board correctly rejected the article from TIME for Kids as neither competent nor credible. It is merely a photocopy of a "fact" page from a publication that contains the statement that the Asthma and Allergy Foundation of America's 2006 study ranked Scranton, Pennsylvania as the worst city for asthmas sufferers based on 12 unnamed factors. In addition, the report cards that Claimant submitted do not state any reason why the daughter was absent just that she was absent a certain number of days each reporting period. Finally, the list of medications submitted by Claimant does not prove that her daughter's medical condition required her to relocate to Florida only that she was taking medication for asthma.

Unlike Steck, there is no evidence that Claimant was advised to relocate to Florida as a result of an explicit direction of a physician. In short, there simply is no medical evidence in the record to support a finding that Claimant had no other alternative than to move to Florida due to her daughter's asthma.[2]

[2] We note that when Claimant submitted the documents of record to the Referee, she requested that the Referee inform her as to whether she should send her daughter's medical records. However, we point out that a *pro se* litigant must to some extent assume the risk that his lack of legal training will prove his undoing. Vann v. Unemployment Compensation Board of Review, 508 Pa. 139, 148, 494 A.2d 1081 (1985).

Accordingly, the Board did not err by concluding that Claimant's decision to move to Florida was a personal preference.[3] The Board's order is affirmed.

JAMES R. KELLEY, Senior Judge

[3] Claimant specifically testified that *she* decided that living in Scranton was not good for her daughter and that she did not move to Florida sooner due to financial considerations. Transcript of Referee's Hearing at 3-5.

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O R D E R

AND NOW, this 29th day of March, 2010, the order of the Unemployment Compensation Board of Review in the above-captioned matter is affirmed.

JAMES R. KELLEY, Senior Judge