



voluntarily left his job without a necessitous and compelling reason. On appeal, we consider whether the Board capriciously disregarded evidence, namely, that Claimant's superior had instructed him to falsify personnel records, making it impossible for Claimant to remain in his position. Concluding that the Board did not capriciously disregard this evidence and the Board did not err as a matter of law in concluding that Claimant quit his job without necessitous and compelling cause, we affirm.

Claimant applied for unemployment compensation benefits after becoming separated from his employment with Aramark Healthcare Support (Employer). The Unemployment Compensation Service Center (Service Center) issued a determination finding Claimant ineligible for benefits under Section 402(b) of the Law. Claimant appealed the Service Center's determination and the Referee conducted an evidentiary hearing, at which only Claimant appeared and testified. Following the hearing, the Referee affirmed the Service Center's determination, and made the following factual findings:

1. The claimant began working for Aramark Healthcare Support [(Employer)] on March 30, 2009 and last worked on May 15, 2009 as a full time Director of Environmental Services on assignment to [Client] at a final rate of pay of \$70,000 per year.
2. On May 15, 2009, the claimant resigned employment without notice.
3. The claimant's reason for leaving employment was that he had a personality conflict with the director of residential services for [Client].
4. The claimant considered the director of residential services for the contracted [C]lient to have conflicting ethical principals.

5. Continuing work was available for the claimant.
6. The claimant was not in imminent threat of discharge at the time of leaving and had not had his job threatened in any way.

(Referee Findings of Fact (FOF) ¶¶ 1-6.) The Referee noted Claimant’s testimony that “he had a personality conflict with the client’s director of residential services [and] that he considered this person to have serious ethical deficiencies.” (Referee Decision at 2.) The Referee also noted Claimant’s testimony that he agreed with his district manager that the “position was not a good fit.” (Referee Decision at 2.) The Referee found that Claimant was ineligible for benefits under Section 402(b) “[b]ecause the claimant was not in imminent threat of discharge and because the claimant’s mere dissatisfaction with his working conditions does not constitute necessitous and compelling reasons for leaving employment.” (Referee Decision at 2.) Claimant appealed to the Board, which ultimately affirmed the Referee’s Decision and adopted the Referee’s factual findings and conclusions. Claimant now petitions this Court for review.<sup>2</sup>

On appeal, Claimant argues that the Board erred in concluding that he quit without cause of a necessitous and compelling nature. Claimant asserts that by characterizing his problem with Employer’s Client’s director of residential services (Director) as a mere “personality conflict,” the Board capriciously disregarded his testimony that he was asked to falsify interview records. Claimant further argues

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<sup>2</sup> “Our scope of review is limited to determining whether the Claimant's constitutional rights were violated, whether an error of law was committed, or whether substantial evidence supports the findings of fact.” Williams v. Unemployment Compensation Board of Review, 926 A.2d 568, 571 n.4 (Pa. Cmwlth. 2007) (citation omitted). Whether a claimant had cause of a necessitous and compelling nature to leave his employment “is a legal conclusion subject to appellate review.” Brown v. Unemployment Compensation Board of Review, 780 A.2d 885, 888 (Pa. Cmwlth. 2001).

that, under this Court's precedent, being instructed to engage in dishonest behavior constitutes a necessitous and compelling reason to quit. The Board responds that it did not capriciously disregard evidence; rather, Claimant's own testimony supports the finding that he quit because of a personality conflict, which is not a necessitous and compelling reason to quit a job.

“[T]he Board is the ultimate factfinding body empowered to resolve conflicts in evidence, to determine the credibility of witnesses, *and to determine the weight to be accorded evidence.*” Oliver v. Unemployment Compensation Board of Review, 5 A.3d 432, 438 (Pa. Cmwlth. 2010) (en banc) (emphasis added). Capricious disregard occurs when the fact finder deliberately *ignores evidence* that a reasonable person would consider important. Leon E. Wintermyer, Inc. v. Workers' Compensation Appeal Board (Marlowe), 571 Pa. 189, 203 n.12, 812 A.2d 478, 487 n.12 (2002) (quoting Kania v. Ebensburg State School and Hospital, 410 A.2d 939, 940 (Pa. Cmwlth. 1980)); *see also* Wintermyer, 571 Pa. at 210-11, 812 A.2d at 492 (Cappy, J., concurring) (capricious disregard occurs “where the agency completely ignores overwhelming evidence *without comment.*” (emphasis added).) Our Supreme Court has cautioned that “where there is substantial evidence to support an agency's factual findings, and those findings in turn support the conclusions, it should remain a rare instance in which an appellate court would disturb an adjudication based upon capricious disregard.” Wintermyer, 571 Pa. at 204 n.14, 812 A.2d at 488 n.14.

Claimant testified that he reported to Employer's District Manager and to Client's Director. Claimant stated he had “several disagreements” with Director and he realized “it wasn't going to be a good fit for either one of us.” (Hr'g Tr. at 5, R.R.

at 7a.) Claimant explained that “several things happened during my stay there that prompted me to make the decision” to quit. (Hr’g Tr. at 5, R.R. at 7a.) Claimant stated that he and Director had a “personality conflict.” (Hr’g Tr. at 5, R.R. at 7a.) He then asked the Referee: “Can I give you an example of some of the unethical behavior I was asked to join in with?” (Hr’g Tr. at 5, R.R. at 7a.) With the Referee’s permission he proceeded to provide the example.

Claimant explained that one of his responsibilities was to interview prospective employees for a new facility of the Client. The Client had distributed job applications to its employees at an older facility to give them an opportunity to move to the newer facility. Claimant was instructed to interview any current employees of Client’s older facility that applied. Claimant interviewed a maintenance employee and recommended that he be hired. Director responded that she would not hire him because she had made a “back room deal” with the management of Client’s older facility not to hire any of its employees, lest that facility be left short-staffed. (Hr’g Tr. at 6, R.R. at 8a.)

Claimant concluded that his interviews of employees of Client’s older facility were a sham, given that Director would hire none of them. Further, Director directed Claimant to state on his interview notes of the maintenance worker that he was not qualified for the position, which was not true. Claimant refused to fill out the paperwork as instructed by Director. Claimant did not believe he was asked to do anything illegal, but he viewed the request as unethical. (Hr’g Tr. at 6, R.R. at 8a.)

Claimant spoke to Employer's District Manager about Director's directive. District Manager responded by asking Claimant if it was "worth throwing [himself] under the bus for some guy" that Claimant did not even know. (Hr'g Tr. at 6, R.R. at 8a.) Claimant stated that District Manager was not at all supportive and more concerned with keeping Employer's contract with its Client than with Claimant's ethical dilemma.

In spite of this incident, Claimant testified that he continued to work two more weeks because he had never left a job in his adult life for any reason. On May 15, 2009, District Manager sat in on a meeting between Claimant and Director, after which Claimant and District Manager agreed that the "personality conflict" with Director was not going to resolve. (Hr'g Tr. at 8, R.R. at 10a.) Claimant stated that District Manager "pretty much came to terms with the fact that it wasn't working out, it wasn't a good fit and it wasn't going to work," (Hr'g Tr. at 8, R.R. at 10a), and "we mutually agreed it was best that we parted ways." (Hr'g Tr. at 4, R.R. at 6a.) Claimant acknowledged that no one ever threatened to fire him. (Hr'g Tr. at 7-8, R.R. at 9a-10a.)

Claimant testified that, in addition to his ethical dilemma, he had several reasons for quitting, including his "personality conflict" with Director, (Hr'g Tr. at 5, 8, R.R. at 7a, 10a); Employer's failure to provide Claimant with a work cellular telephone, which was promised, (Hr'g Tr. at 8-9, R.R. at 10a-11a); and the fact that Claimant was "so busy" doing job duties outside his position of Environmental Services Director because of "staffing issues." (Hr'g Tr. at 5, 8, R.R. at 7a, 10a.)

After considering Claimant’s testimony and evidence of record, the Referee found that “[t]he claimant considered [Director] for the contracted [C]lient to have conflicting ethical principals,” which the Board adopted as its own finding. (FOF ¶ 4.) As such, the Board, indeed, considered Claimant’s testimony regarding Director’s directive to Claimant to manipulate personnel records. The Board, relying on Claimant’s own testimony, found that “claimant’s reason for leaving [E]mploy[er] was that he had a personality conflict with [Director].” (FOF ¶ 3.) The Board could have found that it was the unethical directive that caused Claimant to leave his employment, despite his waiting two weeks after the directive to quit, but did not. Instead, the Board made its findings based on Claimant’s testimony, which listed several reasons for his quit, and his characterization of the situation as a “personality conflict.” Merely because the Board did not expressly find that the ethical issue was the reason for Claimant’s quit does not mean that the Board ignored the ethical issue or otherwise disregarded evidence in this matter. The Board *weighed* Claimant’s testimony differently than Claimant would have liked, which is not grounds to reverse the Board for capricious disregard of evidence, and this is not one of the rare instances in which this Court should disturb the Board’s adjudication based on capricious disregard.

Having concluded that the Board did not capriciously disregard evidence of record, we now must decide whether the Board erred as a matter of law by concluding that Claimant did not show a necessitous and compelling reason to quit under Section 402(b) of the Law. “In order to show necessitous and compelling cause, the claimant must establish that circumstances existed which produced real and substantial pressure to terminate the claimant's employment; like circumstances

would compel a reasonable person to act in the same manner; the claimant acted with ordinary common sense; and the claimant made a reasonable effort to preserve his or her employment.” Brown v. Unemployment Compensation Board of Review, 780 A.2d 885, 888 (Pa. Cmwlth. 2001). Personality conflicts, absent an intolerable work atmosphere, do not amount to a necessitous and compelling cause for leaving one’s employment. Lynn v. Unemployment Compensation Board of Review, 427 A.2d 736, 737 (Pa. Cmwlth. 1981). Moreover, “[m]ere dissatisfaction with one’s working conditions does not constitute cause of a necessitous and compelling nature for terminating one’s employment.” Brunswick Hotel and Conference Center, LLC v. Unemployment Compensation Board of Review, 906 A.2d 657, 660 (Pa. Cmwlth. 2006).

The record indicates that Claimant quit his employment because of a personality conflict with Director, who worked for Employer’s contracted Client. Claimant did not present evidence that his work environment was intolerable – he was not forced into filing fraudulent records and, when he refused Director’s directive to manipulate personnel records, his job was in no way jeopardized. Aside from Claimant’s personality conflict with Director, Claimant testified he was also unhappy with Employer’s failure to provide him with a cellular telephone and with the amount of work he was required to do because of staffing issues. Unfortunately for Claimant, his testimony merely establishes that he was unhappy with his work conditions, but his situation was not so intolerable that a reasonable person in a similar situation would have quit his employment. As such, the Board did not err as a matter of law.



Accordingly, we affirm the order of the Board.

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**RENÉE COHN JUBELIRER, Judge**



IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Gregory A. Carey, :  
Petitioner :  
 :  
v. : No. 2103 C.D. 2009  
 : Submitted: February 9, 2011  
Unemployment Compensation :  
Board of Review, :  
Respondent :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge  
HONORABLE DAN PELLEGRINI, Judge  
HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE MARY HANNAH LEAVITT, Judge  
HONORABLE P. KEVIN BROBSON, Judge  
HONORABLE PATRICIA A. McCULLOUGH, Judge  
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

DISSENTING OPINION  
BY JUDGE LEAVITT

FILED: April 27, 2011

Respectfully, I dissent. The majority concludes that Claimant quit his job because he was “unhappy with his work conditions,” which included a “personality conflict” with the Director of Residential Services at Providence Point. However, the Board did not find that Claimant quit because of dissatisfaction with work conditions. Rather, the Board found that Claimant quit because of his “personality conflict” with the Director over their “conflicting ethical principals (sic).” Board Adjudication, Findings of Fact 3, 4.

The majority treats this personality conflict as existing independently of the ethical issue, but the conflict was solely one of ethics, as found by the Board.

Claimant, the sole witness at the hearing, testified that the conflict was based upon the Director's "unethical behavior." Reproduced Record at 7a (R.R. \_\_\_\_). The Director made a "back room deal" not to hire certain job applicants in spite of directions from her supervisors that those applicants be given a preference. R.R. 8a. To advance her "deal," the Director ordered Claimant to report falsely that an applicant with the preference was not qualified for the position. R.R. 8a.

Claimant, who was not represented at the hearing before the Referee, used the term "personality" conflict, when he should have used the term "ethical" conflict or "moral" conflict. However, his eligibility for benefits should not come down to a choice of adjective when the evidence explains the true nature of the conflict. It was not a matter of differences in taste or style, the meaning usually ascribed to "personality conflict." The conflict involved the serious matter of being directed to falsify records.

The majority notes that Claimant testified to being annoyed with Aramark for not giving him a cellular telephone and by the amount of work he was assigned. However, Claimant made it clear that these gripes had nothing to do with his resignation. Claimant repeated, several times, that he resigned because of the unethical directives he, and others, received from the Director. More to the point, the Board made no findings about Claimant's gripes nor did it suggest that they prompted his decision to resign.

It is impossible to discern from the Board's scant adjudication whether the Board was even aware of the most critical portion of Claimant's testimony, *i.e.*, that he was directed to falsify personnel records. We cannot assume, from the Board's silence, that the Board weighed the evidence on this directive. As our Supreme Court has explained,

[a]lthough the weight to be given the evidence and the credibility to be afforded the witnesses are within the province of the Board as finder of fact, such a body *is not free to ignore the overwhelming evidence* in favor of a contrary result not supported by the evidence.

*Borello v. Unemployment Compensation Board of Review*, 490 Pa. 607, 618-619, 417 A.2d 205, 211 (1980) (internal citation omitted) (emphasis added). Capricious disregard occurs when the fact finder fails to *comment* on critical evidence that could have compelled a different conclusion. *Hinkle v. City of Philadelphia, Board of Pensions and Retirement*, 881 A.2d 22, 26-27 (Pa. Cmwlth. 2005) (emphasis added).

Further, our jurisprudence directs that a person who chooses to quit a job rather than engage in unethical behavior is eligible for benefits. *Share v. Unemployment Compensation Board of Review*, 512 A.2d 794 (Pa. Cmwlth. 1986). For this reason, the Board needed to make specific findings about Claimant's ethical dispute with the Director. The Board found one reason for Claimant's resignation – the ethical dispute with the Director. It failed to find, however, whether his ethical dispute with the Director was justified.

Such findings are necessary to evaluate any claimant's assertion that he resigned for good reason because he was asked to do something legally or morally wrong. If the Board did not think Claimant's real reason for quitting was his ethical dilemma, it failed to so find. On the other hand, if it did not think being instructed to falsify personnel records gave Claimant a necessitous and compelling reason to quit, then it misapprehended our jurisprudence in this area of law and should be reversed.

The Board adopted a "rush job" by the Referee, and the result is an unclear adjudication that offered no comment on Claimant's "critical evidence" that he was instructed to falsify records. Because we cannot assume the Board considered

this critical issue, I would vacate and remand for findings from the Board about the Director's instructions to Claimant.

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MARY HANNAH LEAVITT, Judge

Judge Brobson and Judge McCullough join in this dissenting opinion.