

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Sean F. Marinelli,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 2132 C.D. 2009
	:	SUBMITTED: March 5, 2010
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

**BEFORE:**   **HONORABLE BONNIE BRIGANCE LEADBETTER**, President Judge  
              **HONORABLE ROBERT SIMPSON**, Judge  
              **HONORABLE PATRICIA A. McCULLOUGH**, Judge

**OPINION NOT REPORTED**

**MEMORANDUM OPINION BY  
PRESIDENT JUDGE LEADBETTER**

**FILED:** April 21, 2010

Sean F. Marinelli petitions, *pro se*, for review of the order of the Unemployment Compensation Board of Review (Board), which denied him unemployment compensation benefits on the ground that he voluntarily terminated his employment without a necessitous and compelling reason. We affirm.

Marinelli was employed as a General Laborer/Machine Operator at Modern Industries (Employer). In front of the Referee, he testified that his work area was above an area used for burning off parts. He testified that smoke from the burning off operation would sometimes infiltrate his work area, and that it would cause him chest pain and other ailments. Marinelli claimed that he complained about the smoke to his supervisor and other managers, but was rebuffed. He then

contacted the Occupational Safety & Health Administration (OSHA) to complain about his working conditions. Marinelli testified that after contacting OSHA, he called Employer and left a message saying he would not be coming in because of the working conditions, and asked them to call if they had any questions. He then did not come into work or call for the following three days, at which point Employer concluded that he had quit.

In rebuttal, Employer presented the testimony of Marinelli's supervisor, James Herring. Herring confirmed that the work area did occasionally become smoky, and that Marinelli would sometimes ask for the situation to be fixed. According to Herring, when Marinelli complained about the smoke, he would open various windows and doors to ensure that the facilities' fans could properly circulate air and eliminate the smoke. Herring testified, however, that Marinelli did not tell him that the smoke was making him feel sick nor did he provide any medical documentation indicating that he needed special accommodations. He also testified that Marinelli could have transferred to a different workspace in the facility, where he would not be exposed to smoke.

The Referee found credible some of Marinelli's testimony, including his testimony about the effect the smoke had on him. He also found credible all of Herring's testimony. The Referee concluded that Marinelli had not exhausted all alternatives before quitting, and denied benefits. On appeal, the Board affirmed, adopting the Referee's findings and conclusions, in addition to noting that Marinelli never informed Employer that the smoke was causing him medical

problems. The Board also emphasized that Marinelli could have transferred to a different work space.<sup>1</sup> An appeal to this court followed.

When a claimant voluntarily terminates employment, that claimant is ineligible for unemployment compensation benefits unless he left the employment for necessitous and compelling reasons. Section 402(b) of the Unemployment Compensation Law,<sup>2</sup> 43 P.S. § 802(b); *Nolan v. Unemployment Comp. Bd. of Review*, 797 A.2d 1042 (Pa. Cmwlth. 2002). A claimant bears the burden of proving necessitous and compelling reasons for leaving his job. *Wivell v. Unemployment Comp. Bd. of Review*, 673 A.2d 439 (Pa. Cmwlth. 1996). In cases where employment is terminated for medical reasons, the claimant may meet his burden by showing adequate health reasons existed to justify the voluntary termination, communicating such reasons to his employer, and being available to work if reasonable accommodations can be made. *Genetin v. Unemployment Comp. Bd. of Review*, 499 Pa. 125, 451 A.2d 1353 (1982); *Nolan*, 797 A.2d 1042.

On appeal, Marinelli asserts that the smoky working conditions created a necessitous and compelling reason for leaving employment.<sup>3</sup> However,

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<sup>1</sup> Marinelli's initial application for benefits was granted. As a result, the Referee and Board concluded that a nonfault overpayment occurred, a conclusion that is not challenged before this court.

<sup>2</sup> Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*.

<sup>3</sup> In his "Statements of Questions Involved" Marinelli raises a number of issues which are not addressed in the Argument section or any other section of his brief. Because they are not fully briefed, they are waived, and will not be addressed here. *Saad v. Sacred Heart Hosp.*, 700 A.2d 604 (Pa. Cmwlth. 1997); *Savage v. Unemployment Comp. Bd. of Review*, 491 A.2d 947 (Pa. Cmwlth. 1985). Even if the issues had not been waived, they would not command a different result. The issues generally concern matter irrelevant to the dispositive legal issue (such as the Board incorrectly referring to Marinelli as a "she" and the stenographer failing to accurately transcribe certain statements) or challenge credibility findings, a matter not subject to judicial review on appeal.

the Board found credible Herring's testimony that, while Marinelli complained about the smoke, he never explained to management the effect it was having on his health. Because credibility determinations rest with the Board, we can not disturb this finding. *Graham v. Unemployment Comp. Bd. of Review*, 840 A.2d 1054 (Pa. Cmwlth. 2004). Telling the employer about the health problem before voluntarily quitting for health reasons is a requirement for receiving benefits, so the Board was correct to conclude that Marinelli does not qualify.

For all the foregoing reasons, we affirm.

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**BONNIE BRIGANCE LEADBETTER,**  
President Judge

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Unemployment Compensation	:	
Board of Review,	:	
	:	
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**ORDER**

AND NOW, this 21st day of April, 2010, the order of the Unemployment Compensation Board of Review in the above-captioned matter is hereby AFFIRMED.

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**BONNIE BRIGANCE LEADBETTER,**  
President Judge