IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Doreen J. Luther,	:	
Petitioner	:	
	:	
v.	:	No. 2184 C.D. 2010
	:	Submitted: February 25, 2011
Unemployment Compensation	:	
Board of Review,	:	
Respondent	:	

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE PELLEGRINI FILED: March 17, 2011

Doreen J. Luther (Claimant) appeals *pro se* from an order of the Unemployment Compensation Board of Review (Board) affirming in part and reversing in part the decision of the Referee and denying her unemployment compensation benefits pursuant to Section 401(d)(1) of the Unemployment Compensation Law (Law), 43 P.S. §801(d)(1),[1] because she failed to prove that she was still attached to the job market. For the reasons that follow, we affirm.

[1] Section 401(d)(1) of the Law provides that: "Compensation shall be payable to any employe who is or becomes unemployed, and who… is able to work and available for suitable work." The basic purpose of the statutory requirements of availability is to establish that a claimant is genuinely and realistically attached to the labor market.

Claimant was employed as a greeter with Blue Knob Auto Sales (Employer) and returned to work from maternity leave in April 2010. She terminated her employment with Employer when her hours changed at work. She had worked a 35-hour work-week, was paid for 40 hours each week that she worked, and received $520 per week plus healthcare benefits. Her hours were being reduced to 30 hours per week and she would lose her healthcare benefits. Her weekly income of $390 per week represented a $130 per week reduction in her wages. The Department of Labor and Industry denied Claimant benefits pursuant to Section 402(b) of the Law, 43 P.S. §802(b), for voluntarily terminating her employment. Claimant appealed, and a hearing was held before a Referee.

At the hearing, Claimant testified that she worked for Employer as a greeter but also did paperwork and closed the office in the evenings. Her last day of work was May 5, 2010, when she quit her employment. She stated that she had come back from maternity leave on April 5, 2010, and had arranged for daycare for her baby during the week, but could not find someone to watch her baby on Saturdays when she normally had to work. Prior to having her baby, she had been working 35 hours per week and receiving healthcare benefits, but had been getting paid for 40 hours. Upon her return, she was sick and then her baby was sick, so she left work early several days and then missed some work. She was offered a schedule of Monday through Friday, 3:00 p.m. to 10:00 p.m., which she readily agreed to work. After calling off two more days of work, she was then demoted to a part-time employee working 30 hours per week and lost her healthcare benefits. Because her husband was self-employed as a landscaper and had no health insurance, she felt she had to quit. She stated the whole reason she was working

for her family was for healthcare benefits. When asked how she would be able to pay her bills if she quit working the 30 hours per week, Claimant stated:

> I can't afford them in all honesty, but what makes it logical to us was I'd be paying out more money because I'd be paying for day care and obviously getting to and from work versus my husband is working longer hours to help cover the bills that I had, but we're not paying out for daycare and I'm not using gas to and from work.

(July 7, 2010 hearing transcript at 8.) She emphasized that the main thing was paying for daycare because it was very expensive. Claimant did not provide any testimony as to whether she was seeking work at the time of the hearing or was employed.

Employer's Business Manager, Brian Schmidt, testified regarding Claimant's schedule, essentially stating that Claimant had missed too much work after her return from maternity leave and that he was left without a back-up employee at the dealership. Even though he did not feel she was reliable, he was attempting to accommodate Claimant by offering her different hours, but he maintained that all greeters had to work on Saturdays.

The Referee reversed the Department of Labor and Industry's determination and granted benefits finding that Claimant had a necessitous and compelling reason for terminating her employment because Employer had unilaterally changed the terms and conditions of Claimant's employment. Employer appealed, and the Board affirmed in part, agreeing with the Referee that Employer had unilaterally changed the terms and conditions of Claimant's

employment. However, the Board went on to find that because Claimant admitted that she considered being on unemployment "better than working because she would not have to pay for child care and her husband would work extra hours to cover some of the bills," Claimant had failed to establish her realistic attachment to the job market as required under Section 401(d)(1) and denied benefits. This appeal by Claimant followed.[2]

Claimant contends that the Board erred in denying her benefits based on her statement that she "admitted that she would not pay for day care for her child and her husband would work additional hours." She claims that the Board completely took her statements out of context. Rather, she argues that those statements support both the Referee's and Board's conclusion that she quit her job for a compelling and necessitous reason because she was forced to quit her employment in order to look for full-time work. She further argues that there is no evidence to support the Board's conclusion that she was not able or available for suitable work.

It was Claimant's burden to prove that she was available for work. *Galla v. Unemployment Compensation Board of Review,* 435 A.2d 1344 n.3 (Pa. Cmwlth. 1981). We have reviewed Claimant's testimony in its totality and agree with the Board that Claimant presented no testimony or other evidence that she was available for suitable work. While Claimant may have quit her job because

[2] Our scope of review of the Board's decision is limited to determining whether an error of law was committed, constitutional rights were violated or findings of fact were supported by substantial evidence. *Frazier v. Unemployment Compensation Board of Review*, 833 A.2d 1181 (Pa. Cmwlth. 2003).

she could no longer afford daycare, she never stated that she was looking for work, had made any attempts or was currently employed. What Claimant essentially stated was that she was not working so she would not have to pay for child care and her husband could work extra hours to pay for some of the bills. That is not an admission of someone intending to return to the work force and looking for work full-time. Consequently, Claimant was not able or available for suitable work.

Accordingly, the order of the Board is affirmed.

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DAN PELLEGRINI, JUDGE

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O R D E R

AND NOW, this 17th day of March, 2011, the order of the Unemployment Compensation Board of Review, dated September 20, 2010, at B-506466, is affirmed.

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DAN PELLEGRINI, JUDGE