IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Kathleen Begler,	:	
Petitioner	:	
	:	
v.	:	No. 2226 C.D. 2010
	:	Submitted: March 4, 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 LEAVITT FILED: August 12, 2011

Kathleen Begler (Claimant) petitions for review of an adjudication of the Unemployment Compensation Board of Review (Board) denying her claim for unemployment compensation benefits. The Board found that Claimant voluntarily quit her job without cause of a necessitous and compelling nature, rendering her ineligible for benefits under Section 402(b) of the Unemployment Compensation Law (Law).[1] Discerning no error in the Board's adjudication, we affirm.

Claimant was employed by the Duquesne University School of Health Sciences (Employer) for 15 years as an Assistant Professor of Health Information

[1] Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §802(b). It provides, in relevant part, that "[a]n employe shall be ineligible for compensation for any week … [i]n which his unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature." *Id.*

Management. Claimant resigned on July 1, 2008; however, under a severance agreement, she continued to receive her salary and benefits through November 2009. At that point, she applied for unemployment benefits. The Duquesne UC Service Center determined that Claimant had a necessitous and compelling reason for leaving her job and was eligible for benefits under Section 402(b) of the Law, 43 P.S. §802(b). Employer appealed, and a hearing was held before a Referee.

Claimant testified that she worked for 15 years as an assistant professor and that during this time, she also served as an internship coordinator for the school's Health Information Management Department. Claimant stated that she resigned in July 2008 at Employer's request and, accordingly, her separation from employment was the equivalent of a discharge. Claimant explained that her problems began in September 2004 when, for health reasons, she declined the proffered chairmanship of the department. Claimant believed that this refusal caused her relationship with the Dean of Health Sciences, Gregory Frazer, to deteriorate.

Claimant took a leave of absence from January 2006 to June 2007 for health reasons. Upon her return, Claimant learned that Dean Frazer was running the department and had reassigned her duties as internship coordinator to another professor. Claimant's request to resume her internship coordinator duties was refused. Instead, Claimant was expected to supplement her regular teaching assignment with scholarly research.

In October of 2007, Claimant spoke with Provost Pearson about what she believed to be unfair treatment. In that meeting, Claimant suggested Dean Frazer should be replaced or that the department be transferred from the School of Health to the School of Business. Provost Pearson rejected this proposal.

Dean Frazer and Claimant disagreed on whether the department should focus on hospital administration or electronic medical records. In

November of 2007, Dean Frazer told Claimant in an e-mail that if they could not agree on a focus for the Health Information Management Department, he would begin efforts to close the program.

In March of 2008, Claimant received an evaluation that was "unsatisfactory" in scholarship but "outstanding" in teaching. Reproduced Record at 56a (R.R. ___). Claimant e-mailed Dean Frazer to inquire into a buyout. Under her negotiated resignation, Employer provided Claimant with her salary and benefits through November of 2009, which guaranteed that Claimant's daughter could finish her degree without paying tuition. Claimant declined to discuss other details of her resignation agreement, stating that it was confidential.[2]

Upon cross-examination, Claimant admitted that she never told Dean Frazer that she wanted to work and did not wish to resign. Claimant also admitted that no one told her that if she did not resign, she would have no further employment.

Employer presented the testimony of Gregory Frazer, the Dean of Health Sciences. Dean Frazer stated that the person who had replaced Claimant as internship coordinator during Claimant's medical leave had done an excellent job and for that reason he did not return the coordinator job to Claimant. Dean Frazer also explained that Claimant taught three courses, totaling nine credit hours. As a non-tenure track professor, she was required to carry a 12 credit hour load and, thus, was expected to make up the difference in scholarly research. Claimant had previously made up the difference through her internship coordinator duties. She did not perform the necessary scholarly research but was not disciplined.

[2] According to one of Employer's witnesses, the terms of the agreement could be disclosed as necessary "to comply with legal obligations," such as a hearing on unemployment. R.R. 62a.

Dean Frazer explained that Claimant persisted in her request to resume her internship coordinator position. Because "it was getting to be an impasse," Dean Frazer asked Claimant whether she wanted to negotiate a "buyout" or whether she wanted to continue employment. R.R. 64a. Dean Frazer stated that continued employment as a teacher was always available to Claimant. Dean Frazer explained that a buyout generally occurs when a faculty member feels frustrated because they are not able to "contribute to the mission and direction of the program." R.R. 65a. Dean Frazer stated that he had no intention to fire Claimant and that the school's Health Information Management Department remains active. Although the school had experienced reduced enrollment in the program, Claimant would not have been dismissed given her level of seniority.

On rebuttal, Claimant stated that the person who took over the internship coordinator duties was not as qualified as Claimant because she did not have Claimant's established relationships and connections throughout western Pennsylvania. Claimant agreed that Dean Frazer had the discretion to decide who should do this job and that he did not have to consult her about the decision. According to Claimant, the impasse she reached with Dean Frazer did not concern the internship coordinator position, but rather, the focus of the department, *i.e.*, an electronic medical records program versus a hospital administration program. She supported the former, not the latter.

The Referee found that Claimant voluntarily quit her employment without cause of a necessitous and compelling nature and was ineligible for benefits under Section 402(b) of the Law, 43 P.S. §802(b). The Referee found that Claimant chose to leave because she was offered a generous severance package and because she was dissatisfied with her job. The Referee found that relieving Claimant of the internship coordinator position and replacing it with scholarly research did not render her job unsuitable.

Claimant appealed to the Board, and it affirmed. The Board resolved all conflicts in testimony in favor of Employer, finding that Claimant had continuing work available to her under the same requirements as other faculty members not seeking tenure. Claimant petitioned for this Court's review.

On appeal,[3] Claimant presents four issues. First, Claimant contends that she resigned under the threat of imminent termination. Second, Claimant contends that her resignation was of a necessitous and compelling nature because Claimant resigned in order to preserve her daughter's tuition remission. Third, Claimant contends that the Board erred in failing to make an evidentiary finding regarding Claimant's Exhibit C-1, *i.e.*, a photocopy of e-mails between Claimant and Dean Frazer. Finally, Claimant contends that her appeal implicates equal protection because the Board's decision in this case has

> created an invidious and irrational distinction between claimants who resign to preserve access to healthcare benefits and claimants who resign to preserve access to tuition benefits.

Claimant's Brief at 18. Stated otherwise, she argues, as a matter of equal protection, if the Board finds that resigning to preserve health insurance is a necessitous and compelling reason to resign, then the Board must also hold that resigning to preserve free tuition for a family member is a necessitous and compelling reason to resign.

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[3] Our scope of review is limited to determining whether the Board's adjudication is in violation of constitutional rights, errors of law were committed, or whether findings of fact are supported by substantial evidence. *Kirkwood v. Unemployment Compensation Board of Review*, 525 A.2d 841, 843 (Pa. Cmwlth. 1987). Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Chishkov v. Unemployment Compensation Board of Review*, 934 A.2d 172, 176 n.4 (Pa. Cmwlth. 2007).

The Board counters that Claimant was never threatened with imminent termination but, rather, resigned because of dissatisfaction with working conditions. Further, Claimant could have preserved her daughter's tuition remission by continuing to work as a professor. In making its findings, the Board did consider the two e-mails exchanged between Dean Frazer and Claimant about a buyout agreement.[4] Finally, the Board contends that this appeal does not implicate equal protection because the Board found that Claimant did not resign her position in order to maintain tuition benefits for her daughter but because she was unhappy with her job.

In a voluntary quit case, the claimant has the burden to prove that she resigned for necessitous and compelling reasons. *Draper v. Unemployment Compensation Board of Review*, 718 A.2d 383, 385 (Pa. Cmwlth. 1998). Cause of necessitous and compelling nature is defined as circumstances that 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 v. Unemployment Compensation Board of Review*, 474 Pa. 351, 358-359, 378 A.2d 829, 832-833 (1977). In addition, claimant must have acted with ordinary common sense in leaving her employment; made reasonable efforts to preserve her employment; and had no other real choice but to quit. *Craighead-Jenkins v. Unemployment Compensation Board of Review*, 796 A.2d 1031, 1033 (Pa. Cmwlth. 2002).

We begin with Claimant's contention that she resigned under the threat of imminent termination. Claimant acknowledges that there was no overt

[4] Claimant included in the reproduced record additional e-mails exchanged between Dean Frazer and Claimant in September of 2007. However, these e-mails are not part of the certified record and were never admitted into evidence. Accordingly, we will not consider them.

threat of imminent termination. She argues, however, that it was implied. In an e-mail to Claimant, Dean Frazer stated that unless Claimant began to cooperate and find a focus for the program, he might be forced to end the program. The Board found that this was not a threat to fire Claimant but a strongly worded encouragement to cooperate with the Dean's decision on the proper focus for the department. It was the Board's prerogative, as fact finder, to give the e-mail that construction. In sum, the record does not support Claimant's claim that her discharge was imminent, and the Board did not err in refusing to so find.

Claimant next contends that she was compelled to resign in order to preserve her daughter's tuition remission. The Board responds that Claimant resigned because she refused to work with Dean Frazer.

Dean Frazer pointed out the potential consequences for her daughter's tuition privilege if the Heath Information Management program ended. However, no evidence was presented that had Claimant decided to cooperate with Dean Frazer or continued her teaching employment that this would have occurred. Claimant's assertion that she resigned to preserve her daughter's free education is just a recast of her argument that she resigned because she was about to be fired. Continued employment as a professor would have preserved her daughter's free tuition, and there is no merit to Claimant's second issue.

Claimant next contends that the Board erred in failing to make an evidentiary finding with respect to Claimant's Exhibit C-1, *i.e.*, a record of two e-mails exchanged between Claimant and Dean Frazer. The Board maintains that the content of these e-mails is reflected in the Board's findings and conclusions.

Claimant's e-mail to Dean Frazer stated that she was considering the suggestion of a buyout and desired to know the terms of such a buyout. Dean Frazer responded, explaining that a buyout would entitle her to an additional year of salary. However, he also offered her the option of continuing to teach a reduced

course load, *i.e.*, nine credit hours. Dean Frazer cautioned Claimant that if she continued to refuse to "agree on a focus or make a due diligent effort to find a compromise," he would "begin efforts to close the program which will jeopardize your and Shirley's positions." Exhibit C-1, R.R. 73a. Dean Frazer explained that if the program ended, "there would be no guarantee for [Claimant's] daughter's tuition." *Id.*

The Board did not agree with Claimant's construction of this e-mail, but the Board did not ignore its substance. Claimant construed the message as forcing her to resign. The Board, however, construed the e-mail as an effort to coax Claimant into staying. It is within the fact-finding prerogative of the Board to assign the appropriate meaning to documentary evidence.

For these reasons, we affirm the decision of the Board.[5]

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MARY HANNAH LEAVITT, Judge

[5] Because we affirm the Board's holding that Claimant resigned due to her dissatisfaction with her working conditions and with Dean Frazer, not to preserve her daughter's tuition remission benefit, it is not necessary for us to address Claimant's equal protection argument.

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O R D E R

AND NOW, this 12th day of August, 2011, the order of the Unemployment Compensation Board of Review in the above-captioned matter, dated September 20, 2010, is hereby AFFIRMED.

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MARY HANNAH LEAVITT, Judge