

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Donald G. Karpowich, :
Petitioner :
v. :
Unemployment Compensation :
Board of Review, : No. 2242 C.D. 2009
Respondent : Submitted: March 12, 2010

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY

FILED: May 19, 2010

Donald G. Karpowich (Employer) challenges the order of the Unemployment Compensation Board of Review (Board) which reversed the referee's denial of benefits under Section 402(b) of the Unemployment Compensation Law (Law).¹

The facts, as found by the Board, are as follows:

1. The claimant was last employed as a legal secretary and receptionist by Attorney Donald G. Karpowich from October 2001, and her last day of work was May 12, 2009.
2. The employer yelled and cursed at the claimant throughout her employment.

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §802(b).

3. On one occasion, the employer yelled at the claimant 'What the f**k is wrong with you?'
4. The employer would also call the claimant 'stupid' and 'idiot.'
5. The claimant spoke to employer on several occasions and told him that he needed to stop the abuse, but he just laughed it off.
6. On May 12, 2009, the employer was yelling at the claimant because he could not locate a file. The employer screamed: 'Jesus Christ. Why do I think you could find anything?'
7. The employer eventually found the file on his own desk.
8. Later in the morning, the employer became upset after learning about an arbitration scheduled that day that was not on the scheduling calendar.
9. The employer yelled at the claimant that the oversight was her fault and slammed his office door.
10. The employer could not prove that the claimant was responsible for the oversight.
11. The claimant was so upset over the employer's behavior that she advised the office manager, the employer's wife, that she was leaving and would not be back.
12. The claimant voluntarily terminated her employment due to the employer's abusive treatment.

Board Decision, October 22, 2009, (Decision), Findings of Fact Nos. 1-12 at 1-2.

The Board determined that Rosalie Curiale (Claimant) was eligible for benefits under Section 402(b) and reversed the decision of the Referee:

The Board credits the claimant's testimony that she was repeatedly subject to verbal abuse by the employer. The Board further credits the claimant's testimony that she spoke to the employer on several occasions and requested that the abuse stop. However, the employer did not take the claimant's concerns seriously. The employer verbally abused the claimant on her last day of work. In light of her prior unresolved complaints, it would have been futile for the claimant to further express her dissatisfaction prior to quitting. Notably, the employer did not testify to personally refute the claimant's allegations. The claimant has met her burden of proving necessitous and compelling cause to quit.

Decision at 2.

Employer contends that the Board committed an error of law in determining that Claimant had a necessitous and compelling reason to quit.²

Whether a termination of employment is voluntary is a question of law subject to this Court's review. The failure of an employee to take all reasonable steps to preserve employment results in a voluntary termination. Westwood v. Unemployment Compensation Board of Review, 532 A.2d 1282 (Pa. Cmwlth. 1987). An employee voluntarily terminating employment has the burden of proving that such termination was necessitous and compelling. The question of whether a claimant has a necessitous and compelling reason to terminate employment is a question of law reviewable by this Court. Willet v.

² This Court's review in an unemployment case is limited to a determination of whether constitutional rights were violated, errors of law were committed, or essential findings of fact were not supported by substantial evidence. Lee Hospital v. Unemployment Compensation Board of Review, 637 A.2d 695 (Pa. Cmwlth. 1994).

Unemployment Compensation Board of Review, 429 A.2d 1282 (Pa. Cmwlth. 1981). Good cause for voluntarily leaving one's employment results from circumstances which produce pressure to terminate employment that is both real and substantial and which would compel a reasonable person under the same circumstances to act in the same manner. Philadelphia Parking Authority v. Unemployment Compensation Board of Review, 654 A.2d 280 (Pa. Cmwlth. 1995).

An employee who is subject to unjust accusations, abusive conduct or profanity at the workplace has adequate justification to terminate employment and avoid disqualification provided notice of the conduct has been given to the employer. Moskovitz v. Unemployment Compensation Board of Review, 635 A.2d 723 (Pa. Comwlth. 1993), citing Forty v. Unemployment Compensation Board of Review, 447 A.2d 1078 (Pa. Cmwlth. 1982); Willet. If the employer is already aware of the problem, notice may not be required. Danner v. Unemployment Compensation Board of Review, 443 A.2d 1211 (Pa. Comwlth. 1982).

Tracy Gallagher (Gallagher), the office manager, testified on Employer's behalf. Gallagher stated that Claimant never contacted Gallagher "about having problems in the office regarding the allegedly abusive behavior by [Employer]." Notes of Testimony (N.T.), August 12, 2009, at 27; Reproduced Record (R.R.) at 40a. Also, Claimant never indicated that Employer's "behavior was affecting her health." N.T. at 27; R.R. at 40a.

Employer also contends that on May 12, 2009, a file was misplaced and a court appearance was not in the appointment book. Gallagher testified that Employer told [Claimant] “you need to make sure these appointments go in our book. That is your job.” N.T. at 32; R.R. at 45a. Employer argues that the consternation surrounding these two incidents was not abusive treatment that justified a voluntary quit. Gallagher stated that Claimant only said “This isn’t working. I’m leaving.” N.T. at 26; R.R. at 39a. Claimant was not specific regarding any medical reason why she quit.³

Claimant testified at the hearing and described the behavior she was subjected to: “He would scream. He would curse. He would throw a folder across the table. He would embarrass me. And he was abusive.” N.T. at 7; R.R. at 20a. Claimant further testified that Employer behaved in this manner in front of other

³ Employer further contends that if the Board does not adopt the findings of the referee, it must state in its own findings why it disregarded the referee’s finding. American Water Works Service Co., Inc. v. Com. Unemployment Compensation C. of Review, 488 A.2d 1184 (Pa. Cmwlth. 1985). American Water Works cited Treon v. Unemployment Compensation Board of Review, 499 Pa. 455, 453 A.2d 960 (1982) where our Pennsylvania Supreme Court stated that if particular findings are inconsistent, incredible, or unsupported by the evidence, then the Board must so indicate. The Board may not ignore the referee’s findings if they are supported by overwhelming evidence.

However, this Court has expressly rejected the applicability of the Treon holding to cases, such as the one before us, where both sides presented evidence. Sprague v. Unemployment Compensation Board of Review, 647 A.2d 675 (Pa. Cmwlth. 1994) citing Carter v. Unemployment Compensation Board of Review, 629 A.2d 212 (Pa. Cmwlth. 1993). In the instant case, both parties have presented evidence based upon occurrences on May 12, 2009, and the Board found Claimant’s testimony to be credible and resolved evidentiary conflicts in her favor. In resolving conflicts in testimony in Claimant’s favor, the Board rejected the testimony of Employer’s witness.

staff and clients and that “I did tell [Employer] that the abuse has to stop. He would laugh at me.” N.T. at 7-8; R.R. at 20-21a.

Melissa Beltrami (Beltrami) had formerly served as a paralegal for Employer. Beltrami described the treatment of Claimant that she had observed during her employment: “I observed him yelling at her, cursing, screaming on a daily basis.” N.T. at 19; R.R. at 32a. Beltrami further testified that Employer yelled at Claimant in front of others and threw things in the office during these outbursts. N.T. at 20; R.R. at 33a.

With respect to her final day of employment, Claimant was first accused of losing a file which Employer later found on his own desk. Claimant stated:

And he said, ‘Pull this file. I told you to make this file. Pull it. I need it right now.’ And I went into the cabinet to pull it, and it was not there. He stood behind me, screaming at me, ‘Jesus Christ. I come in early. I tried to get my work done. Why do I think you could find anything? Why would I think you can do anything?’, screaming at me... Then, he went around into his office and was still screaming. ‘Jesus Christ. Jesus Christ.’ Well, the file wasn’t a file. It was on his desk, just a pile of papers. He found it. And he screams to his office, ‘Never mind. I found the file.’

N.T. at 10; R.R. at 23a.

Claimant was also accused of failing to mark an arbitration date on the calendar.

Shaun [Ladson, Employer’s associate] picked up a file and found out there was an arbitration hearing that day. He said it was my fault because I should have written in

the book. I never saw the paper. I do open the mail. I do write the dates in the book. However, I am out of work. There were other people to do the mail. I never saw this paper. He was screaming at me. 'This is your fault. Shaun, it's not your fault. Rosalie, it's your fault'... So, [Employer] has to go to the arbitration hearing. The client was not able to go... So, he was beside himself. And I could see him, he's getting more and more nervous, screaming more and more. And I tried to stay calm...when he went to leave, he took this door and slammed it as hard as he could.

N.T. at 10; R.R. at 23a.

With respect to unemployment compensation cases, the law is well settled that the Board is the ultimate fact finder. Reice v. Unemployment Compensation Board of Review, 578 A.2d 624 (Pa. Cmwlth. 1990). The Board accepted Claimant's description of Employer's behavior and the events that surrounded Claimant's termination and rejected the testimony of the office manager.

Here, this Court agrees with the Board that the Claimant established a necessitous and compelling reason for quitting employment and demonstrated that the quit was consistent with ordinary common sense and prudence under the pressure of circumstances that were real not imaginary, substantial not trifling, and reasonable not whimsical, and which would compel a reasonable person under the same circumstances to act in the same manner.

Accordingly, this Court affirms.

BERNARD L. McGINLEY, Judge

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ORDER

AND NOW, this 19th day of May, 2010, the order of the Unemployment Compensation Board of Review is affirmed.

BERNARD L. McGINLEY, Judge