

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Kailla Edger-Drozdek, :
Petitioner :
v. :
Unemployment Compensation :
Board of Review, : No. 2244 C.D. 2010
Respondent : Submitted: April 8, 2011

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY

FILED: May 11, 2011

Kailla Edger-Drozdek (Claimant) challenges the order of the Unemployment Compensation Board of Review (Board) which affirmed the referee's denial of benefits under Section 402(b) of the Unemployment Compensation Law (Law).¹

The facts, as initially found by the referee and confirmed by the Board, are as follows:

1. For the purpose of this appeal, the claimant was last employed full-time by Gateway Rehabilitation Center where she performed the job duties of a Clinical Manager at a final rate of pay of \$24.64 per hour. She began this employment July 2, 2002 and her last day of work was May 28, 2010.

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

2. The claimant's husband was employed in Pennsylvania for the employer, Safelight Auto Glass, for approximately 11 years where he performed job duties of a Warehouse Lead person at approximately \$16.00 per hour.
3. The claimant's husband did not get an expected promotion at the Pittsburgh facility and additionally, was not happy with the working conditions at the facility.
4. The claimant accepted a voluntary transfer to Safelight Auto Glass in a Florida location at the same rate of pay, the same job duties, however, with a greater possibility of being promoted to a supervisor and better working conditions.
5. The commute for the claimant would have been insurmountable.
6. Maintaining two households would have created an economic hardship for the claimant.
7. Continuing full-time work remained available for the claimant had she chose [sic] not to sever the employment relationship.

Referee's Decision, July 21, 2010, (Decision), Findings of Fact Nos. 1-7 at 1.

The referee determined:

A claimant who has quit a job to follow a spouse in a new location must show either economic hardship in maintaining two residences or an insurmountable commuting distance if the claimant is to remain eligible for benefits. In addition, the claimant must show that the spouse's move was for reasons beyond a mere personal choice.

In this case, it is undisputed that the claimant quit her job to relocate with her spouse to Florida. The claimant has shown economic hardship existed which would prevent she [sic] and her husband from maintaining two separate

households and that the commute between her employment and the new residence would have been insurmountable. However, the claimant has not established that her husband's decision to relocate was mandatory. The spouse's decision was a voluntary transfer where the husband expects to get a promotion and better working conditions at the facility. Therefore, the claimant has not met her burden of establishing that she quit her job due to cause of a necessitous and compelling nature pursuant to the provisions of Section 402(b) of the Law and accordingly, benefits must be disallowed.

Decision at 2.

The Board incorporated and adopted the referee's findings and conclusions and affirmed.

Claimant contends that the Board erred when it found that there was insufficient evidence to establish that her husband's decision to relocate was mandatory and that the Board erred when it determined that Claimant was ineligible for benefits under Section 402(b) of the Law.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 1281 (Pa. Cmwlth. 1987). An employee voluntarily terminating employment has the burden

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

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. 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 circumstances to act in the same manner. Philadelphia Parking Authority v. Unemployment Compensation Board of Review, 654 A.2d 280 (Pa. Cmwlth. 1995). Mere dissatisfaction with one's working conditions is not a necessitous and compelling reason for terminating one's employment. McKeown v. Unemployment Compensation Board of Review, 442 A.2d 1257 (Pa. Cmwlth. 1982).

Where a claimant terminates employment to join a relocating spouse, the claimant must demonstrate an economic hardship in maintaining two residences or that the move has posed an insurmountable commuting problem. . . . The claimant must also show that her resignation was the direct result of her spouse's relocation, i.e., the necessity to relocate must be caused by circumstances beyond the control of the claimant's spouse and not by personal preference, and the decision to relocate must be reasonable and be made in good faith. . . .The desire to maintain the family unit is not by itself sufficient cause to terminate one's employment and receive benefits. (Citations omitted).

Sturpe v. Unemployment Compensation Board of Review, 823 A.2d 239, 242-243 (Pa. Cmwlth. 2003).

Claimant asserts in her brief that her husband was in emotional turmoil because of his distressing work situation and that the state of his emotional well-being and the state of their marriage both deteriorated. She claims that she had to leave her job in order to avoid further emotional damage to her husband and further deterioration of her marriage. She further claims that she acted with ordinary common sense to preserve her husband's emotional state. When he moved, she had to move, and Gateway Rehabilitation Center (Employer) had no positions in Florida.

Claimant's assertions in her brief do not completely correspond with her testimony at the hearing before the referee. Claimant testified regarding her husband's move to Florida:

His boss had made quite a few complaints, so in addition to not getting a promotion which I understand is not a big part of the unemployment, it was, the conditions where he was working were actually pretty unbearable for him so we ended up making the decision that there was more opportunity for him down in Largo and so after a few months of kind of going over it and going over it and the conditions have been so for, for quite some time and I think there's formal complaints also against his boss there that are documented. So we decided to move down to Largo just because it was just really difficult for us, for him to be there and work there and I think a lot of people have left since actually. . . .

. . . .

[H]e was able to transfer within the company . . . so we just decided to . . . make the move and he couldn't move anywhere else because he was just in the warehouse and he couldn't move locally to another place in Pennsylvania because the next warehouse was not in the area, we would have to move out of state or out or range in the state in order for him to get another warehouse position. So it wouldn't have mattered whether we

moved to Philadelphia or Florida. And there's just more opportunity there when we did the research.

Notes of Testimony, July 20, 2010, (N.T.) at 5.

Claimant further explained that the biggest reason her husband left was because "his boss was just so unbearable to work with." N.T. at 6. She also explained there was more opportunity. N.T. at 6. On cross-examination, Claimant admitted that her husband had a formal complaint against his boss but transferred before that was resolved. N.T. at 7. She also reiterated that there were promotional opportunities in Florida. N.T. at 8.

From Claimant's testimony, the Board determined that Claimant left to join her husband who made a voluntary job transfer in hopes of experiencing better working conditions and a better chance for a promotion. In Gaunt v. Unemployment Compensation Board of Review, 510 A.2d 895 (Pa. Cmwlth. 1986), this Court held that when a claimant terminates employment because of a spouse's decision to relocate to accept a better job, to accept a promotion, or to enhance a career, the spouse's decision is a personal choice, and the claimant is ineligible for benefits. Claimant's husband relocated for a better job with a chance for advancement. The Board did not err when it found that Claimant was ineligible for benefits under Section 402(e) of the Law.³

³ Claimant also contends that Section 402(b) of the Law does not apply because it has been repealed. Claimant confuses Section 402 of the Law, 43 P.S. §802(b) with 43 P.S. §402(b) which was repealed over seventy years ago and which dealt with sanitary regulations for bakeries.

Accordingly, this Court affirms.

BERNARD L. MCGINLEY, Judge

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ORDER

AND NOW, this 11th day of May, 2011, the order of the Unemployment Compensation Board of Review in the above-captioned matter is affirmed.

BERNARD L. MCGINLEY, Judge