IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Anthony Solomon, Petitioner	:	
v.	:	No. 2279 C.D. 2010
Unemployment Compensation Board of Review, Respondent	:	Submitted: March 4, 2010

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY FILED: April 5, 2011

Anthony Solomon (Claimant) petitions, pro se, for review of the order of the Unemployment Compensation Board of Review (Board) affirming the decision of a Referee denying Claimant unemployment compensation benefits pursuant to the provisions of Section 402(b) of the Unemployment Compensation Law (Law).[1] We affirm.

[1] Act of December 5, 1936, Second Ex. Sess. P.L. (1937) 2897, as amended, 43 P.S. § 802(b). Section 402(b) of the Law provides, in pertinent part:

An employe shall be ineligible for compensation for any week—

* * *

(Continued....)

Claimant filed a claim for unemployment compensation benefits with the Philadelphia Unemployment Compensation Service Center upon the termination of his employment as a field supervisor for Top of the Clock, Inc. (Employer). The Service Center representative issued a determination denying his benefits pursuant to Section 402(b) of the Law on the basis that he had voluntarily quit his employment with Employer, that he had not demonstrated a necessitous and compelling reason for leaving his job, and that he did not exhaust all other alternatives prior to quitting his job.

Claimant appealed this determination and a hearing was conducted before a Referee on June 22, 2010. See N.T. 6/22/10[2] at 1-33. On June 23, 2010, the Referee issued a Decision/Order in which she determined that Claimant was ineligible for benefits pursuant to Section 402(b) of the Law. On June 29, 2010, Claimant appealed the Referee's order to the Board.

On September 2, 2010, the Board issued a Decision and Order affirming the Referee's determination that Claimant was ineligible for benefits pursuant to Section 402(b) of the Law. Specifically, the Board made the following relevant findings of fact: (1) on April 28, 2010, Claimant met with his supervisor to exchange vehicles at the beginning of his shift; (2) the supervisor told Claimant that he should visit all of the 17 work sites that night and collect the time sheets from every site; (3) Claimant was responsible to visit every site on each shift; (4)

> (b) In which his unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature, irrespective of whether or not such work is "employment" as defined in this act.

[2] "N.T. 6/22/10" refers to the transcript of the hearing conducted before the Referee on June 22, 2010.

Claimant told his supervisor that he could not visit every site in one shift; (5) the supervisor again gave Claimant instructions at which point Claimant refused; (6) Claimant indicated that he would discuss the instructions no further; (7) the supervisor told Claimant that it was his job to visit each site during his shift, and Claimant told his supervisor that he knew what his job required; (8) Claimant told his supervisor that he was resigning, but his supervisor stated that he was not asking Claimant to resign; (9) Claimant was told to report to the office the following morning at 9:00 a.m. to meet with his supervisor to discuss what is expected of field supervisors; (10) the supervisor waited in his office for one and one-half hours the following morning, but Claimant did not show; (11) Claimant delivered his resignation to the field services manager; and (12) Claimant voluntarily left his employment by letter dated April 28, 2010, citing irreconcilable differences. Board Decision and Order at 1-2.

Based on the foregoing, the Board determined that Claimant was ineligible for benefits pursuant to Section 402(b) of the Law. Board Decision and Order at 2-3. Specifically, the Board stated the following, in pertinent part:

> The claimant has failed to meet his burden of establishing a necessitous and compelling reason for terminating his employment. A mere dissatisfaction with working conditions is not good cause for leaving one's employment. The claimant has failed to sufficiently establish that he resigned for more than mere job dissatisfaction. On April 28, 2010, the claimant became upset with his supervisor's instructions on how to do his job. The claimant refused to listen to his supervisor and told his supervisor that he was done listening to his instructions.
>
> The supervisor told the claimant that he had to visit all seventeen job sites. The claimant alleges that what his supervisor was asking of him is impossible. However, the employer credibly established that the request was the

> claimant's normal job requirements. It is expected of all supervisors at Top of the Clock to visit every site on each shift. The claimant's disagreement with his supervisor over his job duties did not rise to the level of necessit[ous] or compelling reason as required by Section 402(b) of the Law.
>
> Additionally, the claimant did not exhaust all other administrative remedies within his employer before resigning. The claimant alleges that he did because he spoke with his field services manager about the argument and his situation. However, this is not the employer's policy. The employer credibly testified that the claimant should have gone to human resources to discuss possible transfers within the company. The claimant did not exhaust all possible remedies, nor did he have a necessitous and compelling reason for resigning. Therefore, the claimant must be denied benefits pursuant to Section 402(b) of the Law.

Id. Accordingly, the Board issued an order affirming the Referee's decision and denying Claimant benefits. Id. at 3. Claimant then filed the instant petition for review.[3,4]

The sole claim raised by Claimant in this appeal is that the Board erred in affirming the Referee's determination that he is ineligible for benefits pursuant to Section 402(b) of the Law. More specifically, Claimant cites to his

[3] This Court's scope of review in an unemployment compensation appeal is limited to determining whether an error of law was committed, whether constitutional rights were violated, or whether necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa.C.S. § 704; Hercules, Inc. v. Unemployment Compensation Board of Review, 604 A.2d 1159 (Pa. Cmwlth. 1992). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Wheelock Hatchery, Inc. v. Unemployment Compensation Board of Review, 648 A.2d 103 (Pa. Cmwlth. 1994).

[4] The Board denied Claimant's request for reconsideration of its Opinion and Order by order dated October 5, 2010.

version of the events regarding the separation of his employment from Employer to support the conclusion that he was fired by Employer.

We initially note that, in general, a claimant has the burden of proving entitlement to unemployment compensation benefits. Jennings v. Unemployment Compensation Board of Review, 675 A.2d 810 (Pa. Cmwlth. 1996). In a voluntary quit case, this Court must first decide whether the facts surrounding the claimant's separation from employment constitute a voluntary resignation or a discharge. Charles v. Unemployment Compensation Board of Review, 552 A.2d 727 (Pa. Cmwlth. 1989). Where a claimant without any action by employer resigns, leaves or quits employment, that action amounts to a voluntary quit for purposes of unemployment compensation benefits. Monaco v. Unemployment Compensation Board of Review, 523 Pa. 41, 565 A.2d 127 (1989); Fishel v. Unemployment Compensation Board of Review, 674 A.2d 770 (Pa. Cmwlth. 1996); Charles. In order for an employer's language to be interpreted as a discharge, it must possess the immediacy and finality of a firing. Fishel; Charles.

A claimant who voluntarily quits his employment also bears the burden of proving that the termination was caused by reasons of a necessitous and compelling nature. Du-Co Ceramics Company v. Unemployment Compensation Board of Review, 546 Pa. 504, 686 A.2d 821 (1996); Taylor v. Unemployment Compensation Board of Review, 474 Pa. 351, 378 A.2d 829 (1977). Although the Law does not define what constitutes "cause of a necessitous and compelling nature", our Supreme Court has described it as follows:

> "[G]ood cause" for voluntarily leaving one's employment (i.e. that cause which is necessitous and compelling) 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.

Taylor at 358-359, 378 A.2d 832-833.

In establishing that a voluntary quit was reasonable, a claimant must establish that he acted with ordinary common sense in quitting his job, that he made a reasonable effort to preserve his employment, and that he had no other real choice than to leave his employment. PECO Energy Company v. Unemployment Compensation Board of Review, 682 A.2d 58 (Pa. Cmwlth. 1996). If a claimant does not take all necessary and reasonable steps to preserve his employment, he has failed to meet the burden of demonstrating necessitous and compelling cause. Id. Thus, it is well settled that a claimant who terminates his employment to avoid the chance of being fired has not demonstrated the requisite necessitous and compelling cause. Charles; Scott v. Unemployment Compensation Board of Review, 437 A.2d 1304 (Pa. Cmwlth. 1981).

As noted above, in this case, the Board made the following relevant findings of fact: (1) Claimant and his supervisor got into an argument over the work to be performed by employees in Claimant's position over the course of a shift; (2) Claimant told his supervisor that he was resigning, but his supervisor stated that he was not asking Claimant to resign; (3) Claimant was told to report to the office the following morning at 9:00 a.m. to meet with his supervisor to discuss what is expected of people in Claimant's position; (4) the supervisor waited in his office for one and one-half hours the following morning, but Claimant did not show; (5) Claimant delivered his resignation to the field services manager; and (6) Claimant voluntarily left his employment by letter dated April 28, 2010, citing irreconcilable differences. See Board Decision and Order at 1-2.

The Board is the ultimate fact-finding body in unemployment matters and is empowered to resolve conflicts in evidence, to determine what weight is to

be accorded the evidence, and to determine the credibility of witnesses. Peak v. Unemployment Compensation Board of Review, 509 Pa. 267, 501 A.2d 1383 (1985); Wright v. Unemployment Compensation Board of Review, 347 A.2d 328 (Pa. Cmwlth. 1975). The Board's findings of fact are conclusive on appeal so long as the record, taken as a whole, contains substantial evidence to support those findings. Penflex, Inc. v. Bryson, 506 Pa. 274, 485 A.2d 359 (1984). Our duty as an appellate court is to examine the testimony in a light most favorable to the party in whose favor the Board has found, giving that party the benefit of all inferences that can logically and reasonably be drawn from the testimony, to see if substantial evidence for the Board's conclusions exists. Id.

Thus, in this case, the Board was free to weigh the evidence, and to credit the testimony of Employer's witnesses supporting the conclusion that Claimant voluntarily quit his employment. Peak; Wright. In addition, there is ample substantial evidence supporting the Board's findings in this regard based upon the testimony of Employer's witnesses. See N.T. 6/22/10 at 16-17, 18, 21-22, 23-24, 26. As a result, these findings are conclusive in the instant appeal. Penflex, Inc.[5]

Moreover, these findings support the Board's determination that Claimant is not eligible for benefits pursuant to Section 402(b) of the Law as he was not fired by Employer, and he voluntarily terminated his employment with

[5] The fact that Claimant's testimony contradicts the Board's determination that he did not voluntarily abandon his employment and that he was, in fact, fired from his position, does not compel the conclusion that the Board's determination in this regard should be reversed. See, e.g., Tapco, Inc. v. Unemployment Compensation Board of Review, 650 A.2d 1106, 1108-1109 (Pa. Cmwlth. 1994) ("[T]he fact that Employer may have produced witnesses who gave a different version of events, or that Employer might view the testimony differently than the Board, is not grounds for reversal if substantial evidence supports the Board's Findings.").

Employer for a cause that was neither necessitous nor compelling.[6] As a result, Claimant's allegation of error in this appeal is patently without merit.[7]

Accordingly, the order of the Board is affirmed.

JAMES R. KELLEY, Senior Judge

[6] See, e.g., Charles, 552 A.2d at 729 ("An employer's language must possess the immediacy and finality of a firing in order for that language to be interpreted as a discharge. Where an employee, without any action by the employer, leaves or quits work, the employee's action is considered voluntary under the law. Given this test, we cannot conclude that Employer's language in this case possessed the immediacy and finality of a discharge. Employer's statement of company policy did not compel Petitioner to leave his job. Nor did Petitioner wait to find out if Employer would actually fire him when he telephoned for the third time to notify Employer of his car troubles before he quit. Where an employee resigns in order to avoid the chance of being fired, that employee is deemed to have voluntarily quit. Thus, the Board properly determined that Petitioner voluntarily terminated his employment.") (citations omitted); Rizzitano v. Unemployment Compensation Board of Review, 377 A.2d 1060, 1061-1062 (Pa. Cmwlth. 1977) ("The record clearly indicates that the claimant could have continued to work for his employer. The fact that the claimant might have been discharged at some time in the future [for failing to increase his productivity], near or distant, does not justify his terminating his employment when he did. While the claimant may have been dissatisfied with his job, and with the amount of work he was expected to produce, he should have continued to work. Under all the circumstances, the claimant's action in terminating his employment when he did was neither reasonable nor prudent. Therefore, we hold that the claimant did not terminate his employment for a cause of a necessitous and compelling nature.").

[7] Claimant's reliance upon the opinion of this Court in Philadelphia Parent Child Center, Inc. v. Unemployment Compensation Board of Review, 403 A.2d at 1362 (Pa. Cmwlth. 1979), is misplaced. In that case, the claimant was called to her supervisor's office and told to sign a letter of resignation that she had neither seen nor requested its preparation, and she had no intention of resigning but her refusal to sign would result in her termination. Philadelphia Parent Child Center, Inc., 403 A.2d at 1363-1364. Thus, the facts of that case indicated that "[t]his was not a 'voluntary termination'." Id. at 1364. In contrast, in the instant case, the Board's findings of fact conclusively demonstrate that Claimant's resignation was a voluntary quit.

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O R D E R

AND NOW, this 5th day of April, 2011, the order of the Unemployment Compensation Board of Review, dated September 2, 2010, at No. B-505580, is AFFIRMED.

JAMES R. KELLEY, Senior Judge