

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Sarah Herwig, :  
 :  
 Petitioner :  
 :  
 v. : No. 2318 C.D. 2010  
 : Submitted: May 20, 2011  
 Unemployment Compensation :  
 Board of Review, :  
 Respondent :

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

OPINION NOT REPORTED

MEMORANDUM OPINION  
 BY SENIOR JUDGE KELLEY

FILED: August 5, 2011

Sara Herwig (Claimant), proceeding *pro se*, petitions for review from an order of the Unemployment Compensation Board of Review (Board), which affirmed the order of the referee and denied benefits. We affirm.

Claimant worked full time as a head cashier for the Home Depot (Employer) from October 2007 until her last day of work on May 22, 2010. Claimant filed an application for unemployment compensation benefits. The Erie UC Service Center (Service Center) issued a Notice of Determination denying Claimant's application on the basis that Claimant was ineligible for benefits under Section 402(b) of the Unemployment Compensation Law<sup>1</sup> (Law) because Claimant voluntarily left work without cause of a necessitous and compelling nature.

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<sup>1</sup> Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended,  
(Continued...)

Claimant timely appealed the Service Center's notice to the referee. A hearing was held on July 22, 2010. At the hearing, Claimant testified;<sup>2</sup> Employer did not appear to offer testimony or evidence. Based upon Claimant's testimony and the documents of the Office of Employment Security, the referee made the following findings. On May 22, 2010, Claimant was the opening head cashier and started work at approximately 5:30 a.m. At 9:00 a.m., another head cashier arrived to start her shift. At that time, the assistant manager told Claimant to remain at the register in order to ring out customers. Claimant was upset because she was directed to ring customers on a register instead of giving that assignment to the head cashier who recently arrived. Claimant was also upset because she had been on a register ringing customers the entire prior day. At approximately 10:00 a.m., Claimant informed another head cashier that she was leaving for lunch. Claimant left for lunch and while at lunch called the store and informed Employer she was not returning. Claimant also screamed and yelled at the manager regarding other areas of her dissatisfaction with the job and the store. Claimant also informed the manager she was not coming to work the next day. On May 23, 2010, Claimant called the manager and asked for her job back. Claimant had voluntarily terminated her employment. Claimant is able and available for work during the weeks at issue.

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43 P.S. §802(b). This section provides:

An employe shall be ineligible for compensation for any week --

(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 in "employment" as defined in this Act . . . .

(Emphasis added).

<sup>2</sup> Claimant also presented Sally Herwig, her mother, as a witness.

The referee determined that Claimant failed to sustain her burden of providing cause of a necessitous and compelling nature to voluntarily leave her employment. The referee concluded that Claimant was ineligible for benefits pursuant to Section 402(b) of the Law. By decision dated July 23, 2010, the referee affirmed the decision of the Service Center and denied benefits.

From this decision, Claimant filed an appeal with the Board. The Board adopted the findings and conclusions of the referee in their entirety. Additionally, the Board opined that Claimant admitted that she was angry and wrote on her internet claim form that she was quitting and never going back. Claimant also admitted that she called Employer the following day and apologized stating she did not mean what she said. The Board found that Claimant clearly quit. Claimant did not inform Employer of any medical health issues until telling Employer she quit. Claimant informed Employer she was going crazy, could not breathe, and the work place was driving her crazy. In response to Employer asking what she wanted it to do, Claimant “flipped out” and indicated she was not going to return to work. The Board ultimately concluded that Claimant is ineligible for benefits pursuant to Section 402(b) of the Law because she voluntarily left work without cause of a necessitous and compelling nature. By decision dated October 4, 2010, the Board affirmed the referee’s decision and denied benefits. From this decision, Claimant has filed the instant appeal.<sup>3</sup>

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<sup>3</sup> This Court's scope of review is limited to determining whether constitutional rights were violated, an error of law was committed, or necessary findings of fact are not supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704; Kirkwood v. Unemployment Compensation Board of Review, 525 A.2d 841 (Pa. Cmwlth. 1987).

Claimant contends that the Board's findings are not supported by substantial evidence.<sup>4</sup> We disagree.

Section 402(b) of the Law, 43 P.S. §802(b), provides that an employee who voluntarily terminates her employment without cause of a necessitous and compelling nature is ineligible for benefits. A claimant seeking to collect unemployment compensation bears the burden of proving that a voluntary termination of employment was for cause of a necessitous and compelling nature. Mutual Pharmaceutical Company, Inc. v. Unemployment Compensation Board of Review, 654 A.2d 37 (Pa. Cmwlth. 1994); Steinberg Vision Associates v. Unemployment Compensation Board of Review, 624 A.2d 237 (Pa. Cmwlth. 1993). A cause of a necessitous and compelling nature is one that results from circumstances which produce pressure to terminate employment which is both real and substantial and which would compel a reasonable person under the circumstances to act in the same manner. Monaco v. Unemployment Compensation Board of Review, 523 Pa. 41, 565 A.2d 127 (1989).

Medical reasons can provide necessitous and compelling reasons for a voluntary quit. Genetin v. Unemployment Compensation Board of Review, 499 Pa. 125, 451 A.2d 1353 (1982); Fox v. Unemployment Compensation Board of Review, 522 A.2d 713 (Pa. Cmwlth), petition for allowance of appeal denied, 517 Pa. 600, 535 A.2d 1058 (1987). A claimant must establish that the medical reasons precipitated the quit. Id. A claimant has an obligation to communicate her

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<sup>4</sup> Specifically, Claimant asserts that the last day of employment is incorrect on the notice of determination; she did not quit, but was fired by the manager; and her ability and availability to work were not affected by her pregnancy. Claimant also asserts she had no limitations before her pregnancy and questions whether she was required to inform Employer that she takes medication for bipolar disorder.

medical problems to her employer and to explain her inability to perform her regularly assigned duties. Id. Only through communication can an employer be afforded an opportunity to accommodate a claimant's problem by offering suitable work. Fox.

Here, Claimant attempts to reargue the facts of the proceeding. On the internet initial claims form completed by Claimant on May 22, 2010 – the same day she left work - Claimant stated that she “quit.” At the hearing, Claimant testified that she was very angry at the time, “so I wrote, you know, I’m quitting, I’m never going back.” Notes of Testimony (N.T.) at 7. While Claimant also testified she did not quit but was terminated by Employer, Claimant admitted that she “flipped out” and “yelled and screamed” at her manager and said she was not coming back in that day or the next day. N.T. at 5. The Board weighed the conflicting evidence and ultimately concluded that Claimant had in fact quit. Such questions of conflicts in evidence, witness credibility and evidentiary weight are within the sole discretion of the Board and will not be disturbed on appeal. Horton v. Unemployment Compensation Board of Review, 953 A.2d 851 (Pa. Cmwlth. 2008). After walking off the job, Claimant called the next day to ask for her job back, but her calls were not accepted or returned by Employer. Claimant's efforts to rescind her resignation were too late because Employer had clearly accepted her resignation as final and had removed Claimant from the schedule. See Spadaro v. Unemployment Compensation Board of Review, 850 A.2d 855 (Pa. Cmwlth. 2004) (claimant's resignation became effective when it was clearly accepted, and claimant's attempt to revoke after employer's acceptance of the resignation failed because it was too late.); Centerville Clinics, Inc. v. Unemployment Compensation Board of Review, 445 A.2d 1374 (Pa. Cmwlth. 1982) (where claimant's resignation

preceded her attempt to return to work, claimant voluntarily terminated her employment without cause of a necessitous and compelling nature and was not entitled to benefits, even though employer had not taken any steps to replace claimant before receiving her revocation of resignation.). While Claimant cites various health issues as cause of a necessitous and compelling reason for her termination, Claimant never communicated the same to Employer. As a result, Employer was not given an opportunity to make accommodations for Claimant. See Fox. Based upon our review, we conclude that the Board's findings are supported by substantial evidence and that the Board properly denied benefits pursuant to Section 402(b) of the Law.

Accordingly, the order of the Board is affirmed.

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JAMES R. KELLEY, Senior Judge

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Sarah Herwig,		:	
	Petitioner	:	
		:	
v.		:	No. 2318 C.D. 2010
		:	
Unemployment Compensation		:	
Board of Review,		:	
	Respondent	:	

**ORDER**

AND NOW, this 5th day of August, 2011, the order of the Unemployment Compensation Board of Review, at Decision No. B-507149, dated October 4, 2010, is AFFIRMED.

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JAMES R. KELLEY, Senior Judge