

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Tag Realty 2 LLC,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
Unemployment Compensation	:	
Board of Review,	:	No. 2362 C.D. 2010
	:	
Respondent	:	Submitted: July 15, 2011

BEFORE: HONORABLE DAN PELLEGRINI, Judge  
HONORABLE MARY HANNAH LEAVITT, Judge  
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY  
JUDGE BUTLER

FILED: August 12, 2011

Tag Realty 2 LLC (Employer) petitions this Court for review of the October 6, 2010 order of the Unemployment Compensation Board of Review (UCBR) affirming the decision of the Referee and granting benefits. Employer raises one issue for this Court's review: whether Zita Elek (Claimant) voluntarily terminated her employment. For reasons that follow, we affirm the order of the UCBR.

Claimant was hired as a director of first impressions for Employer beginning May 4, 2009, and ending December 2, 2009. On December 2, 2009, Claimant began a three month family medical leave of absence (FMLA) (maternity leave). On February 12, 2010, Claimant contacted Employer about returning to work and was advised to wait until February 25, 2010, when Employer would be returning from a conference. Claimant began trying to contact her supervisor via email, text messaging and cell phone at the end of February, but to no avail. Claimant called

Employer's main telephone line twice on February 25th, once on February 27th, once on March 1st, once on March 2nd, once on March 3rd, and once on March 4th, about returning to work. Employer did not return Claimant's calls. Claimant was subsequently discharged from her employment.

Claimant applied for Unemployment Compensation (UC) benefits. On May 20, 2010, the Philadelphia UC Service Center denied benefits under Section 402(e) of the Unemployment Compensation Law (Law).<sup>1</sup> Claimant appealed, and a hearing was held before a Referee. On July 9, 2010, the Referee reversed the UC Service Center, and found Claimant eligible for benefits beginning with waiting week ending April 10, 2010. Employer appealed to the UCBR. On October 6, 2010, the UCBR affirmed the decision of the Referee and granted benefits. Employer appealed to this Court.<sup>2</sup>

Employer argues that the UCBR erred in determining that Claimant did not voluntarily terminate her employment. Specifically, Employer contends the record does not provide factual or legal support for this finding. We disagree.

“Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *City of Pittsburgh, Dep't of Pub. Safety v. Unemployment Comp. Bd. of Review*, 927 A.2d 675, 676 n.1 (Pa. Cmwlth. 2007) (quotation marks omitted). Further,

[w]hether the claimant's separation from employment is the result of a voluntary resignation is a question of law subject to our review and must be determined from the facts of the individual case. A voluntary quit requires a finding that the

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

<sup>2</sup> This Court's review is limited to determining whether the findings of fact were supported by substantial evidence, whether constitutional rights were violated, or whether errors of law were committed. *Johnson v. Unemployment Comp. Bd. of Review*, 869 A.2d 1095 (Pa. Cmwlth. 2005).

claimant had a conscious intention to leave employment. In determining the claimant's intent, this Court must consider 'the totality of the circumstances surrounding the incident.'

*Procyson v. Unemployment Comp. Bd. of Review*, 4 A.3d 1124, 1127 (Pa. Cmwlth. 2010) (citations omitted). "In making this determination, we must examine the testimony in the light most favorable to the party in whose favor the UCBR rendered its decision." *Bell v. Unemployment Comp. Bd. of Review*, 921 A.2d 23, 26 n.6 (Pa. Cmwlth. 2007).

Here, Claimant testified as follows at the hearing before the Referee:

On the 5th I asked Robert [(Employer)] for an employee handbook. He stated he don't have an employee handbook. What would be rights for – as an employee. I never got that. On December 2nd I left for FMLA for three months I was offered and granted by Robert to me. On February 12th I asked my earlier term from FMLA – my boss, Robert Bodamer said to take the three months and call us when you're ready. From February 25th through March 5, 2010 I made many attempts and I have proof of that and even before I have proof during the month – end of January and February text messages and calls to Robert if you – if you need that and on 28th my health coverage was cancelled. I found out about it by going to the – to my maternity pills and they said it's cancelled. I was supposed to pay \$11 and it was \$26 and that's when I – I kind of started understanding what's going on.

Reproduced Record, Item No. 10 at 18. In addition, Claimant submitted her cell phone bill which was admitted into evidence and showed the calls she made to Employer's office on February 25, and 27, 2010, and on March 1, 2, 3, and 4, 2010, as well as numerous calls to Employer's cell phone. Clearly, this is such relevant evidence as a reasonable mind might accept as adequate to support the conclusion that Claimant was attempting, as she was instructed to do after February 25th, to contact Employer about returning to work and thus, she did not voluntarily terminate her employment. Accordingly, the UCBR did not err by concluding same.

For all of the above reasons, the UCBR's order is affirmed.

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JOHNNY J. BUTLER, Judge

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ORDER

AND NOW, this 12<sup>th</sup> day of August, 2011, the October 6, 2010 order of the Unemployment Compensation Board of Review is affirmed.

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JOHNNY J. BUTLER, Judge