IN THE COMMONWEALTH COURT OF PENNSYLVANIA

William Penn School District, Petitioner	:	
v.	:	No. 2571 C.D. 2010
Unemployment Compensation Board of Review, Respondent	:	Submitted: May 13, 2011

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: June 15, 2011

William Penn School District (Employer) petitions for review of an order of the Unemployment Compensation Board of Review granting Rosina J. Ball (Claimant) unemployment compensation benefits pursuant to Section 402(b) of the Unemployment Compensation Law (Law).[1] We affirm.

Claimant was last employed by Employer as a full-time secretary from August 13, 2003, until her last day of work on December 5, 2009. On May 12, 2010,

[1] Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. §802(b). Section 402(b) provides that an employee who voluntarily terminates her employment without cause of a necessitous and compelling nature is ineligible for benefits.

Claimant filed an internet claim for unemployment compensation benefits. Therein, Claimant stated that she was discharged. In its response, Employer stated that Claimant resigned when she failed to report to work after being released by her doctor to return after an unpaid medical leave. By notice mailed June 22, 2010, the Altoona UC Service Center (Service Center) determined that Claimant was ineligible for benefits pursuant to Section 402(b) of the Law. The Service Center found that Claimant voluntarily quit because she failed to return to work after being released by her doctors to return to work without restrictions.

Claimant appealed the Service Center's determination and a hearing ensued before a Referee on August 27, 2010. Claimant appeared *pro se* and testified on her own behalf. Claimant also presented one fact witness. Employer appeared with counsel and presented the testimony of Betty Pehlman, Director of Human Resources, and Kathleen Gamble, Benefits Analyst for the William Penn School District.

By decision mailed September 8, 2010, the Referee affirmed the Service Center's determination and denied Claimant benefits pursuant to Section 402(b) of the Law. Claimant appealed to the Board, which made the following findings of fact:

> 2. On December 9, 2009, the claimant was injured in a car accident on her way to work.
>
> 3. The claimant contacted the employer later on December 9, 2009, to advise of the accident and the extent of her injuries.
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> 4. The claimant maintained contact with the employer and on January 5, 2010, the claimant received information regarding an uncompensated leave of absence.
> 5. The claimant was instructed to provide an update to the employer every 30 days.

6. The claimant was under the care of three different doctors.

7. On April 13, 2010, the employer sent the claimant a letter stating that it received information indicating that the claimant was medically cleared to work, effective April 7, 2010. The letter further stated that the claimant failed to notify the employer and as a result, the employer deemed that the claimant resigned.

8. Upon receipt of this letter, the claimant contacted the employer and advised that she was under the care of another doctor and had not yet been released to work. Further, she had no intention of resigning her position.

9. The employer received two additional return to work notices from two different doctors providing return to work dates of April 13, 2010, and April 19, 2010. One doctor placed restrictions on the claimant's return to work.

10. The employer sent a letter dated April 27, 2010, to the claimant stating that while it received her message that she remained under the care of a doctor, the employer had received no updated information and since the claimant failed to return to work on April 13, 2010, the [school] board accepted the claimant's resignation at its April 26, 2010, board meeting.

11. The claimant sent a letter dated April 28, 2010, to the employer providing updated information from her doctor, which released her to work on May 30, 2010. The claimant also indicated this information arrived within the previously agreed-upon 30 day time frame.

12. The employer submitted the claimant's resignation to the school board effective April 7, 2010, which resulted in the severing of the employment relationship.

Based on the foregoing findings, the Board concluded:

In this case, the claimant was injured in a car accident and promptly notified the employer of her situation. The employer instructed the claimant to provide a medical

> update every thirty days. Additionally, the claimant applied for, and was granted, uncompensated leave by the employer. The claimant continued to maintain contact with the employer at least every thirty days as required.
>
> In April 2010, the employer received conflicting information regarding the claimant's scheduled return to work. The employer sent a letter to the claimant on April 13, 2010, explaining that the claimant was expected back at work, and because she did not arrive at work, the employer was submitting her resignation to the school board. The Board credits the claimant's testimony that she promptly contacted the employer upon receiving this letter and that she explained that she was under the care of three different doctors and that she had not been cleared to return. The Board believes the claimant, that she had no intention of resigning and that she maintained regular contact with the employer.
>
> The employer submitted the claimant's resignation to the school board in advance of receiving any clarifying information from either the claimant or her doctors and prior to the next scheduled update from the claimant. As a result, the Board finds that the claimant did not quit and cannot denied benefits under Section 402(b) of the Law.

Accordingly, the Board reversed the Referee's decision and granted Claimant unemployment compensation benefits. This appeal by Employer followed.

Initially, we note that this Court's review of the Board's decision is set forth in Section 704 of the Administrative Agency Law, 2 Pa.C.S. §704, which provides that the Court shall affirm unless it determines that the adjudication is in violation of constitutional rights, that it is not in accordance with law, that provisions relating to practice and procedure of the Board have been violated, or that any necessary findings of fact are not supported by substantial evidence. See Porco v. Unemployment Compensation Board of Review, 828 A.2d 426 (Pa. Cmwlth. 2003).

The Board's findings of fact are conclusive upon review provided that the record, taken as a whole, contains substantial evidence to support the findings. Taylor v. Unemployment Compensation Board of Review, 474 Pa. 351, 378 A.2d 829 (1977). Substantial evidence is relevant evidence that a reasonable mind might consider adequate to support a conclusion. Hercules v. Unemployment Compensation Board of Review, 604 A.2d 1159 (Pa. Cmwlth. 1992). The Board is the ultimate fact finder and is, therefore, entitled to make its own determinations as to witness credibility and evidentiary weight. Peak v. Unemployment Compensation Board of Review, 509 Pa. 267, 501 A.2d 1383 (1985).

Herein, Employer first argues that the Board's findings of fact 7, 8 and the Board's conclusion that Employer submitted Claimant's resignation in advance of receiving any clarifying information prior to the next scheduled update from Claimant, are not supported by substantial evidence. We disagree.

The Board's finding of fact 7 sets forth the contents of the April 13, 2010, letter that Employer sent to Claimant and states as follows:

> On April 13, 2010, the employer sent the claimant a letter stating that it received information indicating that the claimant was medically cleared to work, effective April 7, 2010. The letter further stated that the claimant failed to notify the employer and as a result, the employer deemed that the claimant resigned.

The April 13, 2010, letter states that Employer received a copy of a note faxed from Claimant's physician verifying that she was released to return to work as of April 7, 2010. Reproduced Record (R.R.) at 45a. The letter states further that "[f]ailure to return from uncompensated leave at the end of the approved time is deemed as a resignation . . . The doctor has released you to work without restriction and you have not returned. Therefore, we will be placing your

resignation on the April Board agenda for approval." Id. Accordingly, finding of fact 7 is supported by substantial evidence.

The Board's finding of fact 8 states as follows:

> Upon receipt of this letter, the claimant contacted the employer and advised that she was under the care of another doctor and had not yet been released to work. Further, she had no intention of resigning her position.

A review of the record reveals that finding of fact 8 is based upon Claimant's credible testimony and the testimony of Employer's witness, Betty Pehlman. Claimant testified that when she received the April 13th letter, she contacted Ms. Pehlman and told her that she was still under a doctor's care and that she had not been released by her third doctor to return to work. R.R. at 11a.

Ms. Pehlman testified that she had notes from several physicians and that Claimant called her on April 14th regarding the April 13th letter. Id. at 14a-15a. Ms. Pehlman testified that Claimant informed her in that call that her disability time had been extended by another doctor, that she was still in therapy, that she was upset that Employer was moving so quickly to notify her that Employer was going to put her into resignation, and that she looked forward to her expected certification from the doctor. Id. at 15a. Ms. Pehlman testified further that Claimant also called her on April 15th and April 20th regarding the correct release date for Claimant to return to work. Id. Ms. Pehlman testified that Claimant told her in those phone calls: (1) that Claimant informed her that because all the release dates provided to Employer were incorrect, Claimant was getting a second opinion; (2) that Claimant had a doctor's appointment on April 21st; (3) that the doctor had not released Claimant; (4) that Claimant wanted to return to work; (5) that Claimant would update Employer; and (6) that Claimant knew she

had to check in every 30 days with Employer. Id. Thus, finding of fact 8 is supported by substantial evidence.

Accordingly, we conclude that all of the Board's findings support its conclusion that Employer submitted Claimant's resignation in advance of receiving any clarifying information prior to the next scheduled update from Claimant. As such, we reject Employer's first argument raised herein.

Next, Employer argues that the Board erred when it determined that Claimant was eligible for benefits pursuant to Section 402(b) of the Law. Employer contends that the record shows that Claimant did not meet her burden of proving that she voluntarily left her employment due to a necessitous and compelling reason. Employer contends that Claimant failed to return to work when released by her doctors in April 2010 and failed to provide medical evidence that she was still disabled and unable to return to work. Employer argues that Claimant should have provided medical documentation prior to April 26, 2010, in order for her continued absence to not be deemed a resignation. Employer contends that the Board ignored evidence that Claimant failed to provide medical documentation or contact Employer from April 20, 2010, until at least two days after Employer had taken action on her resignation on April 26, 2010.

Employer argues further that the Board should not have relied upon the fact that Claimant had provided further information on April 28, 2010, because it was within the 30 day time frame. Employer contends that the 30 day time frame only applied to Claimant not Employer. Employer argues that the Board misconstrued this requirement so as to require Employer to act in comportment with the 30 day period as well when there is no evidence of any such requirement or restriction placed upon Employer in this regard. Employer argues that the

evidence shows that Claimant's separation from employment resulted from the Claimant's failure to timely provide Employer with information regarding her medical status until after her employment had been terminated.

The question of whether particular facts constitute a voluntary quit is a question of law fully reviewable by this Court. "A claimant has the burden of proving that her separation from employment was a discharge." Kassab Archbold & O'Brien v. Unemployment Compensation Board of Review, 703 A.2d 719, 721 (Pa. Cmwlth. 1997). "Whether a claimant's separation from employment is a voluntary resignation or a discharge is determined by examining the facts surrounding the claimant's termination of employment." Id. This is a question of law to be decided based on the Board's findings. Fekos Enters. v. Unemployment Compensation Board of Review, 776 A.2d 1018 (Pa. Cmwlth. 2001). "A finding of voluntary termination is essentially precluded unless the claimant has a conscious intention to leave [her] employment." Id. at 1021. "In determining the intent of the employee, the totality of the circumstances surrounding the incident must be considered." Id.

The Board's findings, which we have determined are supported by substantial evidence, support the conclusion that Claimant did not intend to quit her employment. It is undisputed that Claimant was absent from work due to injuries suffered from an automobile accident. When Claimant was informed via Employer's April 13, 2010, letter that she had been released to return to work and that her failure to do so would be deemed a resignation, Claimant immediately contacted Employer. In more than one phone call during the time period from April 14th to April 20th, Claimant informed Employer that she was being treated by three doctors, that she was seeking a second opinion due to the conflict in the

release dates, that she had not been released to return to work by every doctor she was treating with, that she was upset that Employer was treating her failure to return to work as a resignation, that she would update Employer, that she wanted to return to work, and that she believed she had 30 days to inform Employer of her status. Most importantly, Employer's witness confirmed that Claimant specifically informed Employer that she wanted to return to work.

In addition, Employer received a note on April 28, 2010, from Claimant's physician stating that Claimant could not return to work until May 31, 2010. There is no evidence in the record that Employer informed Claimant that her belief that she had 30 days to update Employer regarding her status was no longer applicable. As such, the facts support the conclusion that Claimant did not consciously terminate her employment but in fact took steps to preserve her employment relationship with Employer. Accordingly, we reject Employer's contention that Claimant quit her employment.

Finally, Employer argues that the Board's reversal of the Referee's decision and order was arbitrary and capricious. Employer contends that the Board should have accepted the Referee's decision that Claimant separation came about through a break down in communication which was her own fault because the record evidence clearly supports such a decision. In other words, Employer prefers the findings of fact and conclusions of law made by the Referee to the findings and conclusions made by the Board.

As stated previously herein, the Board is the ultimate fact finder and is, therefore, entitled to make its own determinations as to witness credibility and evidentiary weight. Peak. Therefore, it is simply not within this Court's province to reweigh the evidence. Moreover, it is irrelevant whether the record contains

evidence to support findings other than those made by the fact-finder; the critical inquiry is whether there is evidence to support the findings actually made. Ductmate Industries, Inc., v. Unemployment Compensation Board of Review, 949 A.2d 338 (Pa. Cmwlth. 2008) (citing Minicozzi v. Workers' Compensation Appeal Board (Industrial Metal Plating, Inc.)., 873 A.2d 25 (Pa. Cmwlth. 2005)). As we have already determined that the Board's findings are supported by substantial evidence, we conclude that the Board did not act arbitrarily or capriciously in weighing the evidence in favor of Claimant or accepting Claimant's testimony as more credible.

The Board's order is affirmed.

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JAMES R. KELLEY, Senior Judge

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O R D E R

AND NOW, this 15th day of June, 2011, the order of the Unemployment Compensation Board of Review in the above captioned matter is affirmed.

JAMES R. KELLEY, Senior Judge