

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Michelle Tracy, :
 :
 Petitioner :
 :
 v. : No. 2576 C.D. 2009
 :
 : Submitted: May 21, 2010
 Unemployment Compensation :
 Board of Review, :
 Respondent :

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McCULLOUGH

FILED: September 9, 2010

Michelle Tracy (Claimant) petitions for review of the December 3, 2009, order of the Unemployment Compensation Board of Review (Board), which held that Claimant is ineligible for benefits under section 402(b) of the Unemployment Compensation Law (Law).¹ We affirm.

Claimant was last employed as a temporary, full-time customer service representative with PP&L (Employer) from June 15, 2009, through July 2, 2009. (Findings of Fact, Nos. 1-2.) Before she began working for Employer, Claimant sustained injuries to her back, neck, and arm in a car accident. Claimant's duties as a

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended 43 P.S. §802(b). Pursuant to section 402(b) of the Law, an employee who voluntarily terminates employment without a necessitous and compelling reason is ineligible for benefits.

customer service representative involved sitting at a desk and answering phone calls with a headset, which caused her to experience pain, numbness, and tingling. (R.R. at 40a.) On July 6, 2009, Claimant notified Employer that she was quitting her position for personal reasons. (Findings of Fact, No. 3.) Claimant did not inform Employer that her personal reasons were related to her medical problems. (Findings of Fact, No. 4.)

The local job center denied Claimant benefits, concluding that Claimant did not satisfy her burden under section 402(b) of the Law to notify Employer of her health limitations prior to quitting. Claimant appealed, and a referee conducted a hearing at which Claimant was the only participant.² Following the hearing, the referee concluded that Claimant was not eligible for benefits because she did not inform Employer that her personal reasons for terminating employment involved her medical condition and Employer, therefore, was not afforded the opportunity to grant Claimant an accommodation. Claimant appealed to the Board, which affirmed the referee's decision, adopting and incorporating the referee's findings and conclusions.

² In relevant part, Claimant testified as follows:

R Okay. Now, when you called in you said on July 6th, who did you speak with?

C I spoke with Bonnie Torres. She was my supervisor.

R Okay. And what did you tell Ms. Torres?

C I told her that I would not be returning due to personal reasons.

R You didn't go into any specifics as far as.

C Because I didn't' [sic] want to go into my actual medical history. Had I known that I should have it wouldn't have been a problem for me, but I just help with like HIPAA laws and everything I really didn't want to go into detail on my medical history.

(N.T. at 2; R.R. at 6a.)

On appeal to our Court, Claimant argues that the Board erred in concluding that she did not demonstrate a necessitous and compelling reason for voluntarily terminating her employment.³ Claimant notes that she notified Employer of her medical condition on her job application; alternatively, Claimant contends that notifying Employer of her health reasons for terminating employment would have been futile because suitable employment was not available.

Pursuant to section 402(b) of the Law, an employee is ineligible for benefits if she voluntarily terminates her employment without cause of a necessitous and compelling nature.⁴ 43 P.S. §802(b). Thus, a claimant seeking benefits after voluntarily quitting her job has the burden to demonstrate real and substantial pressure to terminate employment that would compel a reasonable person under similar circumstances to act in the same manner. Dopson v. Unemployment Compensation Board of Review, 983 A.2d 1282 (Pa. Cmwlth. 2009). The claimant must further demonstrate that she acted with ordinary common sense and made a reasonable effort to preserve her employment. First Federal Savings Bank v. Unemployment Compensation Board of Review, 957 A.2d 811 (Pa. Cmwlth. 2008), appeal denied, 601 Pa. 685, 970 A.2d 1148 (2009).

A claimant who voluntarily terminates her employment for health reasons demonstrates that she has made every reasonable effort to maintain her employment by notifying an employer of her inability to perform regularly assigned

³ Our scope of review is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with the law, or whether necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

⁴ Whether or not a claimant has a compelling and necessitous cause for voluntarily terminating employment is a question of law subject to this Court's review. Willet v. Unemployment Compensation Board of Review, 429 A.2d 1282 (Pa. Cmwlth. 1981).

tasks due to a medical condition and remaining able and available for suitable employment. Genetin v. Unemployment Compensation Board of Review, 499 Pa. 125, 451 A.2d 1353 (1982). A claimant is required to notify her employer of her health limitations prior to terminating her employment so that her employer is afforded the opportunity to accommodate the claimant by offering suitable work. Fox v. Unemployment Compensation Board of Review, 522 A.2d 713 (Pa. Cmwlth. 1987). However, a claimant is not required to provide notice of health reasons for terminating employment if the evidence of record reveals that doing so would be futile. Hoffman v. Unemployment Compensation Board of Review, 528 A.2d 1050 (Pa. Cmwlth. 1987).

In Fox, the claimant voluntarily terminated her employment as an ice cream counter clerk due to health limitations resulting from her pregnancy. The claimant argued that notifying her employer of her health limitations prior to terminating employment would have been futile because she knew that suitable employment was not available. Our Court held that a claimant may not be aware that an employer has suitable work and, therefore, must afford an employer the opportunity to accommodate the claimant by notifying the employer of specific health limitations prior to terminating employment.

In Hoffman, the claimant voluntarily terminated her employment as a custodial worker due to health limitations resulting from hypertension and a liver problem. Although the claimant did not notify the employer of her health limitations prior to voluntarily terminating employment, the employer's representative and claimant's supervisor testified that they would not have been able to accommodate the claimant's health limitations with suitable employment. Our Court held that notifying the claimant's employer of her health limitations prior to voluntarily

terminating employment would have been futile because the evidence of record demonstrated conclusively that suitable work was not available.

Here, Claimant notified Employer in her job application that she had a preexisting medical condition, but she did not notify Employer that she was terminating her employment because she was unable to perform regularly assigned tasks as a result of that condition. Rather, Claimant told Employer that she was quitting for personal reasons. Consequently, Claimant did not make a reasonable effort to maintain her employment by affording Employer the opportunity to accommodate Claimant's medical needs. Furthermore, the record does not support Claimant's assertion that providing Employer notice of her health limitations would have been futile. Although Claimant testified that suitable employment was not available, a claimant may not "be aware that an employer has suitable work because a suitable position may in fact be one specially created for the claimant." Fox, 522 A.2d at 715. And, the record does not demonstrate conclusively that suitable employment with Employer was not available. Hoffman. Thus, the Board correctly concluded that Claimant did not meet her burden to demonstrate that she voluntarily terminated her employment for a necessitous and compelling reason.

Accordingly, we affirm.

PATRICIA A. McCULLOUGH, Judge

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Unemployment Compensation	:	
Board of Review,	:	
Respondent	:	

ORDER

AND NOW, this 9th day of September, 2010, the order of the Unemployment Compensation Board of Review, dated December 7, 2009, is hereby affirmed.

PATRICIA A. McCULLOUGH, Judge