IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Anita J. Poplawski, Petitioner	:	
v.	:	No. 2612 C.D. 2009
Unemployment Compensation Board of Review, Respondent	:	Submitted: April 30, 2010

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE SIMPSON **FILED: June 30. 2010**

Anita J. Poplawski (Claimant), representing herself, petitions for review from an order of the Unemployment Compensation Board of Review (Board) denying her request for remand. The order also denied Claimant benefits under Section 402(b) of the Unemployment Compensation Law (Law) (relating to voluntary quit).[1] Claimant, who failed to attend the referee's hearing, argues the Board erred in determining she had notice of the hearing. We affirm.

Claimant worked part-time for Red Hot & Blue (Employer) as a server. Claimant filed an application for unemployment benefits under Section 402(b) of the Law, which was denied. Claimant appealed. The Board scheduled a

[1] Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. §802(b).

hearing with a referee and sent notice of the hearing to Claimant and Employer, although neither party appeared for the hearing.

The referee issued a decision, which affirmed the initial denial of benefits. The referee reasoned that it was Claimant's burden to show good cause for voluntarily leaving her employment. Although Claimant set forth reasons for leaving Employer in the Claimant Questionnaire and in her appeal to the referee, the referee found these statements were hearsay. Further, the referee found no corroborating record evidence to justify reliance on the hearsay statements. Therefore, the referee determined Claimant did not meet her burden of proof. Claimant appealed to the Board.

Initially, the Board adopted the referee's findings and conclusions. Claimant submitted a request for reconsideration. The Board vacated its initial order and reopened the case for further review. Thereafter, the Board reinstated its original order and denied Claimant's request for a remand hearing because Claimant did not show good cause for her failure to attend the referee's hearing. Claimant now appeals to this Court.

On appeal, [2] Claimant primarily argues she did not receive notice of the hearing.

[2] Our review is "limited to determining whether necessary findings of fact were supported by substantial evidence, whether errors of law were committed, or whether constitutional rights were violated". Ductmate Indus., Inc. v. Unemployment Comp. Bd. of Review, 949 A.2d 338 (Pa. Cmwlth. 2008) (citing Johnson v. Unemployment Comp. Bd. of Review, 869 A.2d 1095 (Pa. Cmwlth. 2005)).

Generally, "[m]ailing of notices, orders or decisions of a referee, or of the Board to the parties at their last known addresses as furnished by the parties to the referee, the Board or the Department, shall constitute notice of the matters therein contained." 34 Pa. Code §101.53. Furthermore,

> The tribunal by which the appeal is to be heard shall schedule the appeal promptly for hearing and give at least 7 days' notice of the hearing to the parties and their counsel or authorized agent of record, specifying the date, hour and place of hearing and specific issues to be covered at the hearing.

34 Pa. Code §101.85 (a).

In unemployment cases, "[w]here notice, mailed to a party's last known address, is not returned by the postal authorities as undeliverable, the party is presumed to have received notice." John Kenneth, Ltd. v. Unemployment Comp. Bd. of Review, 444 A.2d 824, 826 (Pa. Cmwlth. 1982) (citing Mihelic v. Unemployment Comp. Bd. of Review, 399 A.2d 825 (Pa. Cmwlth. 1979)).

A referee's hearing may be held without the presence of a party, when the party was notified of the hearing specifics and "fails to attend a hearing without proper cause." 34 Pa. Code §101.51 (Absence of party). In the absence of all the parties, the referee's decision "may be based upon pertinent available records." Id.

In situations where a party fails to attend a referee's hearing, the Board examines the reason for the failure to attend and determines whether the reason constitutes proper cause. Ortiz v. Unemployment Comp. Bd. of Review, 481 A.2d 1383 (Pa. Cmwlth. 1984). If the Board determines there was not proper

cause for a claimant's failure to attend the referee's hearing, then it must render a decision on the merits rather than order a remand hearing. Id.

In contrast to the instant case, the claimant in Gadsden v. Unemployment Compensation Board of Review, 479 A.2d 74 (Pa. Cmwlth. 1984) initially provided an incorrect address, which she later corrected. There, this Court remanded to the Board for a determination of whether notice of the referee's hearing was mailed to the claimant's last known address. We instructed the Board as follows, "[i]f it is found that the notice of the referee's hearing was indeed sent to the claimant's last known address, the decision on the merits based on the record of the referee's hearing only shall be entered as the decision of the Board of Review." Id. at 77.

Here, the record includes the hearing notice for the referee's hearing, which sets forth Claimant's address and mailing date. Certified Record (C.R.), at Item No. 7. The mailing date was more than 7 days prior to the hearing. Id. The address used for Claimant on the hearing notice is the last known address of record. C.R. at Item No. 8 (Transcript of Testimony).

Although Claimant argues she never received the hearing notice, Claimant acknowledges use of her correct address and receipt of other documentation regarding this matter.

As pointed out by Claimant, the Board used an incorrect address for Employer and received the returned mail from the postal authorities. However,

nothing in the record indicates that Claimant's notice was returned by the postal authorities as undeliverable. See C.R. at Item Nos. 1- 18. Thus, Claimant is presumed to have received the hearing notice. John Kenneth, Ltd. This conclusion is consistent with the Board's argument that "[u]nder the mailbox rule, proof of mailing raises a rebuttable presumption that the mailed item was received." Dep't of Transp., Bureau of Driver Licensing v. Grasse, 606 A.2d 544, 545 (Pa. Cmwlth. 1991). This presumption is not rebutted by mere denial of receipt. Id.

Since Claimant presumably received notice of the hearing and failed to present any further explanation for her non-attendance at the hearing, Claimant did not establish good cause for the Board to grant a remand. Therefore, the Board properly reinstated the initial decision on the merits based on the record at the referee's hearing.

Even if we reached the merits, we would reject Claimant's argument that she had good cause for leaving her employment. In claims based on Section 402(b) of the Law, the claimant bears the burden of showing the termination was with cause of a necessitous and compelling nature. Tyler v. Unemployment Comp. Bd. of Review, 591 A.2d 1164 (Pa. Cmwlth. 1991). Uncorroborated hearsay statements are incompetent to support findings of good cause for leaving one's employment. Woods v. Unemployment Comp. Bd. of Review, 525 A.2d 1262 (Pa. Cmwlth. 1987).

Here, in the Claimant Questionnaire and the appeal from the Department's determination, Claimant vaguely explained why she quit. C.R. at

Item Nos. 2 and 5. As the referee properly determined, these statements constitute hearsay. C.R. at Item No. 10. Since Claimant and Employer offered no testimony or evidence at the hearing, the record lacks competent evidence to corroborate Claimant's hearsay statements. Thus, Claimant failed to establish the requisite cause for her separation from employment.

Based on the foregoing, we affirm.

ROBERT SIMPSON, Judge

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O R D E R

AND NOW, this 30th day of June, 2010, the order of the Unemployment Compensation Board of Review, dated December 3, 2009, in the above-captioned matter is **AFFIRMED**.

ROBERT SIMPSON, Judge