

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Dawn Wiggins, :
Petitioner :
 :
v. : No. 261 C.D. 2010
 : Submitted: July 16, 2010
Unemployment Compensation :
Board of Review, :
Respondent :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE LEAVITT

FILED: October 6, 2010

Dawn Wiggins (Claimant), *pro se*, petitions for review of an adjudication of the Unemployment Compensation Board of Review (Board) denying her claim for benefits under Section 402(b) of the Unemployment Compensation Law (Law).¹ The Board affirmed the determination of the Referee that Claimant voluntarily quit her job without cause of a necessitous and compelling nature. Finding no error by the Board, we affirm.

Claimant was employed by Progressive Financial Services (Employer) in its collections department from September 27, 2007, until she resigned on August

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §802(b). It provides, in relevant part, that “[a]n employe shall be ineligible for compensation for any week ... [i]n which his unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature.” 43 P.S. §802(b).

25, 2009. After terminating her employment with Employer, Claimant applied for unemployment compensation benefits. The Scranton UC Service Center determined that she was ineligible for unemployment compensation benefits. Claimant appealed, and a hearing was held before the Referee.

At the hearing, Claimant testified that her mother lived in New Mexico with her stepfather and Claimant's brother. In June 2009, Claimant's mother had a heart attack and began suffering from depression. In July 2009, Claimant's stepfather took all of his possessions and moved out of the family home. Claimant's brother left home to attend college. The only other relative residing in New Mexico was Claimant's sister, who lived thirty miles from her mother and could not help her mother on a daily basis due to her work schedule.

Claimant informed Employer that she needed to relocate in order to care for her ailing mother. Claimant testified that relocating her mother to Pennsylvania was not an option because her mother owned a home in New Mexico and did not want to move. Claimant did not attempt to find assisted care for her mother because she did not think it was financially feasible. Claimant did not ask Employer for a leave of absence, believing such a request would be denied.

Employer presented the testimony of its Director of Collections, Raymond Clifton. Clifton testified that Claimant would still have work available to her if she had not voluntarily ended her employment relationship.

The Referee denied benefits, holding that Claimant was ineligible under Section 402(b) of the Law, 43 P.S. §802(b), because she quit her job without cause of a necessitous and compelling nature. Claimant appealed to the Board. The Board concluded that Claimant credibly testified that the reason she quit available work was to care for her ailing mother. However, the Board also found that Claimant quit

before investigating whether assisted living options in New Mexico were feasible. Further, Claimant did not ask Employer for a leave of absence in order to survey her options. Therefore, the Board determined that Claimant failed to meet her burden of proof and affirmed the Referee's decision that she was ineligible for unemployment compensation benefits. Claimant now petitions this Court for review.²

On appeal, Claimant raises one issue. Claimant argues that the Board erred in concluding that taking care of her ill mother did not constitute a necessitous and compelling reason to terminate her employment. Claimant contends that her reason for quitting was necessitous and compelling because there was no one else who could take care of her mother. Claimant admits that she did not ask her Employer if she could take a leave of absence nor did she explore alternatives for her mother's care.

In a voluntary quit case, the claimant has the burden to prove that she resigned for necessitous and compelling reasons. *Draper v. Unemployment Compensation Board of Review*, 718 A.2d 383, 385 (Pa. Cmwlth. 1998). Whether a claimant's voluntary termination of employment to care for an ill parent constitutes a necessitous and compelling reason must be decided on the specific facts of an individual case. *Id.*

Cause of necessitous and compelling nature is defined as circumstances that produce pressure to terminate employment that is both real and substantial, and

² Our scope of review is limited to determining whether constitutional rights have been violated, errors of law were committed, or whether findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704; *Sheets v. Unemployment Compensation Board of Review*, 708 A.2d 884, 885 n.3 (Pa. Cmwlth. 1998). Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Korpics v. Unemployment Compensation Board of Review*, 833 A.2d 1217, 1219 n.1 (Pa. Cmwlth. 2003).

which would compel a reasonable person under the circumstances to act in the same manner. *Empire Intimates v. Unemployment Compensation Board of Review*, 655 A.2d 662, 664 (Pa. Cmwlth. 1995). In addition, to be eligible for benefits under Section 402(b), the claimant must have acted with ordinary common sense in terminating her employment, made reasonable efforts to preserve her employment, and had no other real choice than leaving her employment. *Id.*

The present case is factually similar to *Robinson v. Unemployment Compensation Board of Review*, 532 A.2d 952 (Pa. Cmwlth. 1987). In that case, the claimant quit her job to care for her chronically ill father. This Court affirmed the Board's determination that the claimant was not entitled to unemployment compensation benefits because she did not ask for a leave of absence, nor did she explore alternative solutions for caring for her father. *Id.* at 954. Similarly, in *Renosky v. Unemployment Compensation Board of Review*, 434 A.2d 887, 888 (Pa. Cmwlth. 1981), the claimant, who lived with his parents, quit his job rather than relocating 200 miles away with his employer, an oil rig company. The claimant did so because his father was ill and the claimant needed to be home to assist his mother in case there was an emergency. This Court determined that the claimant did not have necessitous and compelling reasons to quit because he did not explore any alternatives for tending to his father's medical needs.

In the case at bar, by not asking Employer for a leave of absence, Claimant deprived Employer of the opportunity to accommodate her situation. Claimant also failed to pursue alternatives for her mother's care that might have been financially and logistically practical. Instead, Claimant quit her job and moved to New Mexico. The record makes it impossible to find that Claimant had no real

choice other than to terminate her employment. The Board did not err in determining that Claimant is ineligible for benefits.

Accordingly, we affirm the decision of the Board.

MARY HANNAH LEAVITT, Judge

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Unemployment Compensation	:	
Board of Review,	:	
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ORDER

AND NOW, this 6th day of October, 2010, the order of the Unemployment Compensation Board of Review in the above-captioned matter, dated January 27, 2010, is hereby AFFIRMED.

MARY HANNAH LEAVITT, Judge