

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Shari Copenhaver,	:	
Petitioner	:	
	:	
v.	:	No. 2639 C.D. 2010
	:	Submitted: April 8, 2011
Unemployment Compensation	:	
Board of Review,	:	
Respondent	:	

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE SIMPSON**

FILED: May 25, 2011

In this unemployment compensation appeal, Shari Copenhaver (Claimant), representing herself, asks whether the Unemployment Compensation Board of Review (Board) erred in denying her benefits under Section 402(b) of the Unemployment Compensation Law (Law) (relating to voluntary quit).¹ Claimant argues the Board erred in determining that she lacked good cause to quit and that she did not make a reasonable effort to preserve her employment. Discerning no error in the Board's decision, we affirm.

I. Background

Claimant worked for Juniata County (Employer) as the director of its domestic relations section (DRS) for approximately four-and-a-half years.

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

Claimant supervised a staff of four individuals. See Referee's Hearing, 07/07/10, Notes of Testimony (N.T.) at 32. Claimant reported to the President Judge of the Court of Common Pleas for the 41st Judicial District of Pennsylvania, which comprises Juniata and Perry Counties.

As director of DRS, Claimant dealt with the Department of Public Welfare (DPW), Bureau of Child Support Enforcement (BCSE), the entity responsible for supervision of the program under Title IV-D of the Social Security Act. 42 U.S.C. §§651-669b; see 42 U.S.C. §651. By way of background, DPW enters into cooperative agreements with DRS and the County Commissioners. Pursuant to the cooperative agreement and Title IV-D of the Social Security Act, DRS provides child support and spousal support services and receives federal reimbursement and incentive payments. A portion of the cooperative agreement states that DRS provides Title IV-D legal services through professionally independent attorneys and correspondingly, is reimbursed for allowable expenditures. Referee's Op., 07/16/10, Findings of Fact (F.F.) Nos. 3-4; Claimant's Ex. 1 (cooperative agreement). Thus, the cooperative agreement provides for contracts for Title IV-D legal services.

In February 2010, Claimant resigned from her position as director of DRS. After her resignation, she applied for unemployment benefits, which were initially granted. Employer appealed. A referee hearing ensued.

At hearing, Claimant, representing herself, testified. In response, Employer presented the testimony of the Honorable Kathy A. Morrow, President

Judge of the Court of Common Pleas of the 41st Judicial District (President Judge Morrow), and Jeffrey Zimmerman, Chairman of the Juniata County Board of Commissioners.

After hearing, the referee determined Claimant voluntarily quit her job without necessitous and compelling cause; thus, the referee denied benefits. Claimant appealed.

On appeal, the Board adopted and incorporated the referee's findings, which include (with emphasis added):

5. [C]laimant understood a Title IV-D legal services agreement had been executed prior to her beginning employment for a period beginning October 1, 2005.
6. No Title IV-D legal services agreement was executed for the period from October 1, 2005 to December 31, 2009.
7. In December 2009, while preparing for a BCSE audit, [C]laimant became aware a Title IV-D legal services agreement had not been executed.
8. [C]laimant prepared a retroactive legal services agreement for the period from October 1, 2005 to December 31, 2009, and BCSE approved the agreement.
9. The Title IV-D legal services agreement was required to be signed also by the [P]resident [J]udge, the [C]ounty [C]ommissioners and the [C]ourt [A]dministrator.
10. The [P]resident [J]udge and at least one of the [C]ounty [C]ommissioners was [sic] initially reluctant to sign the retroactive Title IV-D legal services agreement because they were not in those positions as of the October 1, 2005, effective date of the agreement.

11. [C]laimant prepared a Title IV-D legal services agreement for the period beginning January 1, 2010, and [C]laimant presented this agreement to the [P]resident [J]udge and the [C]ounty [C]ommissioners for signature and this agreement was signed and subsequently forwarded to the [C]ourt [A]dministrator for signature.
12. The BCSE audit was performed from January 4, to January 28, 2010.
13. Juniata County [DRS] did not lose any funding and was not required to make reimbursement for any legal services expenditures as a result of any unexecuted Title IV-D legal services agreement for the period beginning October 1, 2005. The county was denied some legal services expenditures because the Title IV-D attorney's compensation rate exceeded the market rate allowable for reimbursement.

* * * *

15. [C]laimant reported to the [P]resident [J]udge.
16. [C]laimant's staff repeatedly made complaints to the [P]resident [J]udge regarding [C]laimant's "micromanagement" and other conduct and requirements of the staff.
17. On January 29, 2010, [C]laimant met with the staff and ... expressed her displeasure with the problems and lack of cooperation and lack of communication between [C]laimant and the staff. The [P]resident [J]udge suggested [C]laimant conduct monthly staff meetings, speak to the staff rather than sending emails and explain the legal basis for certain requests of the staff and that all of the individuals respect each other and act like adults.
18. On January 29, 2010, the [P]resident [J]udge also gave direction to [C]laimant's staff how to proceed when an individual appears at [DRS] and indicates his or her dissatisfaction with a support order. The [P]resident [J]udge advised the staff to direct the individual to file an appeal because of the time constraints of filing an appeal within ten days of the order.

19. The [P]resident [J]udge did not give a directive or consent for any of [C]laimant's staff to violate any agreement, regulation or law.
20. [C]laimant was upset with the [P]resident [J]udge's intervention and apparently felt it affected her ability to supervise her staff.
21. On February 1, 2010, [C]laimant submitted her letter of resignation; the letter of resignation did not state a reason for the resignation.
22. [C]laimant resigned her employment because she was upset with the conduct of the [P]resident [J]udge by failing to sign the retroactive agreement and by intervening with her staff and because she felt her reputation might be damaged by the BCSE audit and [DRS'] violation of the agreement, regulations and law.
23. Continuing work was available to [C]laimant had [C]laimant desired to continue working with [E]mployer. [E]mployer had made no decision to take any disciplinary action or to terminate [C]laimant's employment and [E]mployer would not have terminated [C]laimant's employment due to her job performance or the findings of the BCSE audit.
24. The [P]resident [J]udge and the [C]ounty [C]ommissioners, after communication with BCSE, subsequently signed the retroactive Title IV-D legal services agreement.

Referee's Op., F.F. Nos. 5-13, 15-24.

In its decision, the Board further explained (with emphasis added):

The Board notes that [C]laimant admitted that she first learned about a possible problem regarding the Legal Services Agreement on December 18, 2009. Claimant submitted her resignation on February 1, 2010. While the Board understands [C]laimant's subjective concerns regarding the apparent lack of this agreement, the Board concludes that she simply did not make a reasonable effort to maintain her employment. Claimant's concerns

about her reputation in the community wherein she admitted that she was not financially responsible and that any failure was because of other parties actions is a subjective concern. Likewise, her belief that [E]mployer would not sign this agreement was clearly subjective given that [E]mployer subsequently did agree to sign the document. Rather it was clear that [C]laimant simply was dissatisfied with her employment which fails to rise to the level of necessitous and compelling [cause]. [E]mployer credibly established that [C]laimant was informed that her small office would work better with personal communication rather than e-mail and that she needed to inform her subordinates why certain reports needed to be done rather than simply directing them to do work. ...

Bd. Op., 10/08/10 at 1. Thus, the Board upheld the denial of benefits. Claimant now petitions for review to this Court.²

II. Issues

On appeal,³ Claimant first argues Employer's conduct caused her to participate in violations of the law. Specifically, she asserts Employer forced her to resign because it refused to execute the two agreements for Title IV-D legal

² In February 2011, this Court granted the County's application for intervention in this appeal. Shortly thereafter, the County filed a brief in support of the Board's decision.

³ Our review is limited to determining whether the necessary findings of fact were supported by substantial evidence, whether errors of law were committed, or whether constitutional rights were violated. Beddis v. Unemployment Comp. Bd. of Review, 6 A.3d 1053 (Pa. Cmwlth. 2010).

The Board is the ultimate fact finder and resolves all conflicts in the evidence and determines the credibility of witnesses. Ductmate Indus., Inc. v. Unemployment Comp. Bd. of Review, 949 A.2d 338 (Pa. Cmwlth. 2008). Accordingly, the Board determines the weight assigned to the evidence. Diehl v. Unemployment Comp. Bd. of Review, 4 A.3d 816 (Pa. Cmwlth. 2010). The Board's findings are conclusive and binding on review, if supported by substantial evidence in the record, taken as a whole. Id.

services (Agreements). Claimant contends Employer's actions subjected her to possible civil and criminal penalties, as well as damage to her professional reputation. Claimant also contends she made a reasonable effort to maintain her employment under the circumstances.⁴

III. Discussion

In claims based on Section 402(b) of the Law, the claimant bears the burden of establishing cause of a necessitous and compelling nature for leaving her employment. Pollard v. Unemployment Comp. Bd. of Review, 798 A.2d 815 (Pa. Cmwlth. 2002). To show such cause, a claimant must establish circumstances existed that produced real and substantial pressure to terminate employment, and such circumstances would compel a reasonable person to act in the same manner. Id. "Whether a termination of employment was for a necessitous and compelling reason is a conclusion of law to be made based upon the underlying facts and is reviewable by this Court." Id. at 816.

A.

Claimant first argues Employer's conduct caused her to participate in violations of the law. Specifically, she asserts Employer forced her to resign because it refused to execute the two Agreements.

⁴ At the outset, we note, Claimant does not cite any case law in the lengthy, free-flowing argument section of her brief. Instead, she bases her arguments on her version of the facts, some of which are not of record. To the extent Claimant's brief contains factual statements that are not part of the record, we may not consider those statements. Grever v. Unemployment Comp. Bd. of Review, 989 A.2d 400 (Pa. Cmwlth. 2010); Lausch v. Unemployment Comp. Bd. of Review, 679 A.2d 1385 (Pa. Cmwlth. 1996).

A claimant possesses good cause for leaving her employment where the work jeopardizes her health or safety or results in a breach of the law. Fleeger v. Unemployment Comp. Bd. of Review, 528 A.2d 264 (Pa. Cmwlth. 1987). Where the issue is safety, a claimant needs to present objective evidence of an unsafe working condition. Green Tree Sch. v. Unemployment Comp. Bd. of Review, 982 A.2d 573 (Pa. Cmwlth. 2009). Where the issue involves alleged illegality, a claimant's sincere but unsubstantiated belief regarding a violation of the law resulting from an employer's conduct is not sufficient to establish good cause to quit. Telesound Rentals, Inc. v. Unemployment Comp. Bd. of Review, 616 A.2d 190 (Pa. Cmwlth. 1992); Ayres v. Unemployment Comp. Bd. of Review, 598 A.2d 1083 (Pa. Cmwlth. 1991).

A claimant's personal disagreement with her employer's methods does not constitute a compelling reason to leave. Id. Mere dissatisfaction with working conditions is not cause of a compelling nature to terminate one's employment. Brunswick Hotel & Conference Ctr., LLC v. Unemployment Comp. Bd. of Review, 906 A.2d 657 (Pa. Cmwlth. 2006).

Here, as to the unsigned Agreements, the referee, whose findings and conclusions the Board adopted and incorporated in its decision, stated:

[E]mployer did not cause [C]laimant to be out of compliance with a cooperative agreement by failing to sign a retroactive legal services agreement. [E]mployer took justifiable action to ensure the propriety of signing such a retroactive agreement prior to signing the agreement. [E]mployer also signed the required Title IV-D legal services agreement for the current period and did not take any action to attempt to cause [C]laimant, as an agent of Juniata County, to be out of

compliance with a cooperative agreement. [E]mployer did not take any action or cause [C]laimant's reputation to be harmed in the domestic relations professional community. [C]laimant was not in jeopardy of losing any professional license and [C]laimant was not in jeopardy of termination from her employment.

Referee's Op., at 3. Further, the Board's findings indicate that BSCE did not assess any penalty against Employer or cite it for any violation of any federal, state or county law for failing to have executed Agreements. See F.F. No. 13; N.T. at 35-36.

The Board's supported findings also reveal President Judge Morrow did not authorize DRS to violate any laws, and she did not know of any violations by DRS. F.F. No. 19; N.T. at 43-45.

In short, contrary to Claimant's contentions, the record supports the Board's decision that Employer did not cause Claimant to participate in any violation of the law.

B.

Claimant also argues Employer's conduct negatively impacted her professional reputation. Again, we disagree.

Contrary to Claimant's contentions, the record supports the Board's finding that Employer did not hold the lack of executed Agreements or BCSE's audit findings against Claimant. See F.F. No. 23; N.T. 34-36, 48. As stated by the Board: "Claimant's concerns about her reputation in the community wherein she

admitted that she was not financially responsible and that any failure was because of other parties['] actions is a subjective concern. ... [E]mployer credibly established that [C]laimant would not have been personally impacted by [the] [Agreements].” Bd. Op. at 1.

For these reasons, we discern no error in the Board’s determination that Claimant did not prove necessitous and compelling cause for voluntarily terminating her employment. Although Claimant alleged illegal conduct, the Board found Claimant’s concerns were subjective. The Board properly concluded these subjective concerns did not rise to the level of good cause. See Telesound Rentals; Ayres. Also, the Board correctly determined that, because Claimant quit due to mere dissatisfaction with her employment, see F.F. No. 22; N.T. at 16, 18, 24, 28, 36-37, she did not prove the requisite necessitous and compelling cause. Brunswick Hotel & Conference Ctr.⁵

⁵ Claimant further argues Employer hindered her ability to comply with the law by preventing her from properly supervising and directing her staff. Specifically, she asserts President Judge Morrow interfered with the operation of her office by precluding e-mail and intervening on specific issues, such as completion of mandatory federal reports and instructions to dissatisfied individuals regarding appeal rights. However, Claimant did not raise this issue in her petition for review. As such, it is waived. See Jimoh v. Unemployment Comp. Bd. of Review, 902 A.2d 608 (Pa. Cmwlth. 2006).

Moreover, even if not waived, Claimant’s argument fails. Specifically, contrary to Claimant’s assertions, President Judge Morrow refuted Claimant’s allegations and explained the need for better communication within the DRS office. The Board credited President Judge Morrow’s testimony, stating: “[E]mployer is credible that [C]laimant was informed that her small office would work better with personal communication rather than e-mail and that she needed to inform subordinates why certain reports needed to be done rather than simply directing them to do work.” Bd. Op., 10/8/10, at 1; see also Referee’s Findings of Fact Nos. 16-20, 22. The Board’s determinations are adequately supported. Referee’s Hearing, 07/07/10, Notes of Testimony at 32-33, 36-37, 39, 42-45. Thus, even if properly preserved, we would reject Claimant’s argument.

C.

As a final issue, Claimant argues she made a reasonable effort to preserve her employment. She reiterates her assertions that Employer's actions violated the law, and she maintains that she made numerous attempts to advise Employer of the importance of executing the outstanding Agreements, neither of which Employer returned to Claimant prior to her resignation. Again, we disagree.

To obtain benefits, a claimant must show she acted with ordinary common sense in terminating her employment, she made a reasonable effort to preserve her employment, and she had no other real choice than to leave her job. PECO Energy Co. v. Unemployment Comp. Bd. of Review, 682 A.2d 58 (Pa. Cmwlth. 1996).

Here, President Judge Morrow testified Claimant did not address any alleged violations of the law or any other complaints with her prior to resigning. N.T. at 36. This is not surprising given the Board's findings that President Judge Morrow met with Claimant on Friday, January 29, 2010 regarding issues with Claimant's staff, and Claimant submitted her resignation letter on Monday, February 1, 2010. F.F. Nos. 17, 21. Further, although Claimant did not provide any reason in her resignation letter to President Judge Morrow, the Board determined Claimant voluntarily quit her job because of her dissatisfaction with Employer. See Bd. Op. at 1; N.T. at 10; Ex. 14. This determination is bolstered by the finding that Claimant resigned because she was upset with President Judge Morrow's failure to sign the retroactive Agreement and the intervention with

Claimant's staff, as well as Claimant's fear that her reputation would be damaged. F.F. No. 22; N.T. at 16, 18, 24, 28, 36-37.

As explained above, Employer took action to remedy the situation regarding the unsigned Agreement, and it did not ignore Claimant's concerns. Claimant testified President Judge Morrow told her she would sign the retroactive Agreement, which she eventually did. F.F. No. 24; N.T. at 13, 34-36. Claimant also testified President Judge Morrow and the County Commissioners signed the 2010 Agreement, although she never received it from the court administrator. F.F. No. 11; N.T. at 13.

As to the issues with Claimant's staff, the referee reasoned that "[E]mployer took reasonable remedial action to resolve problems in the workplace by meeting with [C]laimant and [C]laimant's staff." Referee's Op., at 3; F.F. Nos. 16-17; N.T. at 32-33. In light of the above circumstances, no error is apparent in the Board's determination that Claimant did not make a reasonable effort to maintain her employment. Bd. Op. at 1; PECO Energy Co.

Based on the foregoing, we affirm.

ROBERT SIMPSON, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Shari Copenhaver,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 2639 C.D. 2010
	:	
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 25th day of May, 2011, the order of the Unemployment Compensation Board of Review is AFFIRMED.

ROBERT SIMPSON, Judge