

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Ada Higgins,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
	:	
Unemployment Compensation Board	:	
of Review,	:	No. 2742 C.D. 2010
	:	
Respondent	:	Submitted: June 3, 2011

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

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER

FILED: July 27, 2011

Ada Higgins (Claimant) petitions this Court for review of the November 1, 2010 order of the Unemployment Compensation Board of Review (UCBR) affirming the decision of the Referee, and denying benefits. Claimant presents two issues for this Court’s review: (1) whether she can be found ineligible for benefits when a representative on behalf of Hat’s Heroes (Employer) failed to appear at a hearing before the Referee, and (2) whether the Referee failed to give Claimant a full opportunity to be heard at the hearing. For reasons that follow, we affirm the UCBR’s order.

Claimant was employed by Employer as a manager for thirteen years ending June 9, 2010. Claimant complained that the owner was acting moody and it was becoming stressful working for him. On June 9, 2010, she told him she was quitting and not giving notice. On July 4, 2010, Claimant applied for Unemployment

Compensation (UC) benefits. On November 1, 2010, the Lancaster UC Service Center denied benefits under Section 402(b) of the Unemployment Compensation Law (Law).¹ Claimant appealed, and a hearing was held before a Referee. Employer did not appear at the hearing. On September 13, 2010, the Referee affirmed the decision of the UC Service Center. Claimant appealed to the UCBR. The UCBR affirmed the decision of the Referee. Claimant appealed, pro se, to this Court.²

Claimant argues that she could not be found ineligible for benefits when Employer's owner did not appear at the hearing. We disagree. As respecting the absence of a party during an administrative proceeding, the law is clear. "If a party notified of the date, hour and place of a hearing fails to attend a hearing without proper cause, the hearing may be held in his absence. In the absence of all parties, the decision may be based upon the pertinent available records." 34 Pa. Code § 101.51. We hold that there was substantial evidence to support the conclusion that Claimant was not eligible for benefits under Section 402(b) of the Law, notwithstanding Employer's absence.

"Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Procyson v. Unemployment Comp. Bd. of Review*, 4 A.3d 1124, 1127 n.4 (Pa. Cmwlth. 2010). Section 402(b) of the Law states in relevant part that an employee 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"

Whether the claimant's separation from employment is the result of a voluntary resignation is a question of law subject

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

² This Court's review is limited to determining whether the findings of fact were supported by substantial evidence, whether constitutional rights were violated, or whether errors of law were committed. *Johnson v. Unemployment Comp. Bd. of Review*, 869 A.2d 1095 (Pa. Cmwlth. 2005).

to our review and must be determined from the facts of the individual case. A voluntary quit requires a finding that the claimant had a conscious intention to leave employment. In determining the claimant's intent, this Court must consider 'the totality of the circumstances surrounding the incident.'

Procyson, 4 A.3d at 1127 (citations omitted). Here, when asked at the hearing whether she quit or was discharged, Claimant testified: "I quit." Original Record, Item No. 8 (O.R.) at 2. When asked what happened the day she quit, Claimant testified:

Well [the owner] goes home every afternoon. He went home that afternoon and he came back, he never spoke to me, never said nothing and I told him, I said Greg, I'm quitting. I said I'll finish this day out and I said I'm finished. I said I'm not giving you a notice I said because I'm not being treated right.

O.R. at 2. When asked why she quit, Claimant stated that the owner was in a mood for the past several weeks, like he was "not there." *Id.*

Clearly Claimant's testimony is such relevant evidence as a reasonable mind might accept as adequate to support the conclusion that Claimant voluntarily left work without cause of a necessitous and compelling nature. Accordingly, the UCBR did not err in finding Claimant ineligible for benefits notwithstanding the fact that Employer did not appear for the hearing at issue.

Claimant next argues that the Referee rushed the hearing and did not give her the proper opportunity to explain what happened. We disagree.

In a hearing the tribunal may examine the parties and their witnesses. Where a party is not represented by counsel the tribunal before whom the hearing is being held should advise him as to his rights, aid him in examining and cross-examining witnesses, and give him every assistance compatible with the impartial discharge of its official duties.

34 Pa. Code § 101.21(a). Here, Claimant was the only witness at the hearing and the Referee examined her. We note that the following exchange took place to conclude the hearing.

[Referee:] What did he say when you told him you were quitting?

[Claimant:] He didn't say nothing.

[Referee:] Okay. Anything else?

[Claimant:] No.

[Referee:] Any closing statement?

[Claimant:] No. I got along with everybody and the customers really, really liked me. In fact, after I quit they called me at home want[ing] to know if I was sick. But I was -- it was kind of rough there towards the end on me because he wouldn't -- like I said he wouldn't talk for a couple weeks. He'd go home every afternoon to have to take a nap. Here I am a 70-year-old woman and a 47-year-old man can't work a whole day's work.

[Referee:] All right.

[Claimant:] So, I mean and it's -- my granddaughter quit because of things going on in there just the way he acted.

[Referee:] Okay, anything else?

[Claimant:] No.

....

[Referee:] Thank you.

[Claimant:] Yeah, I miss my work but -- I just couldn't stay any longer.

[Referee:] All right.

[Claimant:] You know when you get up that you're so tired when you go home your kids have to help you at home.

[Referee:] All right. Thank you.

[Claimant:] Thank you dear.

O.R. at 3-4. Clearly, Claimant had a full opportunity to present her case. We discern no error or abuse of discretion on the part of the Referee.

For all of the above reasons, the order of the UCBR is affirmed.

JOHNNY J. BUTLER, Judge

