

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Sean Bandru,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 2784 C.D. 2010
	:	Submitted: August 19, 2011
Unemployment Compensation Board	:	
of Review,	:	
	:	
Respondent	:	

BEFORE: HONORABLE BERNARD L. MCGINLEY, Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FRIEDMAN

FILED: October 17, 2011

Sean Bandru (Claimant) petitions for review, *pro se*, of the November 8, 2010, order of the Unemployment Compensation Board of Review (UCBR) affirming the decision of a referee to deny his claim for unemployment compensation benefits. The UCBR concluded that Claimant was ineligible for benefits under section 402(b) of the Unemployment Compensation Law (Law).¹ We affirm.

Claimant worked as an office operations supervisor for the United States Census Bureau (Employer) from March 9, 2009, until May 12, 2010. (Findings of

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §802(b). Section 402(b) of the Law provides that an employee shall be ineligible for compensation for any week in which his or her unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature.

Fact, Nos. 1-2.)² Claimant and his co-workers became upset when their direct supervisor was discharged for performance issues. (Findings of Fact, No. 3.) Claimant was not in danger of discharge himself. (Findings of Fact, No. 5.) On May 12, 2010, Claimant and one of his subordinates tendered resignation letters before the end of their shift; however, they did not speak with the office manager about why they were resigning. (Findings of Fact, No. 6.) Claimant voluntarily quit his employment because of an alleged hostile work environment. (Findings of Fact, No. 7.)

Claimant filed a claim for unemployment benefits, which was denied by the local service center. Claimant timely appealed to the referee, who held an evidentiary hearing on August 23, 2010. The referee concluded that Claimant voluntarily quit because he was dissatisfied with his working conditions, which did not constitute cause of a necessitous and compelling nature under section 402(b) of the Law.

Claimant timely appealed to the UCBR, which affirmed. The UCBR concluded that Claimant failed to present competent and adequate testimony to establish that he had a necessitous and compelling cause to quit his employment. The UCBR also concluded that Claimant had a full and fair hearing before the referee and, thus, denied his request for a remand. Claimant now petitions for review of that decision.

² The UCBR adopted the referee's findings of fact and conclusions of law. Thus, the findings of fact cited herein can be found in the referee's August 24, 2010, decision.

On appeal, Claimant asserts that the evidence of record does not support the UCBR's conclusion that Claimant voluntarily quit without a necessitous and compelling cause. We disagree.³

An employee seeking unemployment benefits after voluntarily terminating employment has the burden of proving cause of a necessitous and compelling nature for the voluntary quit. *Brunswick Hotel & Conference Center, LLC v. Unemployment Compensation Board of Review*, 906 A.2d 657, 660 (Pa. Cmwlth. 2006). An employee who claims to have quit his job for a necessitous and compelling reason must prove that: (1) circumstances existed that produced real and substantial pressure to terminate employment; (2) such circumstances would compel a reasonable person to act in the same manner; (3) the employee acted with ordinary common sense; and (4) the employee made a reasonable effort to preserve his or her employment. *Id.* Mere dissatisfaction with one's working conditions is not cause of a necessitous and compelling nature for terminating employment. *Id.*

Here, the UCBR determined that Claimant became disgruntled after his direct supervisor was fired and after his complaints alleging a hostile work environment went unresolved. However, there is no credible evidence in the record indicating that Claimant had reason to believe that his job was in jeopardy. The UCBR disbelieved Claimant's testimony that, following his supervisor's termination, Employer told him that he and his co-workers "should all get used to it . . . before we

³ Our scope of review is limited to determining whether constitutional rights were violated, whether an error of law was committed, or whether findings of fact were unsupported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

lose anybody else.” (N.T., 8/23/10, at 4.) In fact, Claimant’s own witness testified that, to her knowledge, Claimant was never informed that he would be fired. (*Id.* at 6.) Moreover, the UCBR found that Claimant failed to offer sufficient credible evidence that he was working in a hostile environment. Therefore, the record contains substantial evidence to support the UCBR’s conclusion that Claimant lacked a necessitous and compelling cause to voluntarily quit.

Claimant also asserts that the testimony on which the referee and the UCBR relied was unreliable. As the factfinder in unemployment compensation cases, the UCBR is responsible for determining the weight to be given the evidence and the credibility to be afforded the witnesses. *Spiropoulos v. Unemployment Compensation Board of Review*, 654 A.2d 642, 644 (Pa. Cmwlth. 1995). The UCBR’s findings are conclusive on appeal as long as the record, taken as a whole, contains substantial evidence to support those findings. *Id.* Here, the UCBR resolved the credibility issues in favor of Employer and against Claimant, and we see no reason to disturb those determinations.

Finally, Claimant asserts that the UCBR erred in denying his request for a remand for additional testimony. According to Claimant, he did not receive a full and fair hearing before the referee. However, because Claimant failed to raise this claim in his petition for review, it is waived. *See Diehl v. Unemployment Compensation Board of Review*, 4 A.3d 816, 826 (Pa. Cmwlth. 2010), *appeal granted*, __ Pa. __, 20 A.3d 1192 (2011).

Accordingly, we affirm.⁴

ROCHELLE S. FRIEDMAN, Senior Judge

⁴ Claimant also asserts that the referee's finding, which the UCBR adopted, that Claimant was promoted two days before he resigned is unsupported by the record. (*See* Findings of Fact, No. 4.) We agree. The testimony actually established that Claimant was promoted in February 2010, three months before his resignation. (*See* N.T., 8/23/10, at 11, 13-14.) However, there was testimony that, two days after his promotion, Claimant filed his first complaint alleging a hostile work environment. In any event, the UCBR's error in adopting Finding of Fact Number 4 was harmless. While the date of Claimant's promotion has some relevance to the issue of whether he believed his termination was imminent, as discussed above, the UCBR rejected Claimant's testimony on that issue.

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ORDER

AND NOW, this 17th day of October, 2011, we hereby affirm the November 8, 2010, order of the Unemployment Compensation Board of Review.

ROCHELLE S. FRIEDMAN, Senior Judge