IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Carol A. Gwizdak, Petitioner	:	
v.	:	No. 2849 C.D. 2010
	:	Submitted: July 1, 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: August 10, 2011

Carol A. Gwizdak (Claimant) petitions for review, *pro se*, of the December 3, 2010, order of the Unemployment Compensation Board of Review (UCBR), affirming the decision of a referee to deny Claimant's request 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 operator for Verizon Communications (Employer) from December 6, 1999, through June 30, 2010. (Findings of Fact, No.

[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.

1.)[2] Employer announced that it would be closing Claimant's office on June 30, 2010. (Findings of Fact, No. 2.) Employer also announced, however, that any employees in that office would be transferred to another floor in the same building and that they would continue to work for Employer, at the same rate of pay, for a different client base. (Findings of Fact, Nos. 3-4.) Claimant learned of the intended transfer by speaking with other employees but never asked Employer about the terms or conditions of such a transfer. (Findings of Fact, Nos. 5-6.)

At the same time, Employer offered Claimant an enhanced income security plan (EISP). (Findings of Fact, No. 7.) Employer also offered Claimant a one-time incentive in the form of a $50,000.00 bonus, plus $2,200.00 per year for each year of service, in exchange for her voluntary resignation. (Findings of Fact, No. 8.)

Claimant's position is covered by a collective bargaining agreement (CBA) that prohibits involuntary layoffs. (Findings of Fact, No. 9.) As such, Claimant's job was protected by the CBA at least until its expiration in August 2011. (Findings of Fact, No. 14.)

Of the sixteen employees in Claimant's office, fourteen accepted the EISP and two chose to remain employed. The two employees who stayed continued to work for Employer in their respective positions as of the time of the hearing. (Findings of Fact, Nos. 10-11.)

[2] The UCBR adopted the referee's findings of fact and conclusions of law in their entirety. Thus, the findings of fact cited here can be found in the referee's September 30, 2010, decision.

Claimant chose to accept the EISP, thereby terminating her employment on June 30, 2010. (Findings of Fact, No. 12.) If Claimant had not accepted the EISP and had remained employed, she would have continued working as an operator for Employer. (Findings of Fact, No. 13.)

Claimant filed a claim for unemployment benefits, which was denied by the local service center. Claimant appealed to the referee, who held an evidentiary hearing. The referee ultimately affirmed the denial of benefits, concluding as follows:

> While there is no doubt the claimant's position with the employer would have been on a different floor and working with a different client base, the evidence of record indicates the claimant would have continued to perform essentially her same duties at the same rate of pay which she had with this employer prior to any such transfer. The employer credibly testified . . . that those individuals who chose not to accept the enhanced incentive continue to work for the employer at this time. The claimant is also governed by a [CBA] which prohibited her involuntary layoff through . . . at least August 2011. Given that the claimant could have continued to work in her position and that she could not be laid off from her position [under the CBA], the Referee concludes that the claimant has failed to meet her burden.

(Referee's Decision/Order at 2.) The referee further determined that Claimant's subjective fear that she could lose her job at some future time was not a necessitous and compelling reason for her voluntary retirement. (*Id.*) Claimant timely appealed

to the UCBR, which affirmed on the basis of the referee's decision. Claimant now petitions for review of that decision.[3]

On appeal, Claimant asserts that, because she believed that she would have been laid off in the near future had she not accepted the EISP, she had a necessitous and compelling reason to retire. We disagree.

An employee who voluntarily terminates her employment has the burden of proving that her termination was necessitous and compelling. *Renda v. Unemployment Compensation Board of Review*, 837 A.2d 685, 692 (Pa. Cmwlth. 2003) (*en banc*). In determining whether a necessitous and compelling cause exists in the context of corporate downsizing, the relevant inquiry is whether the circumstances surrounding the claimant's voluntary quit indicated a likelihood that the claimant's fear about her employment would materialize, that serious impending threats to her job would be realized, and that her belief that her job is imminently threatened is well-founded. *Id.* However, a claimant's speculation about her employer's financial condition and future layoffs does not establish a necessitous and compelling cause. *Staub v. Unemployment Compensation Board of Review*, 673 A.2d 434, 437 (Pa. Cmwlth. 1996).

Here, the UCBR found that Claimant's belief that she would be laid off if she did not accept the EISP was speculative. Employer never informed Claimant that her layoff was imminent. Rather, Employer informed Claimant that continuing

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

work would be made available to her. Employer credibly testified that, had Claimant chosen not to accept the EISP, she would have continued working in her position as an operator at the same rate of pay, albeit on a different floor of the building. (N.T., 9/29/10, at 7.) Employer further testified that other employees in Claimant's office who rejected the EISP still work for Employer in their same positions. (*Id.* at 6.) Moreover, the UCBR found that the terms of Claimant's CBA prohibited any involuntary layoffs until at least August 2011. Under these circumstances, the UCBR determined that claimant's subjective fear that she could be laid off at some point in the future was insufficient to establish a necessitous and compelling cause. *See Staub*, 673 A.2d at 437 (noting that a claim for unemployment benefits fails "where at the time of retirement suitable continuing work is available, the employer states that a layoff is possible but not likely, and no other factors are found . . . that remove an employee's beliefs from the realm of speculation").

Claimant does not dispute the UCBR's findings regarding the information she received from Employer about the EISP and the intended transfer of her department. Rather, she claims that Employer failed to provide her with a guarantee that she would not be laid off. Claimant submitted to the UCBR various documents and e-mails from Employer indicating that there could be potential layoffs of employees hired *after* August 3, 2003. Claimant, however, was hired in 1999. In fact, Employer testified that, with respect to the potential workforce reduction, "no employee could be laid off unless they were hired after August 3[,] 2003." (N.T., 9/29/10, at 6.) Therefore, we conclude that Claimant's job was not in imminent jeopardy. *See PECO Energy Company v. Unemployment Compensation Board of Review*, 682 A.2d 49, 52 (Pa. Cmwlth. 1996) (reversing UCBR's determination of

eligibility, where the claimant testified only to his subjective belief that he would be laid off and the employer testified that continuing work was available to him).

Because we conclude that there is substantial evidence in the record to support the UCBR's conclusion that Claimant lacked a necessitous and compelling cause to retire, we affirm.

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ROCHELLE S. FRIEDMAN, Senior Judge

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O R D E R

AND NOW, this 10th day of August, 2011, we hereby affirm the December 3, 2010, order of the Unemployment Compensation Board of Review.

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ROCHELLE S. FRIEDMAN, Senior Judge