

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Jane Yeckel,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
	:	
Unemployment Compensation	:	
Board of Review,	:	No. 285 C.D. 2011
	:	
Respondent	:	Submitted: August 26, 2011

BEFORE: HONORABLE DAN PELLEGRINI, Judge  
HONORABLE MARY HANNAH LEAVITT, Judge  
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY  
JUDGE BUTLER

FILED: September 7, 2011

Jane Yeckel (Claimant) petitions, pro se, for review of the December 13, 2010 order of the Unemployment Compensation Board of Review (UCBR) affirming the Referee’s determination denying Claimant unemployment compensation benefits pursuant to Section 402(b) of the Unemployment Compensation Law (Law).<sup>1</sup> The issue before this Court is whether Claimant had a necessitous and compelling reason for quitting her job. For the reasons that follow, we affirm the order of the UCBR.

Claimant was employed full time as a registrar for the Pittsburgh Institute of Aeronautics (Employer) beginning on June 25, 2007. Claimant quit her position with Employer on July 7, 2010 due to what she deemed a hostile work

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

environment. Specifically, Claimant had a personality conflict with two of her co-workers.

Claimant filed for unemployment compensation (UC) benefits through the Duquesne UC Service Center, which deemed her ineligible for benefits pursuant to Section 402(b) of the Law. Claimant appealed the decision, and a hearing was held before a Referee on September 27, 2010, at which Claimant and two witnesses for Employer testified. Claimant was not represented by counsel at the hearing. On October 1, 2010, the Referee issued an order affirming the UC Service Center's decision. Claimant appealed to the UCBR. By order issued December 13, 2010, the UCBR affirmed the Referee's order, adopting and incorporating the Referee's findings and conclusions. Claimant appealed to this Court.<sup>2</sup>

Claimant argues on appeal that the conditions of her employment were so egregious as to represent a necessitous and compelling reason for voluntarily leaving her employment, but that she was not given a full opportunity to present evidence of her claim before the Referee. We disagree.

Section 402(b) of the Law provides 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 . . . .”

Necessitous and compelling cause ‘results from circumstances which produce pressure to terminate employment that is both real and substantial, and which would compel a reasonable person under the circumstances to act in the same manner.’ An employee voluntarily terminating employment has the burden of proving his termination was necessitous and compelling.

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<sup>2</sup> 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. *Brunswick Hotel & Conference Ctr., LLC v. Unemployment Comp. Bd. of Review*, 906 A.2d 657 (Pa. Cmwlt. 2006).

*Renda v. Unemployment Comp. Bd. of Review*, 837 A.2d 685, 691-92 (Pa. Cmwlth. 2003) (citation omitted). This Court has held:

Where an employee voluntarily terminates employment due to a personality conflict with another employee which conflict renders working conditions intolerable, cause of a necessitous and compelling nature for terminating employment has been held to exist. . . . [M]ere personality conflict absent an intolerable work atmosphere, however, does not constitute necessitous and compelling reasons for a voluntary quit.

*Gioia v. Unemployment Comp. Bd. of Review*, 661 A.2d 34, 37 (Pa. Cmwlth. 1995) (citation omitted) (quoting *Uniontown Newspapers, Inc. v. Unemployment Comp. Bd. of Review*, 558 A.2d 627, 629 (Pa. Cmwlth. 1989) (emphasis deleted)).

According to the record in this case, at the September 27, 2010 hearing, the Referee confirmed that Claimant was aware of her right to be represented by counsel. The parties were advised by the Referee that each would have the right to present testimony and evidence, and Claimant was specifically advised that she had the “burden or responsibility to demonstrate that she had cause of necessitous and compelling nature for leaving employment.” Notes of Testimony, September 27, 2010 (N.T.) at 3. Claimant had no questions regarding the procedure. The Referee told her to state under oath why July 7, 2010 was her last day of employment with Employer. She testified that she was humiliated by two co-workers, the Dean of Students and the Director of Human Resources (HR). Specifically, she stated that, on July 6, 2010, the HR Director humiliated her in front of a student. Claimant was told that the student was in the office to see her. She went to the front office to see what the student wanted, then returned to her office to get paperwork and contact the financial aid office. The HR Director told Claimant that it was against policy to conduct business in the front office, and that she should have taken the student to her

office. The HR Director later apologized to Claimant. Claimant reported the incident to her supervisor, Director of Student Services, Greg Null, who discussed the incident with Director, James Mader. Claimant testified that Mr. Mader told her that some people will never change. When she said she planned to quit, Mr. Null and Mr. Mader asked her to take the afternoon to think it over first. When she returned to work the next day, she gave her notice of resignation. She claims that she exhausted all avenues of staying with Employer, but felt since personalities were not going to change, the situation would not change.

The Referee asked her about other instances she may wish to address. Claimant stated that, in April of 2009, she was responsible for completing graduation information, but there were problems with the computers. When she approached the HR Director, who was also the office manager, the HR Director told her that she was working on items for an upcoming board meeting and “she didn’t have time,” and that Claimant should “just deal with it.” N.T. at 8. She took the matter to Mr. Mader, and the computer issues were resolved.

As for incidents involving the Dean of Students, Claimant testified that she had to work closely with him. She described that, “for a long time, he seemed to be so distant and I was unsure why.” N.T. at 9. She also said that “[h]e would withhold information and sort of on the sly, like things were done and then it couldn’t be changed.” N.T. at 9. She testified that they would discuss things, and later he would tell her that he was old and did not remember them. The Referee found this testimony vague and asked her to be more specific. In response, Claimant explained that on one occasion she brought to the Dean’s attention a particular student’s performance that made the student’s reentry the following semester impossible, but he did nothing about it. Claimant testified that she made Mr. Mader aware of the student’s status, although it was the Dean of Students’ responsibility to do so. She

concluded that although their jobs went hand in hand, the Dean of Students “always seemed as though he was holding information from [her].” N.T. at 11. When the Referee asked if she had anything further, she said, “I don’t, no.” N.T. at 11. Subsequent to Employer’s witnesses addressing Claimant’s testimony, the Referee again asked whether she had “anything additional” to add before he moved to Employer’s testimony. N.T. at 11. She responded, “I don’t think so.” N.T. at 11.

Mr. Mader and Mr. Null testified on Employer’s behalf. Mr. Mader stated that Claimant was a very good employee, and that he discussed the incidents Claimant brought to his attention with the Dean of Students and the HR Director, but he did not take any severe action because they perceived the incidents as less serious than Claimant did. Finally, he clarified that he told Claimant that “you can’t change people’s personalities,” not that things would never change. N.T. at 12. Mr. Null’s testimony consisted merely of a statement that Claimant did not offer two weeks’ notice. When the Referee asked Claimant if she had anything additional in light of Employer’s evidence, she said no. She also declined to make any closing comments when offered the opportunity to do so.

The Referee concluded that, although Claimant presented credible testimony of the existence of personality conflicts with two co-workers, she failed to demonstrate the existence of a work environment that produced such real and substantial pressure that would compel a reasonable person to terminate his or her employment. The UCBR adopted and incorporated the Referee’s findings and conclusions.

It is well settled that,

[i]n unemployment compensation proceedings, the [UCBR] is the ultimate fact finder and is, therefore, entitled to make its own determinations as to witness credibility and evidentiary weight. The [UCBR] is free to accept or reject the testimony of any witness in whole or in part.

*McFadden v. Unemployment Comp. Bd. of Review*, 806 A.2d 955, 958 (Pa. Cmwlth. 2002) (citation omitted). Where, as here, substantial evidence supports the UCBR's findings, credibility determinations made by the UCBR are not subject to review by this Court. *Duquesne Light Co. v. Unemployment Comp. Bd. of Review*, 648 A.2d 1318 (Pa. Cmwlth. 1994).

The record here supports the UCBR's findings. Claimant presented testimony that, in her three years of employment, she experienced an instance in which the HR Director may have less than politely told her to handle a situation the HR Director was at the moment too busy to address; an instance in which the HR Director criticized Claimant in front of a student, but later apologized; and, one specific instance and some vague instances in which she was frustrated by the failure of the Dean of Students to perform his job. We cannot say that these circumstances created an intolerable work environment for Claimant. Without credited evidence that Claimant suffered intolerable harassment, there is no support for her claim that she had a necessitous and compelling reason for quitting her job.

In Claimant's brief to this Court, she claims that "it was primarily the forced falsification of school records" that led to her resignation. Claimant's Br. at 10. Specifically, she stated that the Dean of Students falsified student attendance and grade records and other documents that required her signature. This Court has held that "[i]f Claimant had a reasonable belief that he was participating in an illegal activity or if his personal and professional integrity were so jeopardized by the circumstances, there can be a necessitous and compelling cause to terminate his employment." *Tom Tobin Wholesale v. Unemployment Comp. Bd. of Review*, 600 A.2d 680, 683 (Pa. Cmwlth. 1991). However, pursuant to Section 504 of the Law, 43 P.S. § 824, where the UCBR does not direct the taking of new evidence, it must examine the Referee's determination based upon evidence submitted before the

Referee. Although raised by Claimant in her appeal of the Referee's decision to the UCBR, no such evidence was presented to the Referee.

Claimant states in her brief that she did not previously present this evidence because:

In the course of my hearing with the Referee, in a few instances, when I raised an issue or tried to explain a situation, he said 'You don't have to go into all of the details'. (See page 9, last line of the transcript.) Unfortunately, he did not come back to those issues and I was not given the opportunity to give a complete explanation. I was unaware and naïve as to what the full nature of the proceedings would entail. I was not fully informed as to how much specific detail and evidence to provide pertaining to the incidences at issue.

....

The Referee . . . did not ask about or give me the opportunity to discuss and explain the many situations which lead up to my decision to leave employment.

Claimant's Br. at 11-12. She explained: "I was also reluctant to have my former coworkers testify for fear they might jeopardize their employment." Claimant's Br. at 11.

Claimant's argument that she was naïve about what she had to do at the hearing, or that she was purposefully not specific with her reasons for quitting, do not now provide a sufficient basis on which this Court will reverse the UCBR's determination. First, the record is clear that the Referee provided Claimant with more than ample opportunity to provide evidence of what she deemed an intolerable or hostile work environment. Second, in the circumstance referred to by Claimant where the Referee said she need not go into all of the details, it is clear from the record he was referring to student names. *See* N.T. at 9-10. Finally, this Court has long held that "a layperson who chooses to represent himself in a legal proceeding must assume

the risk that his lack of expertise and legal training may prove to be his undoing.” *Finfinger v. Unemployment Comp. Bd. of Review*, 854 A.2d 636, 639 n.5 (Pa. Cmwlth. 2004).

Because Claimant has not met her burden of proving that she left her employment for necessitous and compelling reasons, the UCBR committed no error of law by affirming the Referee’s decision. The order of the UCBR is, therefore, affirmed.

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JOHNNY J. BUTLER, Judge

