

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Jennifer L. Probert,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
Unemployment Compensation	:	
Board of Review,	:	No. 298 C.D. 2010
	:	
Respondent	:	Submitted: October 1, 2010

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER

FILED: October 29, 2010

Jennifer L. Probert (Claimant) petitions this Court for review of the February 4, 2010 order of the Unemployment Compensation Board of Review (UCBR) affirming a Referee’s decision reversing the decision of the Duquesne Unemployment Compensation (UC) Service Center, and denying benefits under Section 402(b) of the Unemployment Compensation Law (Law).¹ Essentially, Claimant raises two issues for this Court’s review: (1) whether Claimant had a necessitous and compelling reason for leaving her employment, and (2) whether the UCBR erred in disregarding Claimant’s testimony. For reasons that follow, we affirm the UCBR’s order.

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

Claimant was hired by Classic Impressions DIP (Employer) as a graphic designer beginning July 7, 2004 and ending May 22, 2009. On June 23, 2008, Claimant filed a lawsuit against Employer for unpaid overtime wages. She felt she was thereafter being harassed. Claimant believes the harassment caused her stress which led to medical problems. Claimant quit her job without notice on May 22, 2009. She subsequently applied for UC benefits. The UC Service Center found Claimant eligible for benefits. Employer appealed, and a hearing was held before a Referee. On September 30, 2009, the Referee issued a decision reversing the UC Service Center and denying benefits. Claimant appealed to the UCBR. The UCBR adopted the Referee's findings and conclusions, and affirmed the decision of the Referee. Claimant appealed to this Court.²

Claimant argues that the UCBR erred in finding that Claimant did not have a necessitous and compelling reason for leaving her employment. Specifically, Claimant contends Employer subjected her to continuing harassment as a result of her filing a lawsuit for unpaid overtime. We disagree.

An employee who claims to have left employment for a necessitous and compelling reason must prove that: (1) circumstances existed which produced real and substantial pressure to terminate employment; (2) such circumstances would compel a reasonable person to act in the same manner; (3) the claimant acted with ordinary common sense; and, (4) the claimant made a reasonable effort to preserve her employment.

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. *Brunswick Hotel & Conference Ctr., LLC v. Unemployment Comp. Bd. of Review*, 906 A.2d 657, 660 (Pa. Cmwlth. 2006).

Brunswick Hotel & Conference Ctr., LLC v. Unemployment Comp. Bd. of Review, 906 A.2d 657, 660 (Pa. Cmwlth. 2006).

Here, Claimant testified that the reason she left her employment was “[b]ecause [she] couldn’t stand the constant harassment anymore. [She] couldn’t stand not being able to do anything right.” Reproduced Record at 58a. Claimant merely testified to instances where she felt she received unwarranted criticisms from her Employer and her co-workers. However, the UCBR found each criticism had a logical explanation based on the testimony of Andy Lantzman, Employer’s president/owner. Reprimands, “absent unjust accusations, profane language or abusive conduct . . . do not amount to necessitous and compelling causes.” *Ann Kearney Astolfi DMD PC. v. Unemployment Comp. Bd. of Review*, 995 A.2d 1286, 1289 (Pa. Cmwlth. 2010) (quoting *Lynn v. Unemployment Comp. Bd. of Review*, 427 A.2d 736, 737 (Pa. Cmwlth. 1981)). We, therefore, hold that a resignation prompted by ordinary workplace pressure is considered a voluntary resignation.

In addition, Claimant testified that she never complained to Employer regarding any harassment she may have received since filing her lawsuit, or any accompanying health problems. Further, she provided no evidence to prove that she made a reasonable effort to preserve her employment. Accordingly, Claimant has not proven that she left her job for a necessitous and compelling reason.

As for her claim that the harassment caused her medical problems:

To establish health problems as a compelling reason to quit, the claimant must (1) offer competent testimony that adequate health reasons existed to justify the voluntary termination, (2) *have informed the employer of the health problems* and (3) be available to work if reasonable accommodations can be made. Failure to meet any one of these conditions bars a claim for unemployment compensation. . . .

Id. at 1290 (citation omitted) (quoting *Lee Hosp. v. Unemployment Comp. Bd. of Review*, 637 A.2d 695, 698 (Pa. Cmwlth. 1994) (emphasis added)). For the reasons stated above, Claimant did not meet these conditions.

Next, Claimant argues the UCBR erred in disregarding Claimant's testimony which completely refuted Employer's justification for the harassment which she suffered. We disagree.

"In unemployment compensation proceedings, the [UCBR] is the ultimate fact finder, and it is empowered to resolve all conflicts in the evidence and to determine the credibility of witnesses." *Procito v. Unemployment Comp. Bd. of Review*, 945 A.2d 261, 262 n.1 (Pa. Cmwlth. 2008). Here, the UCBR found that "[C]laimant had not shown that [Employer] singled her out or harassed her concerning work related matters. Nor has [Claimant] shown that working conditions were intolerable." UCBR's Decision, February 4, 2010. Clearly, the UCBR resolved the evidentiary conflicts in favor of Employer, and found Andy Lantzman more credible than Claimant. Accordingly, the UCBR did not err in rejecting Claimant's testimony.

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

JOHNNY J. BUTLER, Judge

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ORDER

AND NOW, this 29th day of October, 2010, the February 4, 2010 order of the Unemployment Compensation Board of Review is affirmed.

JOHNNY J. BUTLER, Judge