

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Josey N. Wallak, :
 :
 Petitioner :
 :
 v. : No. 38 C.D. 2011
 : Submitted: June 17, 2011
 Unemployment Compensation :
 Board of Review, :
 Respondent :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FRIEDMAN

FILED: August 4, 2011

Josey N. Wallak (Claimant) petitions for review of the December 13, 2010, order of the Unemployment Compensation Board of Review (UCBR), which affirmed the decision of a referee to deny unemployment compensation (UC) benefits to Claimant under section 402(b) of the Unemployment Compensation Law (Law).¹ We affirm.

On November 12, 2007, Claimant began working full time as a shift manager for Pizza Hut (Employer). (Findings of Fact, No. 1; N.T., 9/28/10, at 9.) Claimant lived in a HUD subsidized efficiency apartment with her boyfriend in

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §802(b). Under section 402(b) of the Law, a claimant is 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.

Carlisle, Pennsylvania. Both of their names were on the lease, but her boyfriend paid the rent. (Findings of Fact, Nos. 2-3, 5.) In January 2010, Claimant and her boyfriend contacted a friend in Oklahoma about the availability of a rental property for themselves. (Findings of Fact, No. 4.) Sometime in the spring of 2010, Claimant's boyfriend stopped paying rent due to a dispute with the landlord over a rent increase from \$358.00 to \$372.00 per month and, as of June 2010, Claimant owed the landlord approximately \$1,200.00 in accumulated rent and late fees. (Findings of Fact, Nos. 6-7.)

On June 10, 2010, Claimant's eighteen-year-old son, who was living with his father in Latrobe, Pennsylvania, came to stay with Claimant between his junior and senior years of high school. Upon arrival, Claimant's son informed her that he wanted to live with her on a permanent basis. (Findings of Fact, Nos. 9-10, 14.) HUD regulations only permitted Claimant's son to stay in the apartment for fourteen days, so Claimant began searching for another apartment in Carlisle within walking distance of Employer but was unable to find one she could afford, as a two-bedroom apartment was between \$600.00 and \$730.00 per month. (Findings of Fact, Nos. 11-12.)

On June 23, 2010, Claimant and her boyfriend were served with an eviction notice, ordering them to move from the property by July 4, 2010. (Findings of Fact, No. 8.) On June 28, 2010, the friend from Oklahoma offered Claimant's boyfriend a two-bedroom house in Mangum, Oklahoma, for \$300.00 per month. (Findings of Fact, No. 13.) Claimant's boyfriend receives \$1,150.00 per month in

social security disability, and Claimant's net pay is approximately \$1,100.00 to \$1,200.00 per month. (N.T., 9/28/10, at 17; *see also* Findings of Fact, Nos. 15-16.)

On June 28, 2010, Claimant, her boyfriend and her son relocated from Carlisle, Pennsylvania, to Mangum, Oklahoma, a town without public transportation.² (Findings of Fact, No. 17, 22.) Claimant did not notify Employer that she was leaving her employment and, further, did not tell Employer of any housing, transportation or financial problems prior to leaving. (Findings of Fact, Nos. 18-19.) Employer had previously provided transportation to Claimant, as Claimant and her boyfriend do not have a motor vehicle. (Findings of Fact, Nos. 21, 23.) Claimant quit her employment, and continuing work was available to her. (Findings of Fact, Nos. 18, 20.) Claimant did not have an offer of employment at the time she chose to relocate, and the job opportunities are very limited within walking distance of their new home. (Findings of Fact, Nos. 24-25.)

Claimant applied for UC benefits, but the application was denied under section 402(b) of the Law. Claimant filed an appeal, and a hearing was held before a referee. The referee determined that Claimant voluntarily left her employment with Employer to relocate to Oklahoma, and that this was a personal choice and did not constitute a necessary and compelling reason for voluntarily leaving work. (Referee's decision at 3.) The referee denied Claimant benefits. Claimant appealed to the UCBR, which adopted the referee's findings of fact and affirmed, stating that

² Claimant's last day of work was June 15, 2010, as she had taken vacation from work from June 16, 2010, through June 30, 2010. (N.T., 9/28/2010, at 9, 13.)

Claimant made the personal choice to become unemployed and move to Oklahoma. (UCBR's Decision, at 1.) Claimant now petitions this court for review.³

Claimant contends that she had a necessitous and compelling cause to leave her employment given all of the conflict in her life in June 2010.⁴ We disagree.

To show a necessitous and compelling cause, the claimant must establish that: (1) circumstances existed that produced real and substantial pressure to terminate employment; (2) like circumstances would compel a reasonable person to act in the same manner; (3) she acted with ordinary common sense; and (4) she made a reasonable effort to preserve her employment. *First Federal Savings Bank v. Unemployment Compensation Board of Review*, 957 A.2d 811, 816 (Pa. Cmwlth. 2008).

Initially, we note that Claimant did not make any attempt to preserve her employment. Indeed, she did not even inform Employer that she was quitting. For this reason alone, we conclude that Claimant failed to show a necessitous and compelling cause for quitting. *Id.*

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.

⁴ Claimant presented evidence that her eighteen-year-old son wanted to live with her, that she and her boyfriend stopped paying rent and were being evicted, and that she quit her job in order to move to Oklahoma with her boyfriend. However, we must view each allegation separately, as a claimant cannot combine multiple causes in the hopes that together they constitute a necessitous and compelling reason to quit. *Hostovich v. Unemployment Compensation Board of Review*, 414 A.2d 733, 735 (Pa. Cmwlth. 1980).

Moreover, the record shows that Claimant made a personal choice to open her home to her son, to withhold rent from her landlord and to move to Oklahoma with her boyfriend. Claimant did not establish that: (1) her son had special needs or that he had been banned from his father's home; (2) Claimant could not pay the rent to the landlord or that the eviction forced her to quit her job; or (3) she could not afford to remain in Carlisle without her boyfriend. Thus, the UCBR did not err in determining that Claimant failed to show a necessitous and compelling reason for her quit.

Accordingly, we affirm.

ROCHELLE S. FRIEDMAN, Senior Judge

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Board of Review,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 4th day of August, 2011, the December 13, 2010, order of the Unemployment Compensation Board of Review is affirmed.

ROCHELLE S. FRIEDMAN, Senior Judge