

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Mary Murphy, :
Petitioner :
 :
v. : No. 546 C.D. 2010
 : Submitted: September 17, 2010
Unemployment Compensation :
Board of Review, :
Respondent :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE LEAVITT

FILED: January 19, 2011

Mary Murphy (Claimant), *pro se*, petitions for review of an adjudication of the Unemployment Compensation Board of Review (Board) denying her claim for benefits under Section 402(b) of the Unemployment Compensation Law (Law).¹ In doing so, the Board held that Claimant voluntarily quit her job for health reasons without informing her employer she had a medical problem. Because the Board's factual findings are not supported by substantial evidence, we will reverse and remand.

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §802(b). It provides, in relevant part, that “[a]n employe 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.” 43 P.S. §802(b).

Claimant was employed by Comfort Keepers (Employer) as a certified nurse assistant, providing in-home health care services to Employer's clients. Following her separation from employment on June 29, 2009, Claimant filed for unemployment compensation benefits. On the "Claimant Questionnaire," Claimant indicated that she had been terminated. Certified Record, Item No. 2 (C.R. ___), at 3. Claimant also wrote on her questionnaire that she refused a work assignment because the client "wanted me to take off my shoes and my right foot drags with no support." *Id.* at 2. Employer stated in its responsive questionnaire that Claimant quit her job. On the basis of Employer's response, the Altoona UC Service Center denied benefits. Claimant appealed to the Referee, arguing that she had been discharged and did not quit.

At the Referee's hearing, Claimant testified that on her last day of work she was scheduled to meet a client at 2:00 p.m. Because she was running late from a doctor's appointment, Claimant attempted to contact Employer at approximately 2:30 p.m. She was unable to reach Employer because she could not acquire a signal on her cell phone. A few minutes later, Claimant retrieved a voicemail message from Employer telling her "not to go any further ... you're done, you're through." Notes of Testimony, January 7, 2010, at 5 (N.T. ___). Claimant tried to contact Employer again at 3:00 p.m. She was informed by the operator that Employer had left for the day and advised to call the next day. Claimant did not call in the next day because she had other appointments and was not scheduled to work. She thought Employer would call her because "[u]sually they do." N.T. 4.

Addie Corvo, Employer's Administrator, testified that the client to which Claimant was assigned on June 29, 2009, called at the end of the day and said Claimant never showed up. According to Corvo, Employer's policy is "if you don't

call and you don't show, you don't have a job anymore." N.T. 5. Corvo did not recall calling Claimant on the day in question. She acknowledged that she never informed Claimant she was terminated, testifying that "the only time I've talked to her since is when she's asked us to take care of her due to her own health problems." N.T. 6.

The Referee affirmed the UC Service Center's denial of benefits. In doing so, the Referee found that "Employer has a policy that provides for the termination of any employee who does not call or report for work when scheduled," and that "Claimant voluntarily quit when she did not call or return to work." Referee's Decision, Findings of Fact No. 6, 7. Claimant appealed to the Board.

The Board, like the Referee, found that Employer "has a policy that provides for the termination of any employee who does not call or report for work when scheduled," and that Claimant "voluntarily quit her employment." Board Opinion at 2, Findings of Fact 9, 10. In its discussion, the Board further explained that Claimant voluntarily terminated her employment for health reasons. The Board reasoned that

the claimant admitted that she quit her work because she did not want to take her shoes off for this client. The claimant failed to credibly establish that she informed the employer that she had any medical problem with working for this client. The claimant has failed to credibly establish that she made a reasonable effort to maintain her employment. Accordingly, the claimant is ineligible for benefits under Section 402(b) of the Law.

Claimant now petitions for this Court's review.

On appeal,² Claimant argues, *inter alia*, that the Board’s finding that she voluntarily quit her job for health reasons is not supported by substantial evidence, which has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Korpics v. Unemployment Compensation Board of Review*, 833 A.2d 1217, 1219 n.1 (Pa. Cmwlth. 2003).³ We agree.

The Board found that Claimant voluntarily quit her job for medical reasons. More specifically, the Board found that “[C]laimant admitted that she quit her work because she did not want to take her shoes off for this client.” Board Opinion at 2. The Board drew this admission from Claimant’s statement in her questionnaire that she refused an offer of work from Employer because her right foot drags without support. What is absent from the questionnaire, however, is any context for Claimant’s statement, *i.e.*, on what date she refused to take her shoes off for a client and whether the client in question was the one to whom she was supposed to report on her last day of employment. There is simply nothing in the questionnaire to tie this event to Claimant’s separation from employment. There was no testimony

² Our scope of review is limited to determining whether constitutional rights have been violated, errors of law were committed, or whether findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704; *Sheets v. Unemployment Compensation Board of Review*, 708 A.2d 884, 885 n.3 (Pa. Cmwlth. 1998).

³ Claimant also argues on appeal that the Board erred in relying on the information in her questionnaire because it was inadmissible hearsay. We disagree. Statements made by a claimant on a summary interview form are not considered hearsay because they are admissions by a party. *Sargent v. Unemployment Compensation Board of Review*, 630 A.2d 534, 538 (Pa. Cmwlth. 1993). Moreover, Claimant did not object to admission of the questionnaire into the record at the hearing. Claimant suggests that, as a *pro se* litigant, she was unaware that she had a right to object to such a document, even though the Referee specifically asked her if she had any objections. Although there would have been no legal basis for excluding the questionnaire from evidence, we remind Claimant that her decision to represent herself meant that she bore the risk that her lack of legal training and expertise could have been fatal to her case. *Groch v. Unemployment Compensation Board of Review*, 472 A.2d 286, 288 (Pa. Cmwlth. 1984).

at the Referee's hearing from either Claimant or Employer about Claimant's alleged medical condition. The statement in the questionnaire, standing alone, does not constitute substantial evidence that Claimant quit for a medical reason.

Before this Court, the Board argues that Claimant quit her job. Impliedly, it argues, the Board did not believe Claimant's testimony that she did not quit and tried to contact Employer. The problem with this argument is that it does not conform to the adjudication, which held that Claimant quit for medical reasons.

Because the record does not contain evidence sufficient to make any findings about Claimant's medical condition, we reverse and remand for a new hearing on whether Claimant violated a work rule, was fired or quit without a necessitous and compelling reason.

MARY HANNAH LEAVITT, Judge

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ORDER

AND NOW, this 19th day of January, 2011, the order of the Unemployment Compensation Board of Review in the above-captioned matter, dated March 4, 2010, is hereby REVERSED, and this case is REMANDED for a new hearing in accordance with the attached opinion.

Jurisdiction relinquished.

MARY HANNAH LEAVITT, Judge