

Therapist, from December 2006 at a final rate of \$20.00 per hour and her last day of work was July 23, 2010.

2. In the beginning of May, 2010, the claimant advised the employer that she was too busy with all the personal events going on in her life to continue her employment.

3. The claimant explained that she was doing extensive redecorating and remodeling of her residence.

4. The employer advised the claimant to submit a resignation notice if she was quitting.

5. The claimant then placed a note on the office manager's desk indicating that her last day of work would be May 30, 2010.

6. The employer advised the claimant that it needed a more formal resignation notice.

7. On May 5, 2010, the claimant submitted a formal resignation notice with an effective date of May 28, 2010.

8. The claimant indicated in her formal resignation notice that she was resigning because she felt she did not have sufficient time to properly fulfill the expectations of the job.

9. The employer accepted the claimant's resignation but asked if she would be willing to continue working for the employer on a temporary, flexible basis until the employer was able to hire her replacement.

10. The claimant agreed to work for the employer on a temporary, flexible basis until it was able to hire a replacement.

11. In June 2010, the claimant began working one or two days a week for the employer.

12. The claimant continued working for the employer until July 23, 2010, at which time the employer hired her replacement.

13. The claimant contends that the employer discharged her on July 23, 2010.

14. The claimant asserts that the employer did not accept her resignation, and she agreed to continue working for the employer on an indefinite basis because the employer had agreed to hire a secretary to assist her with the workload.

Board's Opinion, December 23, 2010, (Opinion), Findings of Fact Nos. 1-14 at 1-2.

The Board determined:

A claimant who accepts a job knowing its terms and conditions accepts it as suitable work. In order to demonstrate necessitous and compelling reason to quit work accepted as suitable, the claimant must show that the employer substantially and unilaterally changed the conditions or that claimant was deceived about the conditions.

In the beginning of May, 2010, the claimant advised the employer that she was too busy with all the personal events going on in her life to continue her employment. The claimant explained that she was doing extensive redecorating and remodeling of her residence. In a formal resignation notice to the employer that the claimant provided on May 5, the claimant indicated that she felt she did not have sufficient time to properly fulfill the expectations of the job. The claimant has not demonstrated that the employer substantially and unilaterally changed the conditions of her employment, or that she was deceived about the working conditions. The claimant's desire to have more time to attend to the personal events in her life does not amount of cause of a necessitous and compelling nature for voluntarily

quitting her employment. Benefits are denied under Section 402(b) of the Law. (emphasis added).

Opinion at 2-3.

I. Did Claimant Voluntarily Quit Her Employment Or Was She Discharged?

Before the referee and Board, Claimant argued² that she did not voluntarily quit her employment but was discharged by Employer. Specifically, Claimant stated that Employer never accepted her resignation and that Employer asked her to continue working indefinitely. N.T. at 8. Claimant stated that she was discharged when Employer hired a new employee on July 23, 2010. N.T. at 3.

At the hearing, Claimant testified that Employer notified her on July 29, 2010, “not to come in as I had been scheduled for August 6, 9, 11, and 13 . . . [h]e hired a billing service.” Notes of Testimony, October 21, 2010, (N.T.) at 4. Claimant stated that she was fired. N.T. at 5. Specifically, Claimant testified that John S. Young (Young), never accepted her resignation:

[Gary Brienza] (Brienza), Employer’s attorney: And you wrote . . . some time actually earlier in the month of May of this year, you advised Mr. Young that you were resigning. Is that fair?

. . . .

Claimant: That was advising them.

[Brienza]: . . . Now, ma’am, I’m correct that you prepared this letter as a result of Mr. Young saying that [it] was not suitable as a resignation letter? Isn’t that correct?

² This Court’s review in an unemployment case is limited to a determination of whether constitutional rights were violated, errors of law were committed, or essential findings of fact were not supported by substantial evidence. Lee Hospital v. Unemployment Compensation Board of Review, 637 A.2d 695 (Pa. Cmwlth. 1994).

Claimant: Correct.

....

[Brienza]: . . . You discussed it and he indicated to you verbally that your resignation was accepted?

Claimant: No. He never . . . accepted my resignation because . . . I continued to stay and act as their secretary . . . John [Young] asked me to stay on and continue billing. He said I could come in maybe one or two hours here, one or two hours there, however it fit with my schedule and continue doing the billing and then they would possibly hire a secretary to take care of the day to day jobs because [sic] my situation at the time. (emphasis added).

....

Claimant: July 15, Elaine called me to ask me to bill indefinitely . . . I told her I would bill indefinitely

N.T. at 7-12, 15.

Employer testified that Claimant was not terminated but resigned:

[John S. Young, (Young)]: . . . Pat [Claimant] came into my office at the end of one workday and sat down in a chair right across from my desk and said I just can't do this anymore. I'm too busy with all I have else going on in my life to come in and do the job here So I said, Pat [Claimant], if you really can't work for us anymore, give us a resignation notice and, you know, we'll let you resign. I said but please give us a little time so we can try to find another employee to replace you. (emphasis added).

....

[Brienza]: She gave a resignation [dated] May [5th]. She worked until July 23rd. Did her hours change in that time? (emphasis added).

[Young]: . . . [H]er hours stayed basically the three days a week throughout May . . . where she would actually end her regular normal employment with us. But I had asked her since we hadn't been able to hire an employee to replace her, yet, I asked her if she would be willing to

stay on, on a temporary, flexible basis just to do billing. And she was gracious to agree to do that and help us out And -- so from the beginning of June, right after she had officially resigned, she worked on like a once a week to perhaps twice a week a few hours basis primarily doing the billing (emphasis added).

. . . .
I was under the complete understanding that we had accepted her resignation that the end of May was going to be her last official time working with us on a regular basis, but that she had agreed to work passed [sic] her resignation time on a temporary basis to help us out. . . . We never told her -- I never told her that she'd be working for us indefinitely doing billing. (emphasis added).

N.T. at 18-20.

Whether a termination of employment is voluntary is a question of law subject to this Court's review. Westwood v. Unemployment Compensation Board of Review, 532 A.2d 1281 (Pa. Cmwlth. 1987). An employee voluntarily terminating employment has the burden of proving that such termination was necessitous and compelling. Willet v. Unemployment Compensation Board of Review, 654 A.2d 280 (Pa. Cmwlth. 1995).

Here, the Board was confronted with conflicting testimony and found Employer's evidence more credible that Claimant voluntarily terminated her employment because "[C]laimant's desire to have more time to attend to the personal events in her life" was not a necessitous and compelling cause to voluntarily quit her employment. Board's Opinion at 3. In unemployment compensation proceedings, the Board is the ultimate fact-finding body empowered to resolve conflicts in evidence, to determine the credibility of witnesses, and to

determine the weight to be accorded evidence. Unemployment Compensation Board of Review v. Wright, 347 A.2d 328 (Pa. Cmwlth. 1975).

However, Claimant asserts that she was discharged on July 23, 2010, after she accepted Employer's request that she continue to work until a replacement could be hired.

Again, the Board's finding that Claimant was not discharged is supported by substantial evidence in the record. Here, the evidence indicated that Employer accepted Claimant's resignation but inquired whether Claimant would be willing to continue working for him until an adequate replacement was found. To sweeten the offer, Employer told Claimant that she could come into the office once or twice a week, on a flexible basis, and restricted her office duties to billing Employer's patients.³ See N.T. at 20. Claimant agreed to help Employer until a suitable replacement was found. Claimant may not claim, now, that Employer never accepted her resignation. Her resignation became effective once Employer hired a new employee to perform office duties and outsourced the customer billing. Also, the record supports the conclusion that Claimant voluntarily quit. Findings of fact are conclusive upon review provided that the record, taken as a whole,

³ Claimant testified that during her normal course of employment with Employer she worked twenty (20) hours per week, N.T. at 3, and that her job duties over time increased to include not only the billing, but also tasks ordinarily performed by a physical therapist. N.T. at 22.

provides substantial evidence⁴ to support the findings. Taylor v. Unemployment Compensation Board of Review, 474 Pa. 351, 378 A.2d 829 (1977).

II. Did Claimant Voluntarily Quit Her Employment For Necessitous and Compelling Reasons?

Claimant alleges in her brief that she voluntarily terminated her employment for necessitous and compelling reasons. Specifically, Claimant alleges that (1) Employer made unreasonable demands of Claimant by requiring her to fraudulently bill insurance companies for patients' missed appointments⁵; (2) Employer asked Claimant to act as a physical therapist when inputting patient information onto insurance company websites; and (3) Employer asked Claimant to act as a physical therapist and complete patient's PFSF⁶ forms with patients.

A necessitous and compelling cause for voluntarily leaving one's employment results from circumstances that 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. Philadelphia Parking Authority v. Unemployment Compensation Board of Review, 654 A.2d 280 (Pa. Cmwlth. 1995).

⁴ Substantial evidence is relevant evidence that a reasonable mind might consider adequate to support a conclusion. Hercules, Inc. v. Unemployment Compensation Board of Review, 604 A.2d 1159 (Pa. Cmwlth. 1992).

⁵ Neither the referee nor the Board made any findings concerning Claimant's allegation of fraud.

⁶ A PFSF form is an assessment form used to document a patient's difficulty areas and track a patient's progress during treatment.

However, Claimant testified before the referee that she was discharged by Employer; not that she voluntarily quit for necessitous and compelling reasons:

Referee: I'm getting the feeling from everything you're saying that you weren't terminated that you quit. And if you quit, then I'll need to hear about those things. But if you didn't quit...

Claimant: No. He -- he called me that day...

....

...he called me that day and told me not to come in.

....

Referee: Did you quit, or were you fired?

Claimant: I was fired.

N.T. at 6.

On appeal to this Court, Claimant failed to preserve the argument that she voluntarily quit her employment for necessitous and compelling reasons because she did not raise it before the referee. Also, Claimant testified that she was fired and abandoned any argument that she voluntarily quit for necessitous and compelling reasons. Finally, Claimant did not challenge any of the Board's Findings of Fact on appeal, and has therefore waived the issue of whether the Board's findings are supported by substantial evidence.⁷ Employer accepted Claimant's resignation effective upon Employer's hiring of a replacement, and therefore Claimant's resignation was effective July 23, 2010.

⁷ Where the board's findings "are not challenged by [a claimant] . . . [those findings] . . . are therefore, binding upon this Court upon review." Salamak v. Unemployment Compensation Board of Review, 497 A.2d 951, 954 (Pa. Cmwlth. 1985).

Accordingly, this Court affirms.

BERNARD L. McGINLEY, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Patricia Lofthouse,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
Unemployment Compensation	:	
Board of Review,	:	No. 56 C.D. 2011
	:	
Respondent	:	

ORDER

AND NOW, this 12th day of August, 2011, the order of the Unemployment Compensation Board of Review in the above captioned matter is affirmed.

BERNARD L. MCGINLEY, Judge