

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Amy Corvin, :
 :
 Petitioner :
 :
 v. : No. 635 C.D. 2010
 :
 Unemployment Compensation : Submitted: December 23, 2010
 Board of Review, :
 :
 Respondent :

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

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE COHN JUBELIRER**

FILED: May 26, 2011

Amy Corvin (Claimant), pro se, petitions for review of the Order of the Unemployment Compensation Appeal Board (Board) that affirmed the decision of an Unemployment Compensation Referee (Referee) finding Claimant ineligible for benefits pursuant to Section 402(b) of the Unemployment Compensation Law (Law)¹ because she did not have cause of necessitous and compelling nature to voluntarily quit her employment. On appeal, Claimant essentially challenges some

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

of the facts found by the Referee and contends that she should be entitled to unemployment compensation (UC) benefits.

Claimant worked for Nelson Bus Lines, Inc. (Employer) from August 28, 2008, until she left on September 6, 2009. Claimant applied for UC benefits, and the Altoona UC Service Center found her ineligible for benefits under Section 402(b) of the Law. Claimant appealed, and the Referee held a hearing at which only Claimant appeared and presented evidence. Based on the hearing, the Referee made the following findings of fact:

1. The claimant worked for Nelson Bus Lines, Inc. as a part-time, 20 hour per week, bus driver with a date of hire of August 28, 2008 and a last day of work of September 6, 2009 at a rate of pay of \$41 per hour.
2. The claimant has very bad anxiety and depression which is controlled by medications and some days are worse than other days.
3. The claimant woke up late on September 6, 2009, having a very bad day.
4. Due to the anxiety and depression, the claimant has a difficult time sleeping which results in her inability to wake up on time.
5. The claimant informed the employer of her medications.
6. The claimant slept in a couple times and explained to the employer why she slept in.
7. The claimant did not sit down and inform the employer of her limitations as a result of her anxiety and depression and any limitations regarding her inability to sleep and work in the morning.
8. The employer was unable to make any accommodations due to the claimant's failure to inform [it] of her work limitations due to the anxiety, depression and medications.

9. On September 6, 2009, when the claimant called into work, the employer said, “you’re late” and the claimant told the employer she quit because she would not be able to safely drive students.

(Referee’s Decision, Findings of Fact (FOF) ¶¶ 1-9.) The Referee held that, to establish necessitous and compelling reasons for a voluntary quit where a claimant quits a job for medical reasons:

a claimant must:

- (1) offer competent testimony that adequate health reasons existed to justify termination at the time of termination;
- (2) have informed the employer of the health problem; and
- (3) be available when a reasonable accommodation is made by the employer for work which is not inimical to one’s health.

(Referee’s Decision at 2.) Based on the evidence presented, the Referee found that Claimant did not offer competent testimony that would establish that adequate health reasons existed to justify her voluntary quit, or establish that she discussed with Employer her limitations associated with her health problem/medications such that Employer could take steps to make a reasonable accommodation. Thus, the Referee concluded that Claimant did not meet her burden of proving that she had cause of a necessitous and compelling nature to voluntarily leave her position with Employer. Claimant appealed to the Board, which affirmed and adopted the Referee’s findings of fact and conclusions as its own. Claimant now petitions this Court for review.²

² In reviewing the grant or denial of UC benefits, this Court’s “review is limited to determining whether constitutional rights are violated, whether the adjudication is in accordance with the law and whether necessary findings of fact are supported by substantial evidence.” Docherty v. Unemployment Compensation Board of Review, 898 A.2d 1205, 1208 n.5 (Pa. Cmwlth. 2006).

In her Statement of Questions, Claimant raises the following issues:

1. Why did [the] [R]eferee wait an additional 15 minutes for [Employer] to show at the hearing? Does it not state to be 15 minutes early?
2. Why did the [R]eferee not pay closer attention to [the] dates and facts given to him?
3. Why were there no questions asked by the [R]eferee of safety factors had I driven that day or the possibility of losing my [Commercial Driver's License (CDL)]?
4. Necessitous or Compelling nature. Are the children on the bus not a necessity or worth me taking one day off work so they are safe?

(Claimant's Br., "Statement of Questions.") Claimant offers the following argument in support of her appeal:

1. On [R]eferee Decision / Order finding of fact – date of hire.
August 28th, 2008 – not fact[.]
September 2004 – fact[.]
2. Anxiety controlled by medication. Some days are worse than others. Not fact.
3. Attacks of anxiety happen with no warning. Fact.
4. Anxiety causes you to have a difficult time sleeping. Not Fact.
Anxiety causes you to have no sleep at all. Fact.
5. Did not inform [E]mployer of limitations. Not Fact.
Employer felt there were no limitations. Fact.
6. Employer was unable to make accommodations due to [C]laimant's failure to inform employer of work limitations. Not fact.
Employer knew of [Claimant]'s limitations. Fact.

(Claimant’s Br., “Argument.”) Through these statements we infer that Claimant is challenging some of the findings of fact, as well as the determination that she did not have necessitous and compelling reasons for quitting her position.³

We begin by determining whether the findings of fact are supported by substantial evidence⁴ in the record. Findings of fact are conclusive on appeal as long as they are supported by substantial evidence in the record. Flores v. Unemployment Compensation Board of Review, 686 A.2d 66, 70 n.11 (Pa. Cmwlth. 1996). In making this determination, we “must view the record in a light most favorable to the party which prevailed before the Board, giving that party the benefit of all logical and reasonable inferences deducible from the evidence.” Stringent v. Unemployment Compensation Board of Review, 703 A.2d 1084, 1087 (Pa. Cmwlth. 1997).

³ The fact that the Referee waited an additional period of time before beginning the hearing does not constitute an error of law or abuse of discretion. Moreover, it is Claimant’s burden of proving her entitlement to benefits under Section 402(b) of the Law, Speck v. Unemployment Compensation Board of Review, 680 A.2d 27, 29 (Pa. Cmwlth. 1996), and although referees are permitted to assist pro se parties in certain ways, 34 Pa. Code § 101.21 (stating, *inter alia*, that “[w]here a party is not represented by counsel the tribunal before whom the hearing is being held should advise him as to his rights, aid him in examining and cross-examining witnesses, and give him every assistance compatible with the impartial discharge of its official duties”), Claimant’s assertion that the Referee should have asked her about specific issues, i.e., her CDL license, improperly places the burden of proving Claimant’s eligibility for benefits on the Referee.

⁴ “Substantial evidence is correctly defined as ‘such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.’” Peak v. Unemployment Compensation Board of Review, 509 Pa. 267, 275, 501 A.2d 1383, 1387 (1985) (quoting Murphy v. Department of Public Welfare, 480 A.2d 382, 386 (Pa. Cmwlth. 1984)).

Claimant testified before the Referee as follows. She agreed that her date of hire was August 28, 2008. (Hr’g Tr. at 3, R. Item 8.) Claimant stated that she had very bad anxiety, for which she took medication, and that “[t]here are days that are bad for me. Other days aren’t so bad” and “anxiety levels do change periodically. One day I could be fine.” (Hr’g Tr. at 3-4, R. Item 8.) She testified that with “this anxiety I have a tendency not to be able to sleep at night [and] . . . I have a hard time getting up in the morning.” (Hr’g Tr. at 3, R. Item 8.) Claimant explained that, on September 6, 2009, she “slept in I believe 20 minutes, 25 minutes,” called work to say that she was in bad shape and could not drive, heard someone comment that she was late, she became “too upset,” and that “[t]he anxiety level had gotten really bad and I told them I have to quit then because there’s no way that I could get on the bus and drive.” (Hr’g Tr. at 3-4, R. Item 8.) Claimant stated that she gave Employer a list of her medications because Employer performed random drug testing of its employees with CDLs and that she had explained to Employer that she had to take the medications for her anxiety. (Hr’g Tr. at 4, R. Item 8.) However, Claimant acknowledged that she never: sat down with Employer and talked about her medical condition; had a conversation with Employer about the limitations associated with her condition or medications; or told Employer that, because of her medications, it would be better for her to work in a different area or at a different time. (Hr’g Tr. at 4-5, R. Item 8.) Finally, Claimant stated that Employer was just a bus or van line and that there were no other work options there. (Hr’g Tr. at 5, R. Item 8.) This testimony constitutes substantial evidence to support the findings of fact in this matter, particularly the findings that Claimant did not sit down with Employer to inform and discuss Claimant’s limitations resulting from her medical condition and medications, thus

depriving Employer of the opportunity to accommodate those limitations. (FOF ¶¶ 7-8.) Because the findings of fact are supported by substantial evidence, they are conclusive on appeal. Flores, 686 A.2d 66, 70 n.11. We, therefore, cannot sustain Claimant's challenge to the findings of fact.

We next address Claimant's contention that she had necessitous and compelling reasons to quit her employment. Initially, we note that, to the extent Claimant asserts that she had necessitous and compelling reason to quit because of the safety of the children and should be allowed to take a day off work, (Claimant's Br., "Statement of Questions Involved"), Claimant did not take a day off but quit and she gave "Very Bad Anxiety" as the reason she quit her job, (Claimant's Questionnaire, R. Item. 2.) Thus, we must consider whether Claimant is eligible for benefits on that basis.

Section 402(b) of the Law provides that a claimant will "be ineligible for compensation for any week . . . [i]n which [her] unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature." 43 P.S. § 802(b). It is well settled "that medical reasons can provide necessitous and compelling reasons for a voluntary quit and that a claimant bears the burden of proving that such reasons precipitated the quit." Fox v. Unemployment Compensation Board of Review, 522 A.2d 713, 715 (Pa. Cmwlth. 1987). Where a claimant terminates her employment for medical reasons, she bears the burden of proving that "adequate health reasons existed to justify the voluntary termination, communicating such reasons to her employer, and being available to work if reasonable accommodations can be made." Nolan v. Unemployment

Compensation Board of Review, 797 A.2d 1042, 1046 (Pa. Cmwlth. 2002). The claimant can satisfy her burden by providing competent evidence, including her own testimony or documentary evidence, regarding the health reasons. Lee Hospital v. Unemployment Compensation Board of Review, 637 A.2d 695, 698 (Pa. Cmwlth. 1994). As part of communicating the health reasons to the employer, the claimant should “explain why [s]he cannot continue to perform [her] job duties.” Bailey v. Unemployment Compensation Board of Review, 653 A.2d 711, 713-14 (Pa. Cmwlth. 1995). Requiring the claimant to communicate her medical reasons to the employer and remain available for work if reasonable accommodations can be made ensures that the claimant took all necessary and reasonable steps to preserve her employment relationship. Nolan, 797 A.2d at 1046-47. If a claimant fails to meet any of these requirements, she is barred from receiving unemployment compensation benefits. Lee Hospital, 637 A.2d at 698.

Here, the Referee and the Board found that Claimant did not sit down and inform Employer of her medical condition and the limitations associated with that medical condition and her medications. As stated above, this finding of fact is supported by substantial evidence in the record. In not communicating this information to Employer, Claimant deprived Employer of the opportunity to attempt to reasonably accommodate Claimant’s limitations. Therefore, under the law previously discussed, Claimant did not take all necessary and reasonable steps to preserve her employment relationship with Employer. Nolan, 797 A.2d at 1046-47. We further note that, to the extent that Claimant appeared to assert at the hearing that there were no other positions or types of work available for her, this Court has rejected similar arguments on the grounds that they were speculative,

Nolan, 797 A.2d at 1046, and that a claimant may not be aware that an employer would have suitable work, Fox, 522 A.2d at 715. Thus, unfortunately, Claimant has not satisfied her burden of proving that she had cause of a necessitous and compelling nature for voluntarily terminating her employment and, therefore, is ineligible for benefits pursuant to Section 402(b) of the Law.

Accordingly, the Board's Order is affirmed.

RENÉE COHN JUBELIRER, Judge

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Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

ORDER

NOW, May 26, 2011, the Order of the Unemployment Compensation Board of Review in the above-captioned matter is hereby **AFFIRMED**.

RENÉE COHN JUBELIRER, Judge