

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Natalie J. Andrevich, :  
Petitioner :  
v. : No. 658 C.D. 2010  
Unemployment Compensation : Submitted: August 13, 2010  
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 SENIOR JUDGE KELLEY

FILED: March 7, 2011

Natalie J. Andrevich (Claimant) petitions *pro se* from an order of the Unemployment Compensation Board of Review (Board) affirming an order of a Referee denying Claimant benefits pursuant to Section 402(b) of the Unemployment Compensation Law (Law).<sup>1</sup> We affirm.

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<sup>1</sup> Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. §802(b). Section 402(b) of the Law provides that an employee who voluntarily terminates her employment without cause of a necessitous and compelling nature is ineligible for benefits.

Claimant worked as a full time dental assistant for Dr. William G. Berger, D.M.D. (Employer). Claimant began a medical leave of absence for high blood pressure and pregnancy after April 22, 2009, and delivered her baby on May 12, 2009. In discussing her pending maternity leave with Employer, Claimant had agreed to return to work full time at the conclusion of the leave. However, Claimant changed her mind at some point after the leave commenced, deciding that she did not want to leave her baby with a sitter for all of the hours she would be required to work. Claimant thus requested that she be permitted to return as a part time employee only. Prior to her leave, Claimant had worked four days each week, working until at least 6:00 p.m. on three days, and until at least 5:00 p.m. on the other day.

During Claimant's leave, Employer brought in a temporary replacement for her position. Employer requested that Claimant return from her leave at the beginning of July, 2009. In June, 2009, Claimant mailed to Employer a written notice stating her availability and intent to return to work as of August 31, 2009, and requesting "asap" an answer as to whether "anyone will be working full or part time." Certified Record (C.R.), Item 3. Employer, in response to Claimant's letter, agreed to attempt to accommodate Claimant's part time request.

Employer was unable to hire a dental assistant to fill in for the hours that Claimant would not work under her specified proposed part time schedule. On July 15, 2009, Employer notified Claimant that he had hired a full time replacement for Claimant's position.

On July 16, Claimant filed an application for unemployment benefits under the Law. The Indiana UC Service Center found Claimant ineligible for benefits by Determination dated August 5, 2009. Claimant appealed to the Referee, and a hearing ensued attended by Claimant, her attorney, and Employer.

The Referee found as fact that Claimant did not return from her maternity leave because she no longer wanted to work full time. As such, the Referee treated Claimant's unemployment as a voluntary separation, and addressed whether Claimant had a necessitous and compelling reason for leaving her job. The Referee concluded that Claimant's unilateral decision to return on August 31, 2009, on a part time basis, left Employer with no other alternative but to replace her when he was unable to accommodate her part time request. The Referee further concluded that Claimant's desire that her baby spend as little time with a babysitter as possible – the foundation of her part time return request – was not a cause of necessitous and compelling nature. By order dated November 10, 2009, the Referee denied benefits under Section 402(b) of the Law.

Claimant timely appealed to the Board, which adopted the Referee's Findings and Conclusions and affirmed by order dated March 8, 2010. Claimant now petitions this Court for review of the Board's order.

This Court's review of the Board's decision is set forth in Section 704 of the Administrative Agency Law, 2 Pa.C.S. §704, which provides that the Court shall affirm unless it determines that the adjudication is in violation of the claimant's constitutional rights, that it is not in accordance with law, that provisions relating to practice and procedure of the Board have been violated, or that any necessary

findings of fact are not supported by substantial evidence. See Porco v. Unemployment Compensation Board of Review, 828 A.2d 426 (Pa. Cmwlth. 2003).

A determination of whether a claimant's separation from employment was a voluntary resignation or a discharge is made by examining the totality of the facts surrounding the claimant's termination of employment. Pennsylvania Liquor Control Board v. Unemployment Compensation Board of Review, 648 A.2d 124 (Pa. Cmwlth. 1994), petition for allowance of appeal denied, 540 Pa. 615, 656 A.2d 120 (1995). Such determination is a question of law to be made based upon the Board's findings. Id.

The question of whether particular facts constitute a voluntary quit is a question of law fully reviewable by this Court. Chamoun v. Unemployment Compensation Board of Review, 542 A.2d 207 (Pa. Cmwlth. 1988). The claimant bears the burden of proving a necessitous and compelling reason for voluntarily terminating the employment relationship. Mutual Pharmaceutical Company, Inc. v. Unemployment Compensation Board of Review, 654 A.2d 37 (Pa. Cmwlth. 1994).

A determination that a claimant voluntarily quit is not an absolute bar to the recovery of unemployment compensation benefits. Monaco v. Unemployment Compensation Board of Review, 523 Pa. 41, 565 A.2d 127 (1989). A claimant may prove necessary and compelling reasons that could excuse the voluntary action of the claimant. Id. A cause of necessitous and compelling nature is one that results from circumstances which produce pressure to terminate

employment which is both real and substantial and which would compel a reasonable person under the circumstances to act in the same manner. Id.

We first address the Board's request that Claimant's brief be quashed, and her Petition dismissed, on the basis that Claimant's brief fails to strictly comply with the Pennsylvania Rules of Appellate Procedure, and that such noncompliance precludes our meaningful appellate review. While Claimant's brief can most generously be characterized as less than precise in its conformance with our procedural rules, we are cognizant of the frequent necessity, and incumbent difficulty, of *pro se* representation by unemployed claimants in matters such as this. As Claimant's brief sufficiently states preserved issues that enable meaningful appellate review, we will neither quash her brief, nor dismiss her Petition.

We will combine Claimant's first and third stated issues, as they both address the same argument: whether the Board erred in concluding that Claimant voluntarily quit her position. The gravamen of Claimant's argument on this issue consists of her assertion that she fully desired to return to employment, as supported by her citation to the correspondence she mailed to Employer stating that she was willing to return to work on August 31, 2009. Claimant also emphasizes that she did not apply for unemployment until Employer informed her via telephone that he had replaced her with a new full time employee.

The totality of the circumstances in this case, as based upon the Board's findings,<sup>2</sup> indicates that Claimant did voluntarily quit. Employer desired that Claimant return from her maternity leave at the beginning of July, 2009. Finding of Fact (FOF) 9. Claimant's testimony states that she understood that Employer anticipated her to return to work on July 1, 2009. C.R., Item 13 at 9. Claimant, however, indicated that she was not available to return until August 31, 2009. *Id.* at 8; FOF 11. Claimant's own correspondence to Employer explicitly acknowledges that the possibility existed that Claimant may be replaced full time prior to the date of August 31, 2009, and that her part time return was predicated on some other employee being able to work part time to offset Claimant's desire to work part time. C.R., Item 3.

Claimant requested an answer "asap" to her correspondence defining her availability and return date. FOF 14. Employer attempted to accommodate Claimant's part time request, was unable to do so, and then notified Claimant that she had been replaced by a new full time employee by mid-July, weeks after Employer's requested date to have Claimant return to work. FOF 12-13, 15. Most tellingly, and dispositively on this issue in regard to Claimant's failure to challenge any of the Board's Findings of Fact, "[C]laimant did not return from maternity leave because she no longer wanted to work full time." FOF 16.

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<sup>2</sup> Claimant has not challenged any of the Board's Findings in this case, and thusly those findings are conclusive on appeal. Taylor v. Unemployment Compensation Board of Review, 474 Pa. 351, 378 A.2d 829 (1977).

Under the totality of those circumstances, the Board did not err in concluding that Claimant voluntarily terminated her employment. Pennsylvania Liquor Control Board. Under the facts as found, and additionally in accordance with Claimant's testimony as a whole in this matter, Claimant did not meet her burden of proving a necessitous and compelling reason for voluntarily terminating her employment relationship. Mutual Pharmaceutical Company.<sup>3</sup>

Finally, Claimant argues that Employer was less than truthful in regard to his testimony in this matter, and in his attempts to secure an additional part time worker to supplement Claimant's proposed part time hours. However, questions as to witness credibility, and as to the weight accorded to the evidence presented, are within the purview of the Board and are not reviewable upon appeal. The Board is the ultimate fact finder and is, therefore, entitled to make its own determinations as to witness credibility and evidentiary weight. Peak v. Unemployment Compensation Board of Review, 509 Pa. 267, 501 A.2d 1383 (1985).

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<sup>3</sup> We emphasize that the instant facts are distinguishable from our precedents in this area holding that, under certain circumstances an inability to retain or arrange child care, or a child that requires special care that can only be afforded by a parent or particular caregiver, may constitute circumstances to voluntarily quit in which a claimant remains eligible for benefits under the Law. See, e.g., Moore v. Unemployment Compensation Board of Review, 520 A.2d 80 (Pa. Cmwlth. 1987); King v. Unemployment Compensation Board of Review, 414 A.2d 452 (Pa. Cmwlth. 1980). The record herein makes clear, according to Claimant's own testimony, that her desire to work part time was a preference on her part to leave her child with a babysitter to a lesser degree than her full time work would require. C.R., Item 13 at 9-11. Claimant's desire to minimize her child's time with a babysitter, while laudable, is not cause of a necessitous and compelling nature justifying her failure to return to work when expected.

Accordingly, we affirm.

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JAMES R. KELLEY, Senior Judge



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	:	
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

**ORDER**

AND NOW, this 7th day of March, 2011, the order of the Unemployment Compensation Board of Review dated March 8, 2010, at Decision No. 496277, is affirmed.

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JAMES R. KELLEY, Senior Judge