

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Allison Crane and Rigging, Inc.,	:	
Petitioner	:	
	:	No. 697 C.D. 2010
v.	:	
	:	
Unemployment Compensation	:	Submitted: September 10, 2010
Board of Review,	:	
Respondent	:	

BEFORE: HONORABLE DAN PELLEGRINI, Judge
 HONORABLE PATRICIA A. McCULLOUGH, Judge
 HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McCULLOUGH

FILED: January 6, 2011

Allison Crane and Rigging, Inc. (Employer) petitions for review of the April 1, 2010, order of the Unemployment Compensation Board of Review (Board), which held that Scott E. Andrus (Claimant) is not ineligible for benefits pursuant to section 402(b) of the Unemployment Compensation Law (Law).¹ We affirm.

The local job center determined that Claimant was ineligible for benefits pursuant to section 402(b) of the Law. Claimant appealed, and a referee held a

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. §802(b). Section 402(b) provides that a claimant is ineligible for benefits for any week in which his unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature.

hearing at which Claimant and Employer's witnesses testified. Claimant testified that he worked for Employer as a welder from July 2008 to October 9, 2009. Claimant stated that he was able to walk to work during his first year of employment but had transportation difficulties after he was assigned to a different job site. Claimant explained that he lost his driver's license in 2007,² that he does not own a vehicle, and that there is no bus service to the new work location. Claimant said that he attempted to purchase two vehicles; one of the cars was a lemon and the other deal fell through. Claimant added that he once took a taxi to work at a cost of \$85.00. Claimant testified that he was able to carpool with coworkers for a time until the coworkers were assigned to different work places. Claimant explained that he did not ask to work with his coworkers or at different job sites because he knew he could only be assigned to places that needed welding work. According to Claimant, Employer was well aware of his transportation problems and, on at least one occasion, had arranged for another employee to pick Claimant up and bring him to work. Claimant also testified that he called his foreman and said he would not be coming back to work.

Larry Allison, Jr., Employer's corporate secretary, acknowledged that he was aware of Claimant's transportation problems. Allison knew that Claimant did not have a license and that Claimant's coworkers were helping him get to work; Allison believed that Claimant's coworkers stopped giving him rides because he did not offer to pay for gas. Allison stated that he learned of Claimant's separation from

² Claimant testified that his license was suspended in 2007 and would be reinstated when he finished paying a fine. Claimant estimated that the balance remaining on the fine was \$100 when he left his employment. Claimant denied Employer's suggestion that he chose not to drive, stating that he had child support and other obligations deducted from his paychecks. It is not clear from Claimant's testimony whether he lost his license due to a DUI charge or because of the unpaid fine from improperly passing a school bus. However, because Claimant did not have a valid license when he was hired by Employer, this issue is not relevant to our disposition on appeal.

employment from two employees who said that Claimant had not shown up when expected one day, adding that Claimant had not contacted Employer since then.

Tina M. Shay, Employer's administrative assistant, testified that she gave Claimant a ride home on several occasions. Shay believed that a bus runs about ten minutes from Claimant's house, although she did not know exactly where the bus goes. Shay stated that she called Claimant after he stopped working and was told that he needed to sort out problems with his probation officer.

Bryan P. Dawson, Claimant's supervisor, testified that Claimant called five minutes before he was expected to be at work on October 10, 2009, and said that he was not coming. Dawson said Claimant did not provide an explanation.

The referee reversed the job center's determination and concluded that Claimant was eligible for benefits. The referee's findings of fact may be summarized as follows. Claimant worked for Employer as a welder for approximately fifteen months. Claimant did not own a vehicle, and he lost his license due to a DUI that occurred in 2007. When Claimant was hired, and during his first year of employment, Claimant lived within five minutes of his assigned work site. After work at that location was completed, Claimant had to rely on coworkers for transportation to other work sites. On at least one occasion, Employer sent another employee on company time and in a company vehicle to bring Claimant to work. Claimant's last day of work was October 9, 2009. (Findings of Fact Nos. 1-3, 5-8.)

Based on those findings, the referee concluded that the nature and hours of Claimant's work and Claimant's transportation problems constituted necessitous and compelling reason for Claimant to leave his employment. The referee reasoned as follows:

The Courts have determined [that,] when a claimant has transportation problems as his reason for leaving work[,] in order to have compelling and necessitous reasons, the

claimant must have made a reasonable attempt to find alternative ways to and from work. The claimant relied on a coworker, and one time took a taxi and indicated that there [were] no direct bus lines to the claimant's job site. Moreover, the claimant was assigned to remote locations due to the nature of the employer's work and due to the employer's work persons who lived near the claimant were not assigned to where the claimant was working. Although the employer made an effort to provide transportation for the claimant, the referee concludes that through no fault of the employer, the claimant became unemployed. Due to the nature and hours of the claimant's work and his transportation problems, the referee concludes the claimant met his burden of showing that there were necessitous and compelling reasons for leaving his employment and benefits cannot be denied under [section 402(b) of the Law].

(R. R. at 25a.)

Employer appealed to the Board, which concluded that Claimant made reasonable attempts to overcome his transportation difficulties. The Board affirmed the referee's decision, adopting the referee's findings and conclusions. Employer now appeals to this Court.³

In order to be eligible for compensation, a claimant who voluntarily terminates his employment bears the burden of proving that he left his job for cause of a necessitous and compelling nature. Nimitz v. Unemployment Compensation Board of Review, 699 A.2d 822 (Pa. Cmwlth. 1997). Cause of a necessitous and compelling nature has been defined as circumstances that produce real and substantial pressure to terminate one's employment and would compel a reasonable person to do the same. Phoenix v. Unemployment Compensation Board of Review, 695 A.2d 466

³ Our scope of review is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with law or whether the necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

(Pa. Cmwlth. 1997). Whether an employee has necessitous and compelling reason to terminate his employment is a question of law reviewable by this Court. Mansberger v. Unemployment Compensation Board of Review, 785 A.2d 126 (Pa. Cmwlth. 2001).

Employer asserts that Claimant had the financial means to pay the remainder due on a fine and thereby have his license reinstated and provide his own transportation to work; alternatively, Employer asserts that Claimant could have taken public transportation that was available just ten minutes from his home.⁴ Employer argues that Claimant made little effort to overcome his transportation problems and instead chose to quit his employment.

However, Employer’s argument is based on its preferred version of the facts and not the facts as found by the Board. Contrary to Employer’s assertions on appeal, the Board did not find that Claimant had the means or opportunity to secure transportation to work. In unemployment compensation proceedings, the Board is the ultimate fact-finder, empowered to determine the credibility of witnesses and resolve conflicts in evidence. Curran v. Unemployment Compensation Board of Review, 752 A.2d 938 (Pa. Cmwlth. 2000). Where, as here, the Board’s findings are supported by substantial evidence, they are conclusive on appeal. Id.

⁴ In its Statement of Questions Presented, Employer raises the following issues: (1) whether the finding that Claimant did not have a vehicle is supported by the record; (2) whether the finding concerning the cost of a taxi has any relevance; (3) whether the finding that Claimant had to rely on coworkers to get to his job site is supported by the record; and (4) whether the Board abused its discretion by concluding that Claimant had necessitous and compelling reason to terminate his employment. Employer does not specifically address these issues further; nevertheless, we note, after careful review of the record, that the Board’s findings of fact are supported by substantial evidence. In addition, we construe the fourth question presented in accordance with the assertions and argument set forth in the remainder of Employer’s brief.

Accordingly, we affirm.

PATRICIA A. McCULLOUGH, Judge

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ORDER

AND NOW, this 6th day of January, 2011, the order of the
Unemployment Compensation Board of Review, dated April 1, 2010, is hereby
affirmed.

PATRICIA A. McCULLOUGH, Judge