

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Patricia Romansky,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
Unemployment Compensation	:	
Board of Review,	:	No. 988 C.D. 2010
	:	
Respondent	:	Submitted: November 5, 2010

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

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER

FILED: January 4, 2011

Patricia Romansky (Claimant) petitions this Court for review of the April 15, 2010 order of the Unemployment Compensation Board of Review (UCBR) affirming the Referee’s decision denying benefits under Section 402(b) of the Unemployment Compensation Law (Law).¹ The issues for this Court’s review are: (1) whether the UCBR erred by determining that Claimant voluntarily quit her employment; and (2) whether Claimant had a necessitous and compelling reason for leaving her employment. For reasons that follow, we affirm the UCBR’s order.

Claimant was employed by Lowe’s Home Center No. 1660 (Employer) as a receiving clerk beginning on November 20, 2003. On October 9, 2009, Claimant reported to Employer that co-worker, Danielle Cottle, verbally attacked her, and that

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

she was afraid for her safety. Claimant notified Employer that she was considering resigning as a result of the incident. On October 22, 2009, Claimant met with Employer's human resource personnel, who told her that the investigation of the incident was being closed.² That evening, Claimant reported the October 9, 2009 incident and a perceived ethics violation committed by Ms. Cottle, to Employer's Action Line. On Monday, October 26, 2009, Claimant called the Action Line in order to determine the status of her report, but was unable to obtain any information.

On October 27, 2009, upon reporting for work, Claimant was called to a meeting with another of Employer's human resource personnel, to whom she reported that she was still concerned for her safety. She was asked to leave Employer's store until October 30, 2009, while the matter was investigated. On October 28, 2009, Claimant met with an investigator regarding her allegations. On October 29, 2009, Claimant spoke with Employer's human resource representative, Sue O'Brian, who asked her if she still intended to give her two weeks notice. Claimant responded that "if this continues, yes." Notes of Testimony, January 20, 2010 (N.T.) at 14. According to Claimant, Ms. O'Brian responded that Claimant should not, therefore, return to work, and that Employer would pay her through November 13, 2009. Claimant submitted her resignation to Employer on October 29, 2009, to be effective November 13, 2009.

Claimant subsequently applied for unemployment compensation (UC) benefits. The UC Service Center deemed Claimant ineligible for benefits under Section 402(b) of the Law because she voluntarily quit her employment without a necessitous and compelling reason. Claimant appealed, and a hearing was held

² Ms. Cottle threatened to bring Claimant up on harassment charges. Notes of Testimony, January 20, 2010 (N.T.) at 14. Employer advised Claimant at the October 22, 2009 meeting that Claimant would not be written up. N.T. at 9, 14.

before a Referee. On January 26, 2010, the Referee issued a decision affirming the UC Service Center's determination. Claimant appealed to the UCBR. By order mailed April 15, 2010, the UCBR affirmed the decision of the Referee.³ Claimant appealed to this Court.⁴

Section 402(b) of the Law provides, in relevant part, that a person “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” The resolution of the issue of whether an employee voluntarily quit her job requires a determination of the intent of the employee. *Monaco v. Unemployment Comp. Bd. of Review*, 523 Pa. 41, 565 A.2d 127 (1989). A finding of voluntary quit is precluded unless there was a conscious intention to leave employment on the part of the claimant. *Id.* Such intent is determined by considering the totality of the circumstances surrounding the incident in question. *Id.* Moreover, if the employer's language leaves the employee room for choice, the requisite finality is lacking, and the employee's leaving is voluntary. *Bell v. Unemployment Comp. Bd. of Review*, 921 A.2d 23 (Pa. Cmwlth. 2007).

“Whether Claimant voluntarily terminated her employment with [Employer] is a question of law subject to review by this Court and dependent upon the facts found by the compensation authorities.” *Chinn v. Unemployment Comp. Bd. of Review*, 426 A.2d 1250, 1251 (Pa. Cmwlth. 1981). The UCBR's findings of fact are conclusive if supported by substantial evidence, and the prevailing party must be

³ Claimant sought reconsideration of the UCBR's determination, which was denied by the UCBR's order mailed May 20, 2010.

⁴ This Court's review is limited to determining whether the findings of fact were supported by substantial evidence, whether constitutional rights were violated, or whether errors of law were committed. *Brunswick Hotel & Conference Ctr., LLC v. Unemployment Comp. Bd. of Review*, 906 A.2d 657 (Pa. Cmwlth. 2006).

given the benefit of every reasonable and logical inference drawn from the record. *Chinn*. “Substantial evidence is that relevant evidence which reasonable minds might accept as adequate to support a conclusion.” *Eck v. Unemployment Comp. Bd. of Review*, 651 A.2d 689, 694 (Pa. Cmwlth. 1994). Our review of this record discloses that there was substantial evidence to support the Referee’s conclusion that Claimant voluntarily quit her job.

Claimant told Employer following the October 9, 2009 incident that she was considering resigning. N.T. at 15. On October 29, 2009, Ms. O’Brian asked Claimant whether she was “still intending to turn in [her] two weeks notice” and, after Claimant responded, “if this continues, yes,” Ms. O’Brian advised her that she need not return for those two weeks, but Employer would pay her. N.T. at 14. In addition, on her Internet Initial Claim form, Claimant stated that Employer “told me not to return due to the fact that I had submitted my resignation . . .” and that she “quit” her job with Employer for “personal reasons” related to “working conditions/ethics.” Original Record (O.R.) Item 2 at 2-3. Claimant also testified before the Referee that Employer “accepted my resignation.” N.T. at 3. Finally, in response to the Referee’s question about whether she was fired, Claimant responded, “I asked them that myself.” N.T. at 3. Claimant was referring to an email sent by Claimant on November 7, 2009 to Employer in which Claimant stated, *inter alia*, “I am under the impression that I did not resign as I had wanted to, but rather have been terminated.” O.R. Item 11 at 6. Employer responded on November 9, 2009 stating, in pertinent part: “You were not terminated, we accepted your resignation on October 29, 2009” O.R. Item 11 at 7.

Substantial evidence in this case supports the UCBR’s conclusion that Claimant had the option of continuing her employment but chose to resign. The

UCBR did not, therefore, err by concluding that Claimant voluntarily quit her employment.

Next, we must determine whether the UCBR erred by affirming that Claimant's actions constituted a voluntary quit without a necessitous and compelling reason.

An employee who claims to have left employment for a necessitous and compelling reason must prove that: (1) circumstances existed which produced real and substantial pressure to terminate employment; (2) such circumstances would compel a reasonable person to act in the same manner; (3) the claimant acted with ordinary common sense; and, (4) the claimant made a reasonable effort to preserve her employment.

Brunswick Hotel & Conference Ctr., LLC v. Unemployment Comp. Bd. of Review, 906 A.2d 657, 660 (Pa. Cmwlth. 2006).

Here, Claimant testified that she felt that her safety was threatened at work due to Ms. Cottle's behavior on October 9, 2009. However, there is no evidence in the record as to how her safety was threatened. Unsubstantiated beliefs and accusations are not compelling reasons to quit employment. *Berardi v. Unemployment Comp. Bd. of Review*, 458 A.2d 668 (Pa. Cmwlth. 1983). Moreover, personality conflicts with co-workers will not generally constitute a necessitous and compelling cause for quitting absent proof of an intolerable work atmosphere. *Gioia v. Unemployment Comp. Bd. of Review*, 661 A.2d 34 (Pa. Cmwlth. 1995). Finally, where an employer is taking action to alleviate a problem, an employee should make reasonable attempts to maintain his employment until employer's action proves futile. *Donaldson v. Unemployment Comp. Bd. of Review*, 434 A.2d 912 (Pa. Cmwlth. 1981).

Here, Claimant reported the October 9, 2009 incident involving Ms. Cottle, and Employer conducted an investigation, the result of which Claimant disliked. Thereafter, Claimant again complained, and Employer conducted another investigation, including re-interviewing Claimant. There is no evidence that Employer had concluded the investigation, or that it rendered an opinion to Claimant that would have prompted her resignation.

Under the circumstances, Claimant had the option of continuing her employment. She offered absolutely no necessitous or compelling justification for submitting her resignation. Given the totality of the circumstances presented, we hold that the Referee and UCBR committed no error in concluding that Claimant was not forced to resign, but voluntarily quit her job without a necessitous and compelling reason. Because Claimant's unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature, she is not eligible to receive unemployment compensation benefits.

For these reasons, the Order of the UCBR is affirmed.

JOHNNY J. BUTLER, Judge

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	:	
Respondent	:	

ORDER

AND NOW, this 4th day of January, 2011, the April 15, 2010 order of the Unemployment Compensation Board of Review is affirmed.

JOHNNY J. BUTLER, Judge