

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Yvonne Priester, :
Petitioner :
v. :
 : No. 989 C.D. 2010
 : Submitted: November 5, 2010
Unemployment Compensation :
Board of Review :
Respondent :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE DAN PELLEGRINI, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE PELLEGRINI

FILED: January 4, 2011

Yvonne Priester (Claimant) appearing *pro se* has filed a petition for review from an order of the Unemployment Compensation Board of Review (Board) affirming the decision of the Referee denying her unemployment compensation benefits because she voluntarily terminated her employment without cause of a necessitous and compelling nature pursuant to Section 402(b) of the Unemployment Compensation Law (Law).¹

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

An employe shall be ineligible for compensation for any week –

(Footnote continued on next page...)

Claimant was employed by Independence Blue Cross (Employer) as a Claims Coordinator for approximately 10 years with her last day of work on October 30, 2009. Claimant voluntarily terminated her employment when Employer offered and Claimant accepted a voluntary early retirement package with incentives. Claimant filed for unemployment compensation benefits with the Altoona UC Service Center, which denied her claim, finding that Claimant did not have knowledge that her job would be affected if she did not accept Employer's plan to voluntarily terminate employment and continuing work was available to her if she did not accept the package. Because it was more reasonable for Claimant to continue working than to accept Employer's plan, Claimant did not show a necessitous and compelling reason for voluntarily separating from her employment.² Claimant filed an appeal requesting a hearing before a Referee.

At the hearing, Employer did not appear. Claimant testified that she had worked for Employer for 10 years, and that the reason she took the retirement package was because she had heard that she was going to be laid off; however, no one told her specifically that she was to be laid off. Four weeks after she took the retirement package, though, her entire department was laid off. Claimant stated that

(continued...)

(b) In which his unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature irrespective of whether or not such work is in "employment" as defined in this act.

² The Altoona UC Service Center also found that Claimant received a total of \$1,674 in non-fault overpayments to which she was not entitled but that is not an issue on appeal.

she loved her job and did not quit. “But, this offer [inaudible]. And they really impressed me that this would be the best offer for me, at this --at that particular time.” (January 26, 2010 Hearing Transcript at 4.)

Relying on a document provided by Employer³ to the Altoona UC Service Center as well as Claimant’s questionnaire⁴ and her own testimony, the Referee found that Employer had offered an enhanced retirement package to Claimant; Claimant was advised that Employer was offering the package because it intended a reduction in force; Claimant was not advised that her job was in any imminent jeopardy; and Claimant accepted the retirement package and the work relationship ended. The Referee noted that while Employer offered an enhanced early retirement package to Claimant, she was not advised that the alternative to her accepting that package was an involuntary separation. Further, while Employer did advise Claimant and other employees that it intended to downsize, Claimant was not the specified target of the reduction in force. Because Claimant accepted the early retirement package and voluntarily ended the work relationship without a necessitous and compelling reason because she was not the target for a reduction in the workforce, the Referee denied her claim for benefits under Section 402(b) of the

³ That document was Employer’s “Fact Sheet” on its Voluntary Early Retirement Program (VLEP) which also explained the incentives, i.e., pension benefits.

⁴ On Claimant’s questionnaire, she was asked if Employer told her she would be discharged if she did not resign, and she said, “No,” but added that there was a possibility of being laid off. She also added that she did not have knowledge that her job would be affected if she did not accept the incentive package to voluntarily terminate her job, but her job would have been affected if she had not accepted the package because Employer said it was downsizing and it was going to start laying people off. However, continuing work was available to her if she did not accept Employer’s incentives. (See Original Record Item 2.)

Law. Claimant appealed the Referee's decision to the Board, which affirmed, and this appeal followed.⁵

On appeal, Claimant contends that she took the early retirement package that Employer offered her because there was a layoff looming as suggested by Employer, and she was motivated by the threat of a substantially reduced income.⁶

In determining whether a necessitous and compelling cause exists in the context of corporate downsizing, this Court held in *Renda v. Unemployment Compensation Board of Review*, 837 A.2d 685 (Pa. Cmwlth. 2003), that the relevant inquiry is “whether the fact-finder determined the circumstances surrounding a claimant’s voluntary quit indicated a likelihood that fear about the employee’s employment would materialize, that serious impending threats to her job would be realized, and that her belief her job is imminently threatened is well-founded.” *Id.*, 837 A.2d at 692. Citing *Staub v. Unemployment Compensation Board of Review*, 673 A.2d 434, 437 (Pa. Cmwlth. 1996), we went on to state:

⁵ Our scope of review of the Board’s decision is limited to determining whether an error of law was committed, constitutional rights were violated or findings of fact were supported by substantial evidence. *Frazier v. Unemployment Compensation Board of Review*, 833 A.2d 1181 (Pa. Cmwlth. 2003).

⁶ Claimant also contends that the terms under the original voluntary package were “highly technical legal doctrine, and manufactured to represent best case scenario for IBC, while leaving myself (employee) without sufficient income or recourse what had been originally packaged as beneficial to myself (employee).” Because this argument was never raised before the Referee and Board, it cannot be raised for the first time before this Court and is waived. Pa. R.A.P. 1551.

“[S]peculation pertaining to an employer’s financial condition and future layoffs, however disconcerting, does not establish the requisite necessitous and compelling cause.” *Staub*, 673 A.2d at 437.⁷]

[W]here at the time of retirement suitable continuing work is available, the employer states that a layoff is possible but not likely, and no other factors are found ... that remove an employee’s beliefs from the realm of speculation, a claim for unemployment benefits fails despite the offer to leave.

Id.

⁷ We stated in *Renda*:

[T]his court denied benefits where a claimant’s speculative concerns over future employment prompted her voluntary termination. *Mansberg v. UCBR*, 829 A.2d 1266 (Pa. Cmwlth. 2003) (claimant voluntarily quit despite employer’s statement that lost jobs would be “filtered” to other sections of company); *PECO Energy Co. v. UCBR*, 682 A.2d 49 (Pa. Cmwlth. 1996) (claimant accepted early retirement package based on “postulations” of “what he felt could happen”); *Staub* (claimant accepted early retirement incentive based on his belief that employer’s “poor financial condition” would result in layoff); *Dep’t of Navy v. UCBR*, 650 A.2d 1138 (Pa. Cmwlth. 1994) (claimant “believed” his job would be eliminated); *Peoples First Nat’l Bank v. UCBR*, 632 A.2d 1014 (Pa. Cmwlth. 1993) (employer indicated a layoff was “possible,” but employer “didn’t think so”); *Flannery v. UCBR*, 557 A.2d 52 (Pa. Cmwlth. 1989) (claimant accepted advanced retirement package based on his belief layoff was “inevitable,” despite availability of continuing work).

Renda, 837 A.2d at 692. In both *Renda* and *Staub*, the Referees had found that the employers made continuing work available to the claimants.

Even though the entire department in which Claimant was working was laid off four weeks after she accepted Employer's early retirement offer, at the time she accepted the offer, she testified that she was not aware of that fact.⁸ Moreover, even though Employer did not provide any evidence of continuing work, Claimant failed to prove a necessitous and compelling reason to voluntarily terminate her employment. On the questionnaire form she submitted to the Altoona UC Service Center, question 6 stated the following:

6. Was continuing work available to you if you did not accept the employer's incentives?

Claimant answered: "Yes."

Why didn't you accept the continuing work?

Claimant answered: "Because they offered us the package and said that if we didn't take the package there was a **possibility** that we wouldn't have a job." (Emphasis added.)

(See Original Record, Claimant's Questionnaire Form.)

⁸ Additionally, even though Employer did not appear to testify regarding continuous work available for Claimant as required in *Renda*, in *Johnson v. Unemployment Compensation Board of Review*, 869 A.2d 1095 (Pa. Cmwlth. 2005), this Court held that it is not the employer's burden to come forth with evidence regarding the continued availability of work. If the employer chooses to do so, it is a factor to be considered by the Board in determining whether the claimant's reason for terminating her employment was necessitous and compelling. However, if an employer chooses not to put forth evidence regarding continuing work, the claimant is not automatically granted unemployment compensation benefits because the burden still remains on the claimant to prove a necessitous and compelling reason for voluntarily terminating employment.

Because Claimant admitted that continuing work was available and it was her own decision to take the early retirement package, she did not have a necessitous and compelling reason for voluntarily terminating her employment.

Accordingly, the decision of the Board is affirmed.

DAN PELLEGRINI, JUDGE

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Yvonne Priester,	:
Petitioner	:
	:
v.	: No. 989 C.D. 2010
	:
Unemployment Compensation	:
Board of Review	:
Respondent	:

ORDER

AND NOW, this 4th day of January, 2011, the order of the Unemployment Compensation Board of Review, dated April 1, 2010, at B-497723, is affirmed.

DAN PELLEGRINI, JUDGE