

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Tariq Khalid, :
 :
 Petitioner :
 :
 v. :
 :
 Unemployment Compensation Board :
 of Review, : No. 1013 C.D. 2011
 Respondent : Submitted: November 10, 2011

BEFORE: HONORABLE DAN PELLEGRINI, Judge
 HONORABLE RENÉE COHN JUBELIRER, Judge
 HONORABLE ROBERT SIMPSON, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
 BY JUDGE PELLEGRINI

FILED: December 1, 2011

Tariq Khalid (Claimant) petitions *pro se* for review of an order of the Unemployment Compensation Board of Review (Board) affirming the decision of the Unemployment Compensation Referee (Referee) which dismissed his petition for appeal because he voluntarily resigned from his position and did not demonstrate a necessitous and compelling reason for his resignation pursuant to Section 402(b) of the Unemployment Compensation Law (Law).¹ Because we find no error in the Board’s decision, we affirm.

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §802(b). Under Section 402(b) of the Act, an individual is not eligible for unemployment compensation benefits if his or her unemployment is due to “voluntarily leaving work without cause of necessitous and compelling nature.” “Necessitous and compelling cause” occurs under **(Footnote continued on next page...)**

Claimant was employed by the Julius Silvert Company (Employer) as a warehouse man for six months with his last day of employment being November 3, 2010. On November 3, 2010, Claimant met with Howard Beleiff (Beleiff), Employer's operations manager, because he had a problem with the work schedule. Claimant completed a resignation form that same day making his resignation effective immediately. He applied for unemployment compensation benefits which the Unemployment Compensation (UC) Service Center denied because Claimant did not have a "necessitous and compelling reason for leaving the job." (Notice of Determination dated November 19, 2010, at 1.) Claimant appealed, arguing that he had evidence that he had a necessitous and compelling reason to leave work but was not given an opportunity to present this evidence. He attached to his appeal a doctor's note requesting that Employer permit Claimant to leave work if his wife needed his assistance at home because she was pregnant and experiencing severe back pain.

At the hearing on the appeal, Claimant failed to appear. The only witness who appeared was Beleiff, who testified that Claimant resigned voluntarily

(continued...)

circumstances where there is a real and substantial pressure to terminate one's employment that would compel a reasonable person to do so. *See Renda v. Unemployment Compensation Board of Review*, 837 A.2d 685, 691-92 (Pa. Cmwlth. 2003). The claimant bears the burden of proving necessitous and compelling reasons for quitting. *Petrill v. Unemployment Compensation Board of Review*, 883 A.2d 714 (Pa. Cmwlth. 2005). The claimant must prove that he or she acted with ordinary common sense in quitting and made a reasonable, good faith effort to preserve the employment relationship. *Stiffler v. Unemployment Compensation Board of Review*, 438 A.2d 1058 (Pa. Cmwlth. 1982). Mere dissatisfaction with one's working conditions is not a necessitous and compelling reason to quit a job. *Spadaro v. Unemployment Compensation Board of Review*, 850 A.2d 855 (Pa. Cmwlth. 2004).

after coming into his office and saying that the schedule was not working out. Beleiff further testified that he was not aware of any problems with Claimant's family members, that Claimant did not request a leave of absence or time off, and that he did not complete the required form to request time off.

Because Claimant failed to appear and there was no evidence upon which to base a finding that he had a necessitous and compelling reason to quit, the Referee affirmed the UC Service Center's denial of benefits. Claimant then appealed, alleging that "the employer did not tell the truth[,] and [Claimant had] the proper paperwork to prove [his] case." (Petition for Appeal dated November 19, 2010, at 1.) The Board affirmed and this appeal followed.²

Claimant contends that because his pregnant wife was on bed rest, that he was concerned about his other children, and that his request for family leave was denied, he had a necessitous and compelling reason for resigning and was required to resign. What this argument ignores is the fact that there is no evidence of record to support this contention, which is not surprising because Claimant failed to appear at the hearing on his appeal. The Board found that Claimant did not request a leave of absence or any accommodation from Employer and these findings are supported by Beleiff's testimony. Because these findings are

² Our scope of review is limited to determining whether constitutional rights were violated, an error of law was committed or findings of fact were not supported by substantial evidence. *Myers v. Unemployment Compensation Board of Review*, 533 Pa. 373, 625 A.2d 622 (1993).

supported by substantial evidence, they are conclusive on appeal. *Bruce v. Unemployment Compensation Board of Review*, 2 A.3d 667 (Pa. Cmwlth. 2010).³

Accordingly, because Claimant failed to establish a necessitous and compelling reason to leave his position with Employer, we affirm the decision of the Board.

DAN PELLEGRINI, JUDGE

³ Even if we were to ignore that it is uncorroborated hearsay and not of record, the doctor's note requesting that Claimant be permitted to leave early when his wife needed assistance at home due to her pregnancy is insufficient to justify his resignation because there is no evidence that it was given to Employer and it fails to address Claimant's alleged request—and Employer's alleged denial—for family medical leave.

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ORDER

AND NOW, this 1st day of December, 2011, the order of the Unemployment Compensation Board of Review, dated April 13, 2011, is affirmed.

DAN PELLEGRINI, JUDGE