

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

John W. Binner,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1017 C.D. 2011
	:	SUBMITTED: October 28, 2011
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER**

FILED: December 22, 2011

John W. Binner, *pro se*, petitions for review of the decision of the Unemployment Compensation Board of Review (Board), which adopted the decision of the Referee that Binner was ineligible for benefits. We affirm.

The facts, as found by the Referee, are as follows. Binner was employed as a custodian for the Lebanon County Area Vo-Tech School until November 17, 2010. On that day, he was confronted by his supervisors, who accused him of taking unauthorized breaks during his night shifts. Binner was told that he could resign, or his termination would be recommended to the school board at its next meeting. The day after this discussion, Binner submitted a letter of resignation.

The Referee found that Binner was ineligible for benefits because he voluntarily left his employment. The Referee cited this court's decision in *Fishel v. Unemployment Compensation Board of Review*, 674 A.2d 770 (Pa. Cmwlth. 1996), in which this court held that a teacher who resigned rather than face a formal termination hearing in front of a school board had voluntarily left her employment. This court held that because the teacher could only be formally terminated by the school board, discharge was less than a certainty at the time of her resignation.

On appeal, the Board adopted the Referee's opinion in full and affirmed. An appeal to this court followed.

Before this court, Binner disputes that he voluntarily left his employment, and that he committed misconduct on the job. However, this court is bound by the Board's factual findings when they are supported by substantial evidence of record. *Graham v. Unemployment Comp. Bd. of Review*, 840 A.2d 1054 (Pa. Cmwlth. 2004). Both the testimony and documentary evidence in this case strongly support the Referee's finding, later adopted by the Board, that Binner submitted a letter of resignation rather than face a termination proceeding in front of the school board. In addition, the Referee correctly applied *Fishel* in determining that, by submitting his letter of resignation, Binner voluntarily terminated his employment.

When a claimant voluntarily terminates employment, that claimant is ineligible for unemployment compensation benefits unless he left for necessitous and compelling reasons. Section 402(b) of the Unemployment Compensation Law,¹ 43 P.S. § 802(b); *Nolan v. Unemployment Comp. Bd. of Review*, 797 A.2d

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

1042 (Pa. Cmwlth. 2002). Because Binner has identified no such reasons, the Board correctly concluded that he was ineligible. Therefore, there is no reason for this court to consider Binner's arguments regarding his alleged misconduct.

For all the foregoing reasons, we affirm.

BONNIE BRIGANCE LEADBETTER,
President Judge

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Board of Review,	:	
	:	
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ORDER

AND NOW, this 22nd day of December, 2011, the order of the Unemployment Compensation Board of Review in the above-captioned matter is hereby AFFIRMED.

BONNIE BRIGANCE LEADBETTER,
President Judge