

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Terry Tanzey, :
Petitioner :
 :
v. :
 :
Unemployment Compensation :
Board of Review, : No. 1057 C.D. 2011
Respondent : Submitted: October 7, 2011

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY

FILED: December 9, 2011

Terry E. Tanzey (Claimant) challenges the order of the Unemployment Compensation Board of Review (Board) which affirmed the referee's denial¹ of benefits under Section 402(b) of the Unemployment Compensation Law (Law).²

The relevant facts, as initially found by the referee and confirmed by the Board, are as follows:

1. The claimant was employed from June 1, 2010, until July 2, 2010.

¹ The Board also affirmed the referee's determination that Claimant received fraud overpayments for emergency unemployment compensation and federal additional compensation benefits and penalized him twenty-two weeks. These determinations are not before this Court.

² Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §802(b).

2. The claimant was assigned to work at the General Electric Company as a Control Systems Engineer.
3. The Employer described the duties of the position to the Claimant before the Claimant accepted the job.
4. The responsibilities of the job required a Mechanical Engineering Degree; however, the Claimant had an Electrical Engineering Degree.
5. After the Claimant accepted the job assignment, he found that he was not a good fit for the job.
6. The Claimant began searching for other jobs within the General Electric Company.
7. The Claimant did not let the Employer know that he was uncomfortable in his position or that he did not have the right qualifications.
8. The Claimant did not notify the Employer that he was looking for other positions within the General Electric organization.
9. The claimant did not find any other positions within the General Electric organization.
10. The Claimant subsequently notified representatives of the General Electric organization that he was terminating his employment effective July 2, 2010.
11. The Claimant did not notify the Employer that he was terminating his employment effective July 2, 2010.
12. The Employer subsequently found out from the representatives of the General Electric Company.

Referee's Decision, January 19, 2011, Findings of Fact Nos. 1-12 at 1-2.

With respect to the issue of whether Claimant was ineligible for benefits because he voluntarily quit his employment without a necessitous and compelling reason, the referee determined:

At the hearing, the Claimant testified that after obtaining a position at the General Electric Company, he realized that the position was not a fit for him. The testimony presented at the hearing indicates that the job was explained to the Claimant before he accepted the position. Once he accepted the position, he began looking for other opportunities for employment within the General Electric organization. The testimony presented at the hearing indicates that the Claimant did not notify the Employer either that the job was not a good fit for him or that he was looking for other employment opportunities. After the Claimant did not find a suitable employment opportunity at the General Electric Company, he voluntarily terminated his employment. The testimony presented at the hearing indicates that the Claimant did not notify the Employer either that the job was not a good fit for him or that he was looking for other employment opportunities. After the Claimant did not find a suitable employment opportunity at the General Electric Company, he voluntarily terminated his employment. The testimony presented at the hearing is that the Claimant notified representatives of the General Electric Company that he was terminating his employment but did not notify his Employer.

. . . . In this case, the Claimant did not notify the Employer of any problems that he was having with his job, that he was looking for other opportunities, or that he had voluntarily terminated the employment. In this case, the Referee finds that the Claimant has not met his burden in proving a necessitous and compelling reason for leaving work and, accordingly, the Referee rules the Claimant ineligible for unemployment compensation benefits under the provisions of Section 402(b) of the Law.

Decision at 3.

The Board affirmed and especially found that Claimant did not have a medical reason for quitting:

The Board does not accept as credible that the claimant also quit his employment due to toxic fumes. The claimant never informed the employer of any problems with fumes, and the claimant did not establish that he treated with a doctor for alleged fumes; the claimant's testimony on this point was evasive. Further, informing an employer of a problem at the time two week's [sic] notice of a resignation is given is insufficient. The claimant must give the employer the opportunity to rectify any problem *prior* to resigning.

Board Opinion, March 28, 2011, at 1.

Claimant contends that he had necessitous and compelling reasons for quitting, including health reasons, that he made a reasonable effort to maintain his employment, that the Board erred when it determined that his employer was Adecco, that no medication was made available to help him cope with noxious diesel fumes, that Claimant gave his employer sufficient notice that he was leaving, and that he did not "accept a job so as to work at G.E. [General Electric] in the hopes of finding a better job once on the inside."³ Claimant's Brief at 4.

Essentially, Claimant contends that he had two necessitous and compelling reasons for quitting his job. The first reason was that he believed he would soon be fired because he was unqualified for the position. Claimant

³ This Court's review in an unemployment compensation case is limited to a determination of whether constitutional rights were violated, errors of law were committed, or findings of fact were not supported by substantial evidence. Lee Hospital v. Unemployment Compensation Board of Review, 637 A.2d 695 (Pa. Cmwlth. 1994).

believed he was unqualified to perform the job because he was an electrical engineer, and the job called for a Mechanical Engineering Degree. He also asserts that he informed individuals at General Electric about his situation prior to his resignation.

Whether a termination of employment is voluntary is a question of law subject to this Court's review. The failure of an employee to take all reasonable steps to preserve employment results in a voluntary termination. Westwood v. Unemployment Compensation Board of Review, 532 A.2d 1281 (Pa. Cmwlth. 1987). An employee voluntarily terminating employment has the burden of proving that such termination was necessitous and compelling. The question of whether a claimant has a necessitous and compelling reason to terminate employment is a question of law reviewable by this Court. Willet v. Unemployment Compensation Board of Review, 429 A.2d 1282 (Pa. Cmwlth. 1981). Good cause for voluntarily leaving one's employment results from circumstances which produce pressure to terminate employment that is both real and substantial and which would compel a reasonable person under the circumstances to act in the same manner. Philadelphia Parking Authority v. Unemployment Compensation Board of Review, 654 A.2d 280 (Pa. Cmwlth. 1995). By accepting a job, an employee admits to the initial suitability of the job with respect to the wages and conditions of employment. Stiffler v. Unemployment Compensation Board of Review, 438 A.2d 1058, 1060 (Pa. Cmwlth. 1982). Unsuitability of work will constitute cause of a necessitous and compelling nature for quitting only where the employee proves that she was deceived as to the conditions of the employment or that the conditions substantially changed subsequent to hire. Id.

In Colduvell v. Unemployment Compensation Board of Review, 408 A.2d 1207 (Pa. Cmwlth. 1979), this Court held that an employee must give his employer an opportunity to understand the nature of the employee's objection before resigning.

Here, Claimant feared that he would be fired by General Electric because he was not performing his job well. He asserts that he had a necessitous and compelling reason for quitting his job because the job for which he was hired required a Mechanical Engineering Degree and he was an electrical engineer. Consequently, Claimant states that he quit because it would negatively impact any future chance of employment with General Electric, if he was terminated.

In his Statement of Questions Involved, Claimant raises the issue of whether he worked for General Electric or Adecco. However, in the argument section of his brief, Claimant makes references to General Electric but does not develop the issue. As a result, it is waived. See Pa.R.A.P. 2119; Van Duser v. Unemployment Compensation Board of Review, 642 A.2d 544 (Pa. Cmwlth. 1994). (Issues not briefed are waived).

The Board found that Adecco was Claimant's employer and that Claimant neither notified Adecco that the job was not a "good fit" nor that he was looking for other employment opportunities. Claimant does not challenge the determination that Adecco was his employer and that he failed to inform Adecco that he was not suited for his job. As a result, Claimant failed to meet his burden. Colduvell.

Claimant also argues that he had a second necessitous and compelling reason for quitting. He asserts that his health was compromised because he was sickened by diesel fumes in the course of his employment. The Board explicitly found Claimant not credible on this issue. In unemployment compensation proceedings, the Board is the ultimate fact-finding body empowered to resolve conflicts in evidence, to determine the credibility of witnesses, and to determine the weight to be accorded evidence. Unemployment Compensation Board of Review v. Wright, 347 A.2d 328 (Pa. Cmwlth. 1975).

Accordingly, this Court affirms.

BERNARD L. McGINLEY, Judge

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| Terry Tanzey, | : |
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| Petitioner | : |
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| v. | : |
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| Unemployment Compensation | : |
| Board of Review, | : |
| | : |
| Respondent | : |

No. 1057 C.D. 2011

ORDER

AND NOW, this 9th day of December, 2011, the order of the Unemployment Compensation Board of Review in the above-captioned matter is affirmed.

BERNARD L. McGINLEY, Judge