IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Sarah E. Rush,	:	
	:	
Petitioner	:	No. 1104 C.D. 2012
	:	Submitted: October 12, 2012
v.	:	
	:	
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FRIEDMAN FILED: November 16, 2012

Sarah E. Rush (Claimant) petitions for review, *pro se*, of the May 21, 2012, order of the Unemployment Compensation Board of Review (UCBR) affirming the decision of a referee to deny unemployment benefits pursuant to section 402(b) of the Unemployment Compensation Law (Law).[1] We affirm.

[1] Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §802(b). Section 402(b) of the Law states that an employee shall be ineligible for compensation for any week in which his or her unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature.

Claimant worked for St. Jude's Haven (Employer) from March 17, 2010, until January 31, 2012, as a part-time cleaner and nurse's aide.[2] (UCBR's Findings of Fact, No. 1.) On January 31, 2012, Claimant told a co-worker to sit next to a resident during bingo to help the resident read. (UCBR's Findings of Fact, No. 3.) In response, Employer's owner told Claimant, "[The co-worker] is not an idiot. Do not treat her like one." (*Id.*) Claimant completed her shift but quit the next morning. (UCBR's Findings of Fact, No. 4.)

Claimant applied for unemployment compensation benefits with the local job center, which found her ineligible for benefits under section 402(b) of the Law. Claimant appealed to a referee, who, after a hearing on the matter, affirmed the denial of benefits. Claimant appealed to the UCBR, which affirmed. Claimant's petition for review to this court followed.[3]

Claimant argues that she had a necessitous and compelling reason for quitting because she was harassed and discriminated against while working for Employer.[4] We disagree.

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[2] The UCBR mistakenly listed this date as January 21, 2012.

[3] Our review is limited to determining whether constitutional rights were violated, whether an error of law was committed, or whether the necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

[4] The question of whether a claimant had a necessitous and compelling cause for quitting is a legal conclusion subject to review. *Magazzeni v. Unemployment Compensation Board of Review*, 462 A.2d 961, 962 (Pa. Cmwlth. 1983).

In a voluntary termination case, the claimant has the burden of proving that he or she had a necessitous and compelling cause for leaving employment. *Ganter v. Unemployment Compensation Board of Review*, 723 A.2d 272, 273-74 (Pa. Cmwlth. 1999). This court has established that:

> "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."

Shupp v. Unemployment Compensation Board of Review, 18 A.3d 462, 464 (Pa. Cmwlth. 2011) (quoting *Brunswick Hotel & Conference Center, LLC v. Unemployment Compensation Board of Review*, 906 A.2d 657, 660 (Pa. Cmwlth. 2006)). Harassment by fellow workers can constitute good cause for voluntarily quitting, provided the claimant gives the employer an opportunity to understand the nature of his or her objection before resigning. *The Mercy Hospital of Pittsburgh v. Unemployment Compensation Board of Review*, 654 A.2d 264, 266 (Pa. Cmwlth. 1995). "Excessive taunting can create a hostile work environment." *Id.*

Here, the UCBR considered Claimant's allegation that Employer cut her hours in retaliation for filing a partial unemployment compensation claim and the reprimand that Claimant received on January 31, 2012. The UCBR found that Employer credibly denied that Claimant received reduced hours because she had filed a partial unemployment compensation claim.[5] (UCBR's Findings of Fact, No. 2.)

[5] Moreover, Claimant never confronted Employer about her perceived retaliatory cut in hours. (N.T., 3/20/12, at 10.)

Furthermore, the UCBR determined that Employer's statement, "[The co-worker] is not an idiot. Do not treat her like one," was a reprimand. "Resentment of a reprimand, absent unjust accusations, abusive conduct or profane language, does not constitute necessitous and compelling reason for termination." *Krieger v. Unemployment Compensation Board of Review*, 415 A.2d 160, 161 (Pa. Cmwlth. 1980). Employer's reprimand did not include any of the elements justifying a voluntary termination.

However, Claimant further alleges that the UCBR failed to consider additional incidents of harassment described in letters written by Claimant's former co-workers. The UCBR applied what is commonly referred to as the "*Walker* rule," as set forth in *Walker v. Unemployment Compensation Board of Review*, 367 A.2d 366 (Pa. Cmwlth. 1976), and did not consider the co-workers' letters because they were uncorroborated hearsay. In *Walker*, this court stated:

> (1) Hearsay evidence, *properly objected to*, is not competent evidence to support a finding of the Board . . . . (2) Hearsay evidence, *admitted without objection*, will be given its natural probative effect and may support a finding of the [UCBR], *if it is corroborated by any competent evidence in the record*, but a finding of fact based *solely* on hearsay will not stand.

367 A.2d at 370 (citations omitted). The UCBR found that the letters, admitted without objection, were not corroborated by any competent evidence.

In some instances, a claimant's testimony alone can corroborate hearsay evidence. *See, e.g., Jordon v. Unemployment Compensation Board of Review*, 684

A.2d 1096, 1099-1100 (Pa. Cmwlth. 1996) (finding claimant's own testimony about his mental disorder sufficient to corroborate a physician's certification). Here, the UCBR found Claimant's testimony alone to be insufficient to corroborate the letters because her testimony lacked specificity.[6] We agree with the UCBR that the record lacks any additional evidence corroborating the letters. Thus, the UCBR properly declined to consider the letters.

Additionally, Claimant challenges two "crucial discrepancies" in the UCBR's findings of fact.[7] A determination of the UCBR will not be upset "when the inaccuracy has no effect upon the application of the relevant legal principles and the ultimate resolution of the case." *Wetzel v. Unemployment Compensation Board of Review*, 370 A.2d 415, 416-17 (Pa. Cmwlth. 1977). Here, the discrepancies raised by Claimant had no relevance to the issue of necessitous and compelling cause and, thus, were harmless.

Accordingly, we affirm.

ROCHELLE S. FRIEDMAN, Senior Judge

[6] Claimant did mention that there were "other situations." (N.T., 3/20/12, at 4.) She described some trouble surrounding a missed phone call. (*Id.* at 7.) She also noted rampant gossip in her workplace. (*Id.* at 10.) However, none of these attestations enhances the reliability of the letters.

[7] The discrepancies occur in UCBR's Findings of Fact, Number 1, which erroneously lists Claimant's last day of employment as January 21, 2012, instead of January 31, 2012, and states that her pay rate was $7.25 per hour instead of $7.75 per hour.

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O R D E R

AND NOW, this 16th day of November, 2012, the order of the Unemployment Compensation Board of Review, dated May 21, 2012, is affirmed.

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ROCHELLE S. FRIEDMAN, Senior Judge