

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Lisa Rice, :
Petitioner :
v. :
: No. 110 C.D. 2010
: Submitted: August 13, 2010
Unemployment Compensation :
Board of Review, :
Respondent :

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE PELLEGRINI

FILED: September 9, 2010

Lisa Rice (Claimant) appeals from the determination of the Unemployment Compensation Board of Review (Board) reversing the Referee's decision granting Claimant unemployment compensation benefits following her voluntary termination of her employment with the Pennsylvania Gaming Control Board (Employer).

Claimant was employed as a full-time gaming agent by Employer since October 2, 2006. The last day she worked was June 19, 2009, and the last day for which she was paid was June 26, 2009, following a week off due to unspecified extenuating emergency circumstances. On June 27, 2009, Claimant

sent an email to Employer stating that she was resigning due to dissatisfaction with her work situation caused by a hostile work environment created by her supervisors. She further stated that the hostile work environment adversely affected her mental and physical health and that, despite attempts to alleviate the problem, Employer took no steps to help her. Following her resignation, Claimant sought unemployment compensation benefits which were denied by the Department of Labor and Industry (Department) and she appealed.

Before the Referee, Claimant testified as to the circumstances that led to her resignation. Claimant's testimony was very disjointed and difficult to follow. Read in the most favorable light to Claimant, her testimony is as follows: She became depressed and anxious in the fall of 2008, which led to a loss of appetite, vomiting, shaking, weight loss, nervousness, lack of ability to concentrate, shrieking, headaches, sores in her throat from the vomiting, and bleeding that required the attention of a gynecologist. She also sought counseling from the State Employee Assistance Program. In January 2009, these symptoms worsened and she went home to Pittsburgh for a few days to see her doctor upon the advice of her counselor. She told her regional director of the absence, and he informed her to notify her supervisor. Claimant testified that she left her supervisor a voicemail stating that she was sick, but did not tell him or anyone else what the problem was at that point or later on, because she did not feel comfortable talking to him since he often checked on her to make sure she was seated at her desk and would ask her why if she was not. Claimant also missed the entire month of February because she had neck surgery at the end of January, but she did not

explain why the neck surgery was necessary or if it was related to her depression or to her work environment.

In addition to her illness, Claimant testified that she suffered harassment at work. Other employees made comments because she was throwing up at work. Her supervisor wrote in an evaluation that she did not get along with co-workers, even though she got along perfectly well with them. However, she also testified that no one would talk to her at work during the entire months of March and April. She was not timely reimbursed after returning from a business trip to Las Vegas, during which she also decided to get married, a decision made four days prior. She did not understand why she was required to provide additional documentation as to which expenses during her trip were work-related. She testified that other employees who took such trips did not have to fill out as much documentation and were reimbursed more quickly, but she admitted that she had no first-hand knowledge of this.¹ Additionally, she was not offered or interviewed for a job in Pittsburgh that she applied for, even though she knew a job was available.

Claimant also testified that she was subject to a hostile work environment because she was a woman. She was the only female investigator and was forced to take on a larger case load than the male agents. She was forced to stay in the office until quitting time, while the male agents were allowed to leave

¹ Claimant had a meeting scheduled for the week after she resigned to resolve the reimbursement issues. She was ultimately reimbursed in full for her Las Vegas trip shortly after her resignation.

early, although she also stated that she was not able to testify as to what other agents do other than the fact that they were not in their offices as often as she was. Moreover, she was disciplined for having late cases, but the other agents turned their cases in even later than her and were not disciplined. Again, she admitted that she had no first-hand knowledge of what happened to other agents when they turned in their cases late.

Claire Yantis (Yantis), Employer's Director of Human Resources, testified that she had never seen any independent evidence of any health issues that Claimant may have had. Claimant had notified her that she was ill in January 2009 and was asked to provide a medical note, but she never did so. Claimant was told that she did not have to specify what her illness was if she wanted to keep it private, but that she at least needed a doctor's note stating that something was wrong that prevented her from working those days. She also testified that Claimant could not be transferred to Pittsburgh because there were no investigative jobs in the Pittsburgh office. According to Yantis, Claimant's desire to be in Pittsburgh was because she had family there, not because of any health reasons. As for her tardy case investigations, Yantis testified that Claimant had by far the lowest case completion rate in the office, which is why she was advised in a pre-disciplinary conference to get them done on time.

Without making specific findings of fact,² the Referee found that Claimant was discriminated against because of her gender and that Employer did nothing to alleviate the problems. She did not find that Claimant had a necessitous and compelling reason to quit her employment because of generalized harassment or because she was too sick to continue to work. Employer appealed to the Board, which reversed. The Board made detailed and thorough findings of fact that, for the most part, mirror the summary of the testimony given above. The Board concluded that Claimant provided no competent, credible evidence that she was subjected to a hostile work environment, and she provided no documentation of any health issues prior to quitting. Therefore, she had not established a necessitous and compelling reason for voluntarily quitting her employment and was ineligible for unemployment compensation. This appeal followed.³

Claimant, in the one-and-a-half-page argument section of her brief, contends that the Board committed an error of law in reversing the decision of the Referee and that the Board's findings of fact are not supported by substantial evidence, but does not specify which findings of fact she means. She also contends that the Board arbitrarily and capriciously disregarded the findings of the Referee, and that she gave sufficient notice to Yantis of the inappropriate behavior

² The Referee's decision contained a section labeled "findings of fact," but it only contained general conclusions.

³ Our standard of review is limited to determining whether the Board's adjudication is in violation of constitutional rights, whether an error of law has been committed, or whether the factual findings are supported by substantial evidence. *Nolan v. Unemployment Compensation Board of Review*, 797 A.2d 1042, 1045 n. 4 (Pa. Cmwlth. 2002).

of her supervisor, which consisted of accusing her of submitting an illegal travel reimbursement, giving her more work than her male counterparts, allowing male employees to leave early but forcing her to stay at work until quitting time, and telling her that he hated her. This inappropriate behavior caused anxiety that manifested itself both physically and mentally and prevented Claimant from working.⁴ Claimant's reasons for resigning can be broken down into three categories: health, generalized harassment and a hostile workplace environment due to her gender.

In general, in order for an employee who voluntarily terminated her employment to be eligible for unemployment compensation benefits, she must have had a necessitous and compelling cause.⁵ In order to establish health problems as a necessitous and compelling reason to quit, the claimant must (1) offer competent testimony that adequate health reasons existed to justify the voluntary termination; (2) have informed the employer of the health problems; and (3) be available to work if reasonable accommodations can be made. *Genetin v. Unemployment Compensation Board of Review*, 499 Pa. 125, 451 A.2d 1353

⁴ As to Claimant's contention that the Board's findings of fact are not supported by substantial evidence, because Claimant failed to challenge specifically any particular findings of fact in her brief, the Board's findings are conclusive upon appeal. *Campbell v. Unemployment Compensation Board of Review*, 694 A.2d 1167, 1169 (Pa. Cmwlth. 1997). Additionally, because the Board is the ultimate fact finder in unemployment compensation cases, Claimant's contention that the Board arbitrarily and capriciously disregarded the Referee's findings of fact is meritless. *First Federal Savings Bank v. Unemployment Compensation Board of Review*, 957 A.2d 811, 815 (Pa. Cmwlth. 2008).

⁵ Section 402(b) of the Unemployment Compensation Law, Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. §802(b).

(1982); *Ann Kearney Astolfi DMD, PC v. Unemployment Compensation Board of Review*, 995 A.2d 1286 (Pa. Cmwlth. 2010).

Here, Claimant testified concerning her health problems, but she provided no testimony from any doctor that she suffered from any health problems that prevented her from working despite being asked to provide a doctor's note and being given the option of not even disclosing the nature of her health problems. Furthermore, she never attempted to seek accommodations for her health problems before abruptly quitting. Therefore, Claimant failed to show that she had a necessitous and compelling cause to quit her employment due to health reasons.

As to Claimant's generalized claims of harassment, most of them simply are not harassment.⁶ Not being allowed to leave one's job early is not harassment. Being asked to complete one's work on time is not harassment. Nor is being denied an opportunity to transfer to a place where there are no jobs or being asked to justify travel expenses after unexpectedly getting married while on a business trip considered harassment.

As to Claimant's contention that the Board disregarded the Referee's findings that she had been harassed and discriminated against because of her gender because male agents were treated differently in that they were not at their desks or turned in their files later, the Board did not disregard those findings but

⁶ Harassment is a necessitous and compelling reason to quit work but only if the claimant made a reasonable effort to obviate the problem. *Platz v. Unemployment Compensation Board of Review*, 709 A.2d 450 (Pa. Cmwlth. 1998); *Donaldson v. Unemployment Compensation Board of Review*, 434 A.2d 912 (Pa. Cmwlth. 1981).

instead found that there was insufficient evidence to make out such a claim. Claimant testified that she did not know what the other agents were doing when they were not at their desks and that she had no first-hand knowledge of what happened to other agents when they turned their cases in late. In addition, Yantis testified that Claimant had by far the worst record of completing her caseload of all the investigators in the office.

Even if those allegations were true or we considered her claim that other employees did not talk to her for two months and made fun of her due to health problems, which neither the Referee nor Board addressed, Claimant made no effort to alleviate either the generalized harassment or the harassment she allegedly suffered because of her gender. Instead, Claimant simply quit her job, and only then did she allege harassment. Because she made no reasonable effort to obviate any problem that can legitimately be viewed as harassment, Claimant's alleged harassment – due to her gender and otherwise – did not constitute a necessitous and compelling cause to voluntarily quit her employment.

For the foregoing reasons, the order of the Board is affirmed.

DAN PELLEGRINI, JUDGE

