

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Edward Degosky,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1129 C.D. 2008
	:	SUBMITTED: October 10, 2008
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge**

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER**

FILED: December 4, 2008

Edward Degosky (Degosky) petitions this court for review of an order by the Unemployment Compensation Board of Review (Board) that determined he was ineligible for unemployment compensation benefits under Section 402(b) of the Unemployment Compensation Law (Law), 43 P.S. § 802(b), because he failed to establish that he had a necessitous and compelling reason to voluntarily quit his employment after accepting the early retirement package offered by Electronic Data Systems (Employer).¹ After review, we affirm.

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. § 802(b).

Degosky was employed as a full-time data center tape librarian for approximately 1 and ½ years with Employer and more than 19 years for Employer's predecessor company, Altria. Degosky received a letter from Employer on or about September 24, 2007, offering an incentive/early retirement package available until October 30, 2007. Under the terms of the package, which Degosky accepted, he received \$10,000.00 cash pay-out plus an amount equal to five times his personal pension account or approximately an additional \$13,000.00. Degosky's last day of work was November 30, 2007. Continuing employment was available to Degosky had he not chosen to retire and Employer never advised Degosky that his job was being terminated. In January, Degosky applied for unemployment compensation benefits, which were denied by the Job Center. Following an appeal and subsequent hearing, the referee made a determination to deny benefits on the basis that Degosky voluntarily left work without necessitous and compelling cause. On further appeal, the Board concluded that Degosky did not establish that he was in imminent danger of losing his job and that his concerns were subjective and based on speculation.²

The sole question presented for our review is whether the Board erred in concluding that Degosky lacked necessitous and compelling reasons to quit.

At the hearing before the referee, Degosky testified that when his prior employer, Altria, contracted work to an outside vendor (Employer, EDS), in June of 2006, he was initially laid off but then accepted the same position with Employer. Degosky also testified that when Employer moved two of the

² The Board also denied Degosky's request for a remand, finding that "[t]he record shows that the parties had the opportunity for a full and fair hearing . . ." and that the "record was sufficiently complete to enable the Board to reach its decision." Board's Order, May 22, 2008, at 1.

mainframes he worked on to its site in Texas and he heard that there was a target date of May 2008 for all of the work to be moved to Texas, he believed the work was not going to be available to him. Degosky testified that neither of his supervisors told him that there would be no work for him, only that, “they don’t know where I stand.” Notes of Testimony (N.T.), Hearing of March 31, 2008, at 9. When asked whether it was his testimony that all of the work would be transitioned to Texas in May 2008, Degosky replied:

Well, that’s what I gathered when I left there, you know, and I guess they had to set up the craft or the way the contract was set up. See, I don’t know that part of the story, but what I heard was it was supposed to be 2008 was the target date. I guess maybe the date we definitely we had to be out of there or

Id. Degosky also acknowledged that in the letter from Employer offering the early retirement package it did not say he was obligated to accept the offer. Degosky testified further that, if he had stayed, “the work would still be there.” *Id.* at 11. Finally, Degosky testified that no one at Employer told him that whether or not he took the early retirement package, his job was going to end.

An employee who voluntarily terminates his employment has the burden of proving that such termination was necessitous and compelling. *Mansberger v. Unemployment Comp. Bd. of Review*, 785 A.2d 126 (Pa. Cmwlth. 2001). While the Law does not define the terms “necessitous and compelling,” our Supreme Court explained it as follows:

“Good cause” for voluntarily leaving one’s employment (i.e. that cause which is necessitous and compelling) 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.

Taylor v. Unemployment Comp. Bd. of Review, 474 Pa. 351, 358-59, 378 A.2d 829, 832-33 (1977). This was further refined by this court in *Staub v. Unemployment Comp. Bd. of Review*, 673 A.2d 434, 437 (Pa. Cmwlth. 1996), wherein we concluded that:

speculation pertaining to an employer's financial condition and future layoffs, however disconcerting, does not establish the requisite necessitous and compelling cause. Instead, the relevant inquiry is whether surrounding circumstances at the time an employee voluntarily leaves indicate a likelihood that fears about his or her job security will otherwise materialize, that serious impending threats to the employee's job will be realized and that the employee's belief that his job is imminently threatened is well founded.

Moreover, while the fact that an employer has made an offer of retirement or other incentive package is important, it is not dispositive of the issue. As we stated in *Staub*, “[t]here must be some additional circumstances existing at the time the employee accepts [the offer]. For example, a lack of suitable continuing work, either currently or at a discernible point in time, together with statements or actions of the employer showing a likelihood of imminent layoff, will certainly suffice.” 673 A.2d at 437 (citations omitted). Finally, whether an employee has necessitous and compelling reason to terminate his employment is a question of law subject to this court's plenary review. *Renda v. Unemployment Comp. Bd. of Review*, 837 A.2d 685 (Pa. Cmwlth. 2003).

While the record reveals that Degosky believed it was a possibility that Employer was planning on transitioning all of its work from its site in Wilkes-

Barre, where he worked, to its site in Texas, it remained just that – only a subjectively perceived possibility. As the Board found, Degosky was never informed that his job was in imminent danger and his supervisors informed him only that they did not know the status of his job, and further, there was evidence that continuing work was available to him. Other than Degosky’s speculation that his job was in imminent danger because some of his work had been moved to Texas, there is no evidence that would prove that his concerns would be realized. We agree with the Board’s conclusion that Degosky’s fears that the work was not going to be there in the future were not substantiated and therefore remained merely speculative, and that this was not sufficient to prove a necessitous and compelling reason to voluntarily quit his employment.³

Accordingly, we conclude the Board did not err in finding that Degosky failed to prove necessitous and compelling cause for terminating his employment, and therefore, affirm.

BONNIE BRIGANCE LEADBETTER,
President Judge

³ We have denied benefits on numerous occasions where a claimant’s speculative concerns over future job status were the basis for their voluntary termination. *See, e.g., George v. Unemployment Comp. Bd. of Review*, 767 A.2d 1124 (Pa. Cmwlth. 2001); *Mansberger, supra*; *PECO Energy Co. v. Unemployment Comp. Bd. of Review*, 682 A.2d 49 (Pa. Cmwlth. 1996); *Dep’t of Navy v. Unemployment Comp. Bd. of Review*, 650 A.2d 1138 (Pa. Cmwlth. 1994); *Peoples First Nat’l Bank v. Unemployment Comp. Bd. of Review*, 632 A.2d 1014 (Pa. Cmwlth. 1993).

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Board of Review,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 4th day of December, 2008, the order of the Unemployment Compensation Board of Review in the above-captioned matter is hereby AFFIRMED.

BONNIE BRIGANCE LEADBETTER,
President Judge