

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Georgye Davis,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1206 C.D. 2007
	:	SUBMITTED: January 25, 2008
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE JAMES R. KELLEY, Senior Judge**

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER**

FILED: March 18, 2008

Georgye Davis petitions this court for review of an Unemployment Compensation Board of Review (Board) order affirming a referee’s decision that Davis is ineligible for benefits under Section 402(b) of the Unemployment Compensation Law (Law), Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. § 802(b) [relating to the voluntary termination of employment without cause of a necessitous and compelling nature].

The referee made the following findings of fact, which were adopted by the Board:

1. The claimant was last employed with Genesis Healthcare as a full time Personnel Manager at a pay rate

of \$19.98 per hour. The claimant was employed from August 19, 1991 and her last day of work was January 12, 2007.

2. Over the last five to six years, the claimant reached the point where she could not take the stress of the job and she asked the employer several times for help.

3. The claimant saw a therapist and was given antidepressants and the claimant also saw a physician because of her pressure.

4. About five to six months before the last day of work, the claimant went to the administrator because she needed help.

5. The employer did nothing.

6. The claimant became aware that she could live in her brother's house in Florida for nothing.

7. The claimant made the decision to move.

8. The claimant advised the employer that she was retiring.

9. The claimant voluntarily left her job.

Findings of Fact Nos. 1-9, WCJ's decision (mailed March 20, 2007) at 1.

After the Board affirmed, Davis appealed to this court, arguing that she was essentially forced out of her job due to overwork and stress, that she complained to her employer about her abysmal work situation but received no help, that she could not afford to quit voluntarily or to retire, and that she moved out of state not because she wanted to, but because of an employment opportunity.

Because this is not a case in which Davis was furloughed or discharged against her will, contrary to her characterization, it involves a voluntary quit under section 402(b). The law is well settled that, in order to receive benefits in such a situation, Davis must prove that her voluntary termination of employment was due to reasons of a necessitous and compelling nature. *Collier Stone Co. v. Unemployment Comp. Bd. of Review*, 876 A.2d 481, 484 (Pa. Cmwlth. 2005). In this regard, we have explained:

In order to show a necessitous and compelling reason to quit, the claimant must show that circumstances existed which produced real and substantial pressure to terminate employment; such circumstances would compel a reasonable person to act in the same manner; the claimant acted with ordinary common sense; and the claimant made a reasonable effort to preserve her employment.

Id.

Of course, whether the evidence is legally sufficient is a question of law. *Kirkwood v. Unemployment Comp. Bd. of Review*, 525 A.2d 841, 844 (Pa. Cmwlth. 1987). Consequently, if the burdened party has not presented sufficient evidence, he or she has not met her burden as a matter of law and cannot prevail.

Id. In such a circumstance, and when the burdened party did not succeed below, we have no choice but to affirm what was a proper legal conclusion. *Id.*

We begin by noting that, although Davis now contends in her brief that she moved to Florida when she did to accept a job that, unfortunately, did not work out in the long term, she made no such assertion before the referee or the Board, or in her petition for review to this court. Rather, in her petition for appeal from the local job center's determination denying her benefits, she stated in pertinent part: "I moved to Florida for a place to live cheaply. Am looking for work." Item No. 4, Claimant's Petition for Appeal from Determination (dated February 20, 2007). Also, in her appeal letter to the Board, Davis stated:

When my brother bought a winter home in Florida, he offered me the chance to live in his house, without rent. This was my first and only chance to leave this job. I had to suport [sic] myself and this was a chance to move here and look for a small job without so much stress.

Item No. 9, Claimant's Petition for Appeal from Referee's Decision/Order (March 20, 2007). Consequently, while case law has held that acceptance of a firm job

offer constitutes necessitous and compelling reason for a voluntary quit, *Empire Intimates v. Unemployment Compensation Board of Review*, 655 A.2d 662, 664 (Pa. Cmwlth. 1995); *Antonoff v. Unemployment Compensation Board of Review*, 420 A.2d 800, 801 (Pa. Cmwlth. 1980), Davis's argument to this effect is waived. See generally *Burger v. Unemployment Comp. Bd. of Review*, 569 Pa. 139, 801 A.2d 487 (2002); see also Pa. R.A.P. 2117(c). Essentially, Davis testified that, while the stress was overwhelming, she was finally motivated to leave her job because of a housing opportunity.

Davis testified from Florida in this regard:

I had reached the point where I just could not take the stress any longer. I had asked on several occasions over five or six years for some help and I never got it. Back five or six years ago, I had to start going to a therapist to help me deal. They eventually—my medical doctor put me on anti-depressants for the stress. Also, my pressure would go up everyday [sic], so I had to go on pressure medication and this just continued to take it [sic]. But I refused to quit, I just kept going and kept going. Then, when my brother told me that I could come down and live at his house in Florida for nothing and just to be there, someone to be in it, it's a rental home and I could find work down here and that was my decision and why I was able to finally leave that job. But I couldn't leave before because I couldn't afford to take care of myself and I know at my age, I would not find another job very easily.

Notes of Testimony, Hearing of March 16, 2007, at 4.

Despite Davis's assertion that she left her job when she did because she could no longer suffer the stress it engendered, she nevertheless frankly admitted that the last time she asked for help was "maybe five or six months ago." *Id.* There is no indication that she chose to quit soon after her last request went

unheeded. Instead, Davis clearly testified that she had endured years of unremitting stress but did not opt to leave her employment until free rent in Florida made doing so possible. Sadly for Davis, the fact that she could now afford to put an “escape plan” into action does not render her voluntary quit necessitous and compelling.

Order affirmed.

BONNIE BRIGANCE LEADBETTER,
President Judge

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	:	
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ORDER

AND NOW, this 18th day of March 2008, the order of the Unemployment Compensation Board of Review in the above-captioned matter is hereby AFFIRMED.

BONNIE BRIGANCE LEADBETTER,
President Judge