

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Frank A. Pastore,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1209 C.D. 2012
	:	SUBMITTED: November 16, 2012
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
JUDGE LEADBETTER**

FILED: January 14, 2013

Claimant Frank Pastore petitions *pro se* for review of the order of the Unemployment Compensation Board of Review (Board) affirming the denial of his request for benefits pursuant to Section 402(b) of the Unemployment Compensation Law (Law),¹ 43 P.S. § 802(b) (relating to voluntary termination of employment without cause of a necessitous and compelling nature) and ordering the recoupment of an overpayment of benefits pursuant to Section 804(b), 43 P.S. § 874(b) (relating to the recoupment of non-fault overpayment of benefits). On appeal, Claimant implies that he had necessitous and compelling reasons to

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937), *as amended*.

terminate his employment and contends that the recoupment of the benefits paid is “unfair.” After review, we affirm.

Claimant worked for Employer Grizzly, Inc., as a plumber for approximately nine days in June of 2009. Following his voluntary termination of that job, Claimant sought unemployment compensation benefits, which were denied. A hearing before a referee eventually followed and both Claimant and Employer participated without counsel; Claimant testified on his own behalf and Employer presented the testimony of Keith Holford, its President/Owner. Notably, while Claimant testified to his reasons for quitting the job, his testimony reflected that he did not inform Employer of those reasons or his concerns before he quit. Based upon the testimony, the referee found that Claimant did not give Employer notice of his intent to quit and Claimant did not discuss his concerns with Employer before quitting, thereby depriving Employer of any opportunity to address or resolve Claimant’s concerns.² Accordingly, the referee concluded that Claimant lacked necessitous and compelling reasons to terminate his job and benefits were denied pursuant to Section 402(b). The referee also imposed a fault overpayment for approximately \$3900 for benefits received for claim weeks ending June 27, 2009 through October 17, 2009.³

² Claimant testified that he quit the job because: (1) he didn’t have enough help on the job; (2) he was told that he could not take his vacation during the summer; and (3) Employer wanted him to leave his tools overnight in employer’s truck in the shop. In response to the referee’s statement that Claimant’s concerns were not relevant unless he discussed them with Employer before leaving the job, Claimant replied: “But I could see his controlling manner and I don’t appreciate - - - I don’t like the guy. . . . We didn’t see eye to eye. . . . The lack of help and all these little rules add up to a big red flag. That’s why it only lasted two weeks.” Hearing of April 18, 2012, Transcript of Testimony at 8.

³ The record does not provide any explanation for the unusual delay in this case. It also appears that Claimant did not apply for benefits until 2012, rendering the overpayment somewhat confusing.

Claimant appealed and the Board affirmed in part, adopting the referee's findings and adding the specific finding that: "[T]he claimant did not raise his various concerns with the employer prior to abandoning his position after only nine (9) days on the job. The Board finds insufficient credible evidence that it would have been futile for the claimant to do so and allow the employer the opportunity to address his concerns." Board Order (mailed June 8, 2012). The Board modified the referee's order to the extent a fault overpayment was imposed, holding instead that the overpayment of benefits was recoupable under the non-fault provisions of Section 804(b) of the Law, 43 P.S. § 874(b). This appeal followed.

The dispositive issue on appeal is whether Claimant informed his employer of his concerns regarding the job prior to terminating his employment.⁴ It is well settled that in order for a claimant to recover benefits following a voluntary termination, the claimant must, among other things, make a reasonable effort to preserve his employment.⁵ *Craighead-Jenkins v. Unemployment Comp. Bd. of Review*, 796 A.2d 1031, 1033 (Pa. Cmwlth. 2002). The failure to attempt to resolve issues with an employer before quitting will preclude the grant of benefits. *Id.* at 1033-34; *Petrick v. Unemployment Comp. Bd. of Review*, 455 A.2d 757, 759 (Pa. Cmwlth. 1983).

⁴ We reach this issue only by giving Claimant's petition for review and appellate brief the most liberal reading possible.

⁵ A claimant who voluntarily terminates his employment is not entitled to benefits unless he demonstrates that he had necessitous and compelling cause to leave the job. Section 402(b) of the Law, 43 P.S. § 802(b). Demonstrating necessitous and compelling cause includes proving that reasonable steps were taken to preserve the job. *Craighead-Jenkins v. Unemployment Comp. Bd. of Review*, 796 A.2d 1031, 1033 (Pa. Cmwlth. 2002).

Here, the Board found that Claimant failed to discuss his concerns with Employer prior to quitting. This finding is not challenged on appeal and it is supported by the record. Accordingly, we are bound by it. *Craighead-Jenkins*, 796 A.2d at 1033 n.4. Moreover, as the Board found, there was no credible evidence that attempts to resolve the issues with Employer prior to quitting would have been in vain.

Therefore, we affirm.⁶

BONNIE BRIGANCE LEADBETTER,
Judge

⁶ While Claimant's contention that, "[e]ven if the Petitioner is found wrong [sic] for him to pay back \$3,944.00 is just unfair," has not been preserved for appellate review, we note that a non-fault payment of compensation to a claimant not otherwise entitled can be properly recouped under Section 804(b) of the Law, 43 P.S. § 874(b) (providing for recoupment against future compensation payable).

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	:	
Respondent	:	

ORDER

AND NOW, this 14th day of January, 2013, the order of the Unemployment Compensation Board of Review is hereby affirmed.

BONNIE BRIGANCE LEADBETTER,
Judge