

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Kellie L. Harding, :
Petitioner :
 :
v. :
 :
Unemployment Compensation Board :
of Review, : No. 1279 C.D. 2011
Respondent : Submitted: November 10, 2011

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY

FILED: December 30, 2011

Kellie L. Harding (Claimant), appearing *pro se*, petitions for review of an adjudication of the Unemployment Compensation Board of Review (Board) which affirmed the decision of the Referee denying benefits under Section 402(b) of the Unemployment Compensation Law (Law).¹

The facts, as found by the Referee and adopted by the Board, are as follows:

1. Claimant worked as a full-time Case Worker Income Maintenance for the Dept. of Public Welfare from August 20, 2007 until November 4, 2009² at the final rate of pay of \$19.33 per hour.

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

² It appears from the record that Claimant's last day of work was November 24, 2009.

2. On November 30, 2010, the claimant went on an extended leave of absence from the employer.
3. On November 30, 2010, the claimant submitted a resignation to the employer indicating that she was relocating to Georgia to join her spouse and that she could not work full-time.
4. Claimant did not discuss any issues with the employer prior to resigning her position and did not provide any medical documentation that she could not work full-time after November 30, 2010.
5. Continuing work was available to the claimant with the employer.

Referee's Decision (Decision), April 19, 2011, Findings of Fact Nos. 1-5, at 1.

With respect to the issue of whether Claimant was ineligible for benefits because she voluntarily quit her employment without a necessitous and compelling reason, the Referee determined:

In the present case, the record establishes the claimant submitted her resignation to the employer on November 30, 2010 indicating that she was relocating to Georgia to join her spouse and could not work full time. However, the claimant did not appear for the scheduled hearing and did not present any competent evidence regarding the reasons why she left her employer and how those circumstances were a necessitous and compelling reason for ending the employment relationship. Moreover, the employer witnesses credibly testified that there was continuing work available to the claimant and that she did not speak to anyone at the employer prior to submitting her resignation regarding the issues that she was having or present any medical documentation indicating that she could not return to full-time work after November 30, 2010. As such, the claimant has not established that she voluntarily stopped working for cause of a necessitous or compelling nature and benefits are disallowed under Section 402(b) of the Law.

Decision, 4/19/11, at 2.

The Board affirmed. The Board also denied Claimant's request that the record be remanded for additional testimony because Claimant failed to provide good cause for her non-participation at the referee's hearing on April 15, 2011.

Claimant contends³ that she had a necessitous and compelling reason for terminating her employment. Essentially, Claimant argues that she left employment to follow her spouse to Georgia where he had obtained employment after being unemployed for several years.

Teiwo Fowowe, HR analyst for the Department of Public Welfare, Philadelphia County Assistance Office (Employer), testified on behalf of Employer. He stated that Claimant submitted her resignation on November 30, 2010, and indicated that she was relocating to Georgia to join her spouse. Notes of Testimony, April 15, 2011 (N.T.), at 5.

Barbara Marshall (Ms. Marshall), an HR analyst II with Employer, testified on behalf of Employer that the last day Claimant came into the office was November 24, 2009, because "[s]he's been on a leave of absence, leave without

³ This Court's review in an unemployment compensation case is limited to a determination of whether constitutional rights were violated, errors of law were committed, or findings of fact were not supported by substantial evidence. Lee Hospital v. Unemployment Compensation Board of Review, 637 A.2d 695 (Pa. Cmwlth. 1994).

pay. FMLA or we call it sick parental family care leave since November 30, 2009.” N.T. at 6. Ms. Marshall also stated that there was continuing work available to Claimant. N.T. at 6.

Whether a termination of employment is voluntary is a question of law subject to this Court’s review. The failure of an employee to take all reasonable steps to preserve employment results in a voluntary termination. Westwood v. Unemployment Compensation Board of Review, 532 A.2d 1281 (Pa. Cmwlth. 1987). An employee voluntarily terminating employment has the burden of proving that such termination was necessitous and compelling. The question of whether a claimant has a necessitous and compelling reason to terminate employment is a question of law reviewable by this Court. Willet v. Unemployment Compensation Board of Review, 429 A.2d 1282 (Pa. Cmwlth. 1981). Good cause for voluntarily leaving one’s employment 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. Philadelphia Parking Authority v. Unemployment Compensation Board of Review, 654 A.2d 280 (Pa. Cmwlth. 1995).

Where a claimant terminates employment to join a relocating spouse, the claimant must demonstrate an economic hardship in maintaining two residences or that the move has posed an insurmountable commuting problem.... The claimant must also show that her resignation was the direct result of her spouse’s relocation, i.e., the necessity to relocate must be caused by circumstances beyond the control of the claimant’s spouse and not by personal preference, and the decision

to relocate must be reasonable and be made in good faith.... The desire to maintain the family unit is not by itself sufficient cause to terminate one's employment and receive benefits. (Citations omitted).

Sturpe v. Unemployment Compensation Board of Review, 823 A.2d 239, 242-243 (Pa. Cmwlth. 2003).

Claimant did not participate in the hearing and failed to present any competent evidence that the circumstances surrounding her resignation were of a necessitous and compelling nature and that her spouse's relocation was for reasons beyond his control and not personal.

Accordingly, this Court affirms.

BERNARD L. McGINLEY, Judge

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ORDER

AND NOW, this 30th day of December, 2011, the Order of the Unemployment Compensation Board of Review in the above-captioned matter is affirmed.

BERNARD L. MCGINLEY, Judge