IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Robin L. Johnson, Petitioner	:	
v.	:	
Unemployment Compensation Board of Review, Respondent	:	No. 134 C.D. 2011
	:	Submitted: September 23, 2011

OPINION NOT REPORTED

MEMORANDUM OPINION
PER CURIAM FILED: November 1, 2011

Robin L. Johnson (Claimant) challenges the order of the Unemployment Compensation Board of Review (Board) which affirmed the referee's denial of benefits under Section 402(b) of the Unemployment Compensation Law (Law).[1]

The facts, as initially found by the referee and confirmed by the Board, are as follows:

> 1. The claimant was last employed as a full-time Security Supervisor with the employer from January 21, 2008 until July 16, 2010 at a final rate of pay of $18.81 per hour.
>
> 2. On July 14, 2010, the claimant had discomfort in the chest area and was hospitalized. The claimant was diagnosed with anxiety and diabetes.
>
> 3. The claimant was released on July 15, 2010 from the hospital and returned to work on July 16, 2010.

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

4. On July 19, 2010, the claimant was scheduled to work for the 2:00 PM [sic] shift. At 10:45 AM [sic], the claimant informed the employer that he needed to take two weeks off because of medical reasons.

5. The employer approved the claimant's leave until August 16, 2010.

6. The claimant's assignment was at the Philadelphia Airport.

7. The Philadelphia Airport Authorities informed the employer that the claimant was not wanted at the Airport because of some personal issues regarding a female employee who he was previously dating.

8. The employer had posted the claimant to the Fairmount Water Works.

9. The claimant was not happy with the posting.

10. On August 15, 2010, the claimant called the dispatcher to confirm his schedule and informed that he would report for work on August 16, 2010 but that he wanted to speak with the Vice President of Operations.

11. On August 16, 2010, at 9:15 AM [sic], the Vice President called the claimant and asked him if he was going to report for the 2:00 PM [sic] shift and did not get a proper response, but was told you will get a response in a timely manner.

12. At 11:30 AM [sic], the Vice President again contacted the claimant by phone and told him that he was scheduled to report for the 2:00 PM [sic] shift at which point the claimant said to the employer, 'You do what you want, I will speak with my Attorney - I'm done with you.'

13. The employer interpreted the claimant's statement as a voluntary quit.

> 14. The employer has a contractual obligation and rather than risk its reputation and be liable for damages, the employer sent another Security Guard to the Fairmount Water Works to cover for the claimant's shift.
>
> 15. The claimant reported for the shift at 2:00 PM [sic] but was turned away, as he had been replaced by another Security Officer.
>
> 16. On August 16, 2010, the claimant voluntarily quit his employment.

Referee's Decision, (Decision), October 28, 2010, Findings of Fact Nos. 1-16 at 1-2.

The referee determined that Claimant voluntarily quit his employment without a necessitous and compelling reason:

> At the Referee's Hearing, the claimant testified that he had not quit his employment but he had been discharged because he had shown up for his 2:00 PM [sic] shift on August 16, 2010 but was turned away by the Security Guard. The claimant argued that he had been hospitalized and was on a Medical Leave of Absence. The claimant denied that he had told the employer that he had said that 'You do what you want to do and I'll speak with my Attorney' and had hung up. The claimant's testimony was not credible.
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> . . . .
>
> When the Vice President called the claimant to confirm that he would report for his shift at 2:00 PM [sic] the claimant was angry and upset, and stated, 'You do what you want, I will speak with my Attorney and I'm done with you' and hung up. The employer interpreted this as a voluntary quit and rather than jeopardize its contractual obligations with the customers if the claimant did not show up for his shift, and cause financial damages as well as damages to the employer's reputation, the employer replaced the claimant with another Security

> Supervisor. The claimant was considered as having voluntarily quit his employment.
>
> Based on the testimony provided at the hearing, the Referee finds that the claimant's averment that he was discharged is not convincing as he failed to give a definitive response to the employer when he was asked whether he would report for work at 2:00 PM [sic]. The claimant's response to the employer's question indicated that he would not and that he had finished working with the company. Therefore, the Referee finds that the claimant quit his employment for personal reasons none of which rise to a level of necessity and compulsion as required by Section 402(b) of the Law. The employer replaced the claimant when he said, 'I'm done with you.' The claimant had the obligation to confirm whether he would report for his shift or not which he did not do. The Referee, therefore, finds that the claimant is ineligible for benefits under Section 402(b) of the Law.

Decision at 2-3.

The Board affirmed: "The Board would emphasize the Referee's credibility determination. Also, the Board finds that the claimant's response to the vice president evidences his immediate intention to quit." Board Opinion, January 3, 2011, at 1.

Claimant contends that Kelly's Security Service, Inc. [Employer] provided false statements regarding its interaction with Claimant, that the Board's decision was unfair, and that the transcript of the hearing before the referee was inaccurate.[2]

[2] 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 **(Footnote continued on next page…)**

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). Mere dissatisfaction with one's working conditions is not a necessitous and compelling reason for terminating one's employment. McKeown v. Unemployment Compensation Board of Review, 442 A.2d 1257 (Pa. Cmwlth. 1982).

Claimant initially contends that Employer contradicted itself because in the Notice of Determination the Unemployment Compensation Service Center determined that Claimant telephoned Employer on August 19, 2010, at 11:30 a.m.,

(continued…)

findings of fact were not supported by substantial evidence. Lee Hospital v. Unemployment Compensation Board of Review, 637 A.2d 695 (Pa. Cmwlth. 1994).

and the Board found that Employer telephoned him on August 19, 2010. In unemployment compensation proceedings, the Board is the ultimate fact-finding body empowered to resolve conflicts in evidence, to determine the credibility of witnesses, and to determine the weight to be accorded evidence. Unemployment Compensation Board of Review v. Wright, 347 A.2d 328 (Pa. Cmwlth. 1975). Findings of fact are conclusive upon review provided that the record, taken as a whole, provides substantial evidence to support the findings. Taylor v. Unemployment Compensation Board of Review, 474 Pa. 351, 378 A.2d 829 (1977). The Board determined that Thomas Kelly (Kelly), vice president of operations for Employer, telephoned Claimant at 11:30 a.m. on August 19, 2010. This finding is supported by Kelly's testimony. See Notes of Testimony, October 25, 2010, at 7.[3]

Claimant next contends that he did not receive a fair hearing because he represented himself when he was under prescription medication and had a vision problem complicated by the fact that his attorney failed to attend the hearing. He also alleges that Employer somehow prevented him from securing representation. None of these allegations are contained in the record, so this Court need not address them. Further, Claimant alleges that he was denied due process and asserts that his testimony was cut off by the referee and he was prevented from giving complete answers. A review of the record reveals that Claimant did not

[3] Claimant does not state why he thinks the issue of which party placed the telephone call is significant.

raise these issues in his appeal to the Board. As a result, these issues are waived.[4] See Merida v. Unemployment Compensation Board of Review, 543 A.2d 593 (Pa. Cmwlth. 1988).[5]

Accordingly, this Court affirms.

[4] Assuming arguendo that Claimant preserved these issues, a review of the transcript of the hearing before the referee indicates that Claimant was given every opportunity to present his case.

[5] Finally, Claimant contends that the transcript of the referee's hearing was not accurate enough to make a competent legal review. Claimant fails to address this issue in the argument section of his brief. Consequently, this issue was waived. See Pa.R.A.P. 2116(a); Van Duser v. Unemployment Compensation Board of Review, 642 A.2d 544 (Pa. Cmwlth. 1994). (Issues not briefed are waived).

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O R D E R

PER CURIAM

AND NOW, this 1st day of November, 2011, the order of the Unemployment Compensation Board of Review in the above-captioned matter is affirmed.