

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

|                                 |   |                              |
|---------------------------------|---|------------------------------|
| Bullshipper Corporation, Inc.,  | : |                              |
| Petitioner                      | : |                              |
|                                 | : |                              |
| v.                              | : |                              |
|                                 | : |                              |
| Unemployment Compensation Board | : |                              |
| of Review,                      | : | No. 1375 C.D. 2009           |
| Respondent                      | : | Submitted: December 31, 2009 |

BEFORE: HONORABLE BERNARD L. MCGINLEY, Judge  
HONORABLE JOHNNY J. BUTLER, Judge  
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY  
JUDGE BUTLER

FILED: January 29, 2010

Bullshipper Corporation, Inc. (Employer) petitions this Court for review of the May 20, 2009 order of the Unemployment Compensation Board of Review (UCBR) reversing the Referee’s decision to deny benefits, and granting benefits under Section 402(b) of the Unemployment Compensation Law (Law).<sup>1</sup> The issue before the Court is whether the UCBR’s finding that Pauline Warren (Claimant) did not voluntarily quit her job is supported by substantial evidence. For reasons that follow, we affirm.

Claimant was employed by Employer as a part-time slicer operator at a restaurant for 23 years, ending November 10, 2008. In August of 2008, Pamela

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

McNew (McNew), the owner/manager of the restaurant, marked the calendar noting two weeks in November that she would be out of the country and requesting that employees not take off during that time period. On November 10, 2008, Claimant informed McNew that she had an operation scheduled for November 17, 2008. McNew asked if Claimant could reschedule. Claimant and McNew then had a heated exchange. During the exchange, McNew told Claimant to “go to hell and get out and leave[.]” UCBR Finding of Fact No. 7, Reproduced Record (R.R.) at 57a. Claimant testified that she then returned to her work, only to be approached again by McNew demanding that she leave. Claimant said she then cleaned her equipment and left, retiring from her shift an hour early. She left the job site and did not return. R.R. at 26a.

Claimant subsequently applied for Unemployment Compensation (UC) benefits. On November 21, 2008, the Lancaster UC Service Center mailed a notice of determination denying Claimant UC benefits under Section 402(b) of the Law. Claimant appealed, and a hearing was held by a Referee. On February 20, 2009, the Referee mailed his decision affirming the determination of the UC Service Center denying UC benefits. Claimant appealed to the UCBR. The UCBR reversed the decision of the Referee, and granted benefits. Employer appealed to this Court.<sup>2</sup>

Employer argues that the UCBR’s determination that Claimant did not voluntarily quit her job is not supported by substantial evidence. We disagree. “Substantial evidence is such relevant evidence as a reasonable mind might accept as

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<sup>2</sup> This Court’s review is limited to determining whether the findings of fact were supported by substantial evidence, whether constitutional rights were violated, or whether errors of law were committed. *Johnson v. Unemployment Comp. Bd. of Review*, 869 A.2d 1095 (Pa. Cmwlth. 2005).

adequate to support a conclusion.” *Coal Gas Recovery, L.P. v. Franklin Twp. Zoning Hearing Bd.*, 944 A.2d 832, 838 n.9 (Pa. Cmwlth. 2008).

Here, as stated above, Claimant contends that when she refused to reschedule her surgery, McNew demanded that she leave. Claimant testified that she resumed work, and that McNew then approached her saying she was “supposed to get out.” R.R. at 26a. Notwithstanding, when Claimant was specifically questioned at the hearing before the Referee as to whether she had an understanding of whether she still had a job at that point, she responded: “No, she didn’t say and I didn’t ask.” When asked the follow up question: “But did you believe that you had a job or that you were terminated?” Claimant responded: “No, I’m just – was tired of them being (sic) called names and cursed at so much.” R.R. at 26a.

While there is arguably somewhat of an ambiguity in the testimony as to whether Claimant quit or was fired after being told repeatedly to “get out” and “go to hell,” we note:

In unemployment compensation proceedings, the [UCBR] is the ultimate fact finder and is, therefore, entitled to make its own determinations as to witness credibility and evidentiary weight. The [UCBR] is free to accept or reject the testimony of any witness in whole or in part.

*McFadden v. Unemployment Comp. Bd. of Review*, 806 A.2d 955, 958 (Pa. Cmwlth. 2002). Furthermore, it is axiomatic that “[t]he UCBR, as fact-finder, is not bound by the referee’s credibility determinations and can reverse the referee’s decision . . . .” *Cumberland Valley Animal Shelter v. Unemployment Comp. Bd. of Review*, 881 A.2d 10, 13 n.4 (Pa. Cmwlth. 2005). Here, the UCBR accepted the Claimant’s testimony as credible and concluded, based upon her testimony as to what her employer said to her, that Claimant “did not voluntarily quit her employment.” UCBR Finding of Fact No. 9, R.R. at 58a. We do not disturb the UCBR’s credibility or weight of the

evidence determinations. Claimant's testimony clearly constitutes relevant evidence that a reasonable mind might accept as adequate to support the UCBR's conclusion.

For the above reasons, the order of the UCBR is affirmed.

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JOHNNY J. BUTLER, Judge

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| Respondent                      | : |                    |

ORDER

AND NOW, this 29<sup>th</sup> day of January, 2010, the May 20, 2009 order of the Unemployment Compensation Board of Review is affirmed.

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JOHNNY J. BUTLER, Judge