

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

David Lloyd,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1391 C.D. 2010
	:	SUBMITTED: November 12, 2010
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

BEFORE: **HONORABLE BONNIE BRIGANCE LEADBETTER**, President Judge
 HONORABLE P. KEVIN BROBSON, Judge
 HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER**

FILED: December 28, 2010

David Lloyd (Claimant) petitions, *pro se*, for review of the order of the Unemployment Compensation Board of Review (Board) that affirmed the referee's decision denying him unemployment compensation 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),¹ and finding a nonfault overpayment of benefits. Claimant, who failed to appear at a hearing before the referee, argues that the documents he submitted to the Altoona UC Service Center support a necessitous and compelling reason for leaving his employment.

¹ Section 402(b) of the Law provides in pertinent part that an employee shall be ineligible for compensation for any week "[i]n which his unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature"

Claimant worked for Uni Mart LLC as a part-time employee from February 26, 2008 until he left employment on September 4, 2009. The UC Service Center denied Claimant's application for unemployment benefits under Section 402(b) of the Law for the week ending December 12, 2009. Claimant appealed, and a hearing before the referee was scheduled for March 23, 2010. Although a notice of hearing was sent to Claimant and Employer, neither party appeared at the hearing. The referee then entered the Department's documents into record and found, based on those documents, that Claimant voluntarily left his employment due to his working conditions. The referee stated: "Absent any testimony from the claimant as to why his working conditions at Uni Mart LLC forced him to voluntarily quit his job, [she] can only conclude that the claimant did not have necessitous and compelling reason to leave his employment" Referee's Decision at 2. The referee further found that Claimant received benefits in the amount of \$357 for the two-week period ending December 26, 2009 and January 2, 2010 when he was not entitled to receive benefits. The referee accordingly denied Claimant benefits and found a nonfault overpayment of \$357.²

On appeal, the Board adopted and affirmed the referee's decision. The Board stated that Claimant's written statement submitted to the Board constituted

² Claimant does not dispute that he received benefits during the two-week period. Section 804(b)(1) of the Law, 43 P.S. § 874(b)(1), provides in relevant part:

Any person who other than by reason of his fault has received with respect to a benefit year any sum as compensation under this act to which he was not entitled shall not be liable to repay such sum but shall be liable to have such sum deducted from any future compensation payable to him with respect to such benefit year, or the three-year period immediately following such benefit year

hearsay evidence, which was not corroborated by any competent evidence, and could not establish a necessitous and compelling reason to quit his job. Claimant's appeal to this Court followed.

Claimant does not dispute the Board's conclusion that he was separated from employment due to a voluntary quit, not due to a discharge. To be eligible for benefits, therefore, he had the burden of proving that he terminated his employment for a necessitous and compelling reason. *Diehl v. Unemployment Comp. Bd. of Review*, 4 A.3d 816 (Pa. Cmwlth. 2010). To meet that burden, he was required to establish circumstances which placed a real and substantial pressure upon him to leave employment, such as would compel a reasonable person to act in the same manner. *Empire Intimates v. Unemployment Comp. Bd. of Review*, 655 A.2d 662 (Pa. Cmwlth. 1995). In addition, he was required to demonstrate that he acted with ordinary common sense by making a reasonable effort to preserve employment, but had no real choice other than to terminate his employment. *Carter v. Unemployment Comp. Bd. of Review*, 629 A.2d 212 (Pa. Cmwlth. 1993). Whether the claimant left employment for a necessitous and compelling reason is a question of law subject to plenary review by this Court. *Diehl*.

As stated earlier, neither party appeared at the hearing to present evidence. The regulations at 34 Pa. Code § 101.51 provide:

If a party notified of the date, hour and place of a hearing fails to attend a hearing without proper cause, the hearing may be held in his absence. In the absence of all parties, the decision may be based upon the pertinent available records. The tribunal may take such other action as may be deemed appropriate.

It is within the tribunal's discretion to render a decision upon the pertinent available records or to reschedule a hearing where, as here, both parties did not appear at a

hearing. *Clairton Mun. Auth. v. Unemployment Comp. Bd. of Review*, 639 A.2d 921 (Pa. Cmwlth. 1994).

Claimant does not deny that he received the notice of hearing. Indeed, he admits that he had "no good excuse" for failing to appear at the hearing. Claimant's Brief at 6. He argues, however, that his statements contained in the Claimant Questionnaire and the Employment Separation Questionnaire submitted to the UC Service Center as part of his application for benefits support a necessitous and compelling reason for leaving employment. In those documents, he stated that he was required to work in the cooler for several hours during his shift in addition to performing other duties and that his work hours had been reduced.

Those statements, however, constitute hearsay evidence. *Everette v. Unemployment Comp. Bd. of Review*, 414 A.2d 730 (Pa. Cmwlth. 1980). Hearsay evidence admitted into evidence without objection may support a finding, if it is corroborated by any competent evidence in the record. *Walker v. Unemployment Comp. Bd. of Review*, 367 A.2d 366 (Pa. Cmwlth. 1976). However, hearsay evidence alone cannot support a finding. *Id.* Consequently, Claimant's self-serving statements submitted to the Job Center and the Board regarding his working conditions alone, without any competent evidence in the record corroborating those statements, cannot support a finding that he left employment for a necessitous and compelling reason. Moreover, his statements at best indicate his dissatisfaction with the working conditions. It is well established, however, that the claimant's mere dissatisfaction with working conditions does not amount to a necessitous and compelling reason for leaving employment. *Magazzeni v. Unemployment Comp. Bd. of Review*, 462 A.2d 961 (Pa. Cmwlth. 1983). Hence,

he failed to meet his burden of establishing eligibility for benefits under Section 402(b) of the Law.

Accordingly, the Board's order is affirmed.

BONNIE BRIGANCE LEADBETTER,
President Judge

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	:	
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ORDER

AND NOW, this 28th day of December 2010, the order of the Unemployment Compensation Board of Review in the above-captioned matter is AFFIRMED.

BONNIE BRIGANCE LEADBETTER,
President Judge