

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Janet L. Degenhardt, :
Petitioner :
v. : No. 1538 C.D. 2007
Unemployment Compensation : Submitted: December 21, 2007
Board of Review, :
Respondent :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY

FILED: January 24, 2008

Janet L. Degenhardt (Claimant) petitions for review of an order of the Unemployment Compensation Board of Review (Board) affirming the Referee's decision denying Claimant unemployment compensation benefits pursuant to Section 402(b) of the Unemployment Compensation Law (Law).¹ We affirm.

Claimant was employed by Verizon Pennsylvania (Employer) from August 11, 1968 until May 25, 2007 as a switching equipment technician. On April 18, 2007, Employer notified Claimant and the other workers in Claimant's work group that the work group was going to be subject to a "force adjustment." Employer offered employees in this work group the option of a voluntary retirement package.

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. §802(b). Section 402(b) provides that an employee who voluntarily terminates her employment without cause of a necessitous and compelling nature is ineligible for benefits.

Under the retirement package, each employee accepting the package would receive \$2,200 for each completed year of credited service up to a total of \$66,000 and a voluntary termination bonus of \$10,000.

Under Employer's contract with the union, there was a no lay-off provision and the jobs of all workers in the work group were secure through August 2008 after which, if there were layoffs, the layoffs or transfers would be made on the basis of seniority. Claimant had the most seniority of any employee in her unit.

Claimant decided to accept the package effective May 25, 2007. Thereafter, Claimant applied for unemployment compensation benefits. By notice mailed June 11, 2007, the Lancaster UC Service Center (Service Center) determined that Claimant was ineligible for benefits pursuant to Section 402(b) of the Law because she failed to show a necessitous and compelling reason for terminating her employment. Claimant appealed the Service Center's determination to the Referee.

A hearing before the Referee ensued at which Claimant, *pro se*, and Employer appeared and presented testimony. Based on the evidence presented, the Referee found that continuing work was available to Claimant at the time she accepted the retirement package. The Referee concluded, based on the facts previously set forth herein, that when Claimant resigned, she did so because Employer offered her a financial incentive package based on the number of years of service. The Referee concluded further that Claimant was guaranteed work under Employer's current contract with its employees until August 2008, after which the Claimant and other members of her work group faced the possibility of a work force adjustment. The Referee determined that as the most senior employee in that work group, Claimant's job would have been the most secure. Accordingly, the Referee concluded that continuing work was available and that Claimant did not meet her burden of proving that she resigned for necessitous and compelling reasons.

Claimant appealed the Referee's decision to the Board. The Board affirmed and adopted and incorporated the Referee's findings and conclusions without making any independent findings of fact or conclusions of law. This appeal followed.

Herein, Claimant raises the following issues: (1) whether the Board erred by determining that Claimant terminated her job without cause of a necessitous and compelling nature; and (2) whether the Board's decision is supported by substantial evidence.

Initially, we note that this Court's review of the Board's decision is set forth in Section 704 of the Administrative Agency Law, 2 Pa.C.S. §704, which provides that the Court shall affirm unless it determines that the adjudication is in violation of the claimant's constitutional rights, that it is not in accordance with law, that provisions relating to practice and procedure of the Board have been violated, or that any necessary findings of fact are not supported by substantial evidence. See Porco v. Unemployment Compensation Board of Review, 828 A.2d 426 (Pa. Cmwlth. 2003). Findings of fact are conclusive upon review provided that the record, taken as a whole, contains substantial evidence to support the findings. Taylor v. Unemployment Compensation Board of Review, 474 Pa. 351, 378 A.2d 829 (1977). Substantial evidence is relevant evidence that a reasonable mind might consider adequate to support a conclusion. Hercules v. Unemployment Compensation Board of Review, 604 A.2d 1159 (Pa. Cmwlth. 1992).

The question of whether particular facts constitute a voluntary quit is a question of law fully reviewable by this Court. Chamoun v. Unemployment Compensation Board of Review, 542 A.2d 207 (Pa. Cmwlth. 1988). The claimant bears the burden of proving a necessitous and compelling reason for voluntarily terminating the employment relationship. Mutual Pharmaceutical Company, Inc.

v. Unemployment Compensation Board of Review, 654 A.2d 37 (Pa. Cmwlth. 1994).

A determination that a claimant voluntarily quit is not an absolute bar to the recovery of unemployment compensation benefits. Monaco v. Unemployment Compensation Board of Review, 523 Pa. 41, 565 A.2d 127 (1989). A claimant may prove necessary and compelling reasons that could excuse the voluntary action of the claimant. Id. A cause of necessitous and compelling nature is one that results from circumstances which produce pressure to terminate employment which is both real and substantial and which would compel a reasonable person under the circumstances to act in the same manner. Id.

Claimant first argues that the Board committed an error of law by determining that she left her job without cause of a necessitous and compelling nature. Claimant argues that she left her job with Employer only after she received a letter from Employer notifying her that her job was in a work group that was subject to a force adjustment.² Claimant argues further that the circumstances surrounding her decision to leave her job were real and constituted substantial pressure that would have compelled a reasonable person to act in the same manner. Claimant contends

² The letter received by Claimant from Employer stated, in part, as follows:

This is to inform you that your job is in a work group that is subject to a force adjustment. Therefore, the Company is offering you the opportunity to volunteer to leave the service of the Company and received EISP [Enhanced Income Security Plan] benefits pursuant to the provisions of the collective bargaining agreement. You should understand that your volunteering to leave the company does not guarantee that you will be selected for EISP since volunteers will be accepted to the extent necessary to relieve the surplus, in the order of seniority among those eligible employees.

Reproduced Record (R.R.) at 6a.

that when she asked her supervisor for information and advice about Employer's retirement letter, he told her that it was "time to get out." Claimant contends that she was not sure continuing work would be available had she not taken retirement because Employer was telling her it was forcing the adjustment of her work group.

Claimant contends further that in the past other employees in similar positions who had accepted a voluntary package after receiving the same letter received unemployment compensation. This, Claimant argues, bolstered her reasonable conclusion that Employer would not have available work for her so she should accept the package. Claimant contends that a reasonable person would have acted in the same manner; therefore, she is entitled to unemployment compensation benefits pursuant to Section 402(b) of the Law.

It is now well settled that in the context of corporate downsizing, the critical inquiry is whether the fact finder determined the circumstances surrounding a claimant's voluntary quit indicated a likelihood that fears would materialize, that serious impending threats to his or her job would be realized, and that his or her belief his or her job is imminently threatened is well-founded. Renda v. Unemployment Compensation Board of Review, 837 A.2d 685 (Pa. Cmwlt. 2003), petition for allowance of appeal denied, 581 Pa. 686, 863 A.2d 1151 (2004); Mansberger v. Unemployment Compensation Board of Review, 785 A.2ed 126 (Pa. Cmwlt. 2001); Staub v. Unemployment Compensation Board of Review, 673 A.2d 434 (Pa. Cmwlt. 1996). "[S]peculation pertaining to an employer's financial condition and future layoffs, however disconcerting, does not establish the requisite necessitous and compelling cause." Staub, 673 A.2d at 437. Where at the time of retirement suitable continuing work is available, the employer states that a layoff is possible but not likely, and no other factors are found that remove an employee's

beliefs from the realm of speculation, a claim for unemployment compensation benefits fails despite the offer to leave. Id.

In the present case, Claimant testified that she received a letter from Employer informing her that her job was in a work group that was subject to a force adjustment and that she was advised by her supervisor to take the enhanced offer. R.R. at 13a. Specifically, Claimant testified that her supervisor informed her that “with the [union] contract coming up, he did not know what was going to happen and that if he was given the offer, it’s time to get out.” Id. at 14a. Claimant testified further that she did not know how long she could have kept working under the current union contract. Id. In addition, Claimant testified, without giving specifics, that other employees in the past received unemployment under the same circumstances presented in her situation because Employer did not tell them what would happen if they did not take the offer. Id.

Employer testified that the current contract between it and its employees expires in August 2008, that the offer presented to its employees was a voluntary separation, that Claimant’s job still would have been available, that Claimant would not have been subject to a lay off due to the no-layoff clause in the union contract, that employees with the lowest seniority would be subject to a transfer, and that Claimant had the highest seniority in her work group. Id. at 14a-15a.

Therefore, this not a case where the employer affirmatively stated, in the context of making retirement offers, layoffs would occur, without demonstrating that continuing work was available. As found by the Board, under the union contract, there was a no lay-off provision and the jobs of all the employees in the work group were secure through August 2008, after which transfers would be made on the basis of seniority. The Board also found that Claimant had the most seniority of any employee in her work group and as such, continuing work was available. Finally,

while Claimant's supervisor may have advised her to take the offer and "get out", Claimant did not testify that her supervisor specifically informed her that her job would definitely be subject to the force adjustment. To the contrary, Claimant testified that her supervisor informed that he did not know what was going to happen. Moreover, Claimant testified that when she was offered an incentive package in the past, she was transferred because she did not take the "layoff." Id. at 15a. Accordingly, Claimant's fears regarding her job security were speculative at most.

In addition, whether other similarly situated employees received unemployment benefits as alleged by Claimant is irrelevant particularly where Claimant offered no specifics with regard to this allegation. In fact, in Renda which is a case involving this same Employer and a strikingly similar enhanced income security plan, this Court determined that the claimants failed to prove that they were entitled to unemployment compensation because Employer did not expressly inform the claimants that their jobs would be eliminated, that the claimants were aware that downsizing would occur by reverse seniority, that the claimants' concerns over job security were speculative or uncertain, and that Employer made continuing work available to the claimants. Renda, 837 A.2d at 693.

Accordingly, the Board did not commit an error of law by determining that Claimant left her job without cause of a necessitous and compelling nature.

Next, Claimant argues that the Board's decision is not supported by substantial evidence. Specifically, Claimant contends that the Board did not make any specific finding regarding her credibility and that the Referee failed to gather facts or question Claimant in detail about many of the issues involved in this matter such as her reasons for accepting the early retirement package, whether a layoff was imminent, the details of the union contract and whether other similarly situated employees received different results. Claimant contends that since she was *pro se*,

she was entitled to assistance from the fact finder in developing her case. Claimant argues that, unlike the Referee, she was unaware that these type of cases turn on very specific sets of facts.

Claimant contends further that: (1) there is no evidence to support the Board's finding that there was continuing work available; (2) there is no evidence to support what was stated in the provisions of the union contract regarding layoffs; and (3) there is no evidence on the issue of whether other employees who left Employer after receiving similar offers were granted unemployment compensation benefits. In addition, Claimant argues that the Board erred in refusing to grant a remand as the record is incomplete; therefore, there was no substantial evidence to support the denial of benefits. We disagree.

First, with regard to Claimant's assertion that since she was *pro se*, the Referee should have assisted her in properly developing her case, we note that the record reflects that the Referee did advise Claimant of her rights and she was afforded the opportunity to be heard at the Referee hearing. R.R. at 11a. While a Referee is required to assist a *pro se* claimant, he or she is prohibited from becoming the claimant's advocate. Brennan v. Unemployment Compensation Board of Review, 487 A.2d 73 (Pa. Cmwlth. 1985). The Board's regulations make it clear that the Board, and the Referee as agent for the Board, are to remain impartial as between the parties in the production of evidence. See 34 Pa. Code §101.21; Vann v. Unemployment Compensation Board of Review, 508 Pa. 139, 494 A.2d 1081, (1985). Moreover, our Supreme Court has adopted the Commonwealth Court's position that "any layperson choosing to represent himself in a legal proceeding must, to some reasonable extent, assume the risk that his lack of expertise and legal training will prove his undoing." Vann, 508 Pa. at 148, 494 A.2d at 1086 (quoting Groch v. Unemployment Compensation Board of Review, 81 Pa. Cmwlth. 26, 472 A.2d 286,

288 (Pa. Cmwlth. 1984)). Accordingly, we conclude that the Referee acted properly in this matter and that Claimant was not deprived of due process.

With regard to Claimant's contention that the Board failed to make specific credibility determinations, we conclude, based on a review of the Referee's decision as adopted by the Board, that it is clear that the Referee accepted as fact the testimony of Employer's witness that Claimant would not have been subject to a layoff had she not accepted the early retirement package and that continuing work was available. As such, the Board did not err by not making a specific credibility determination regarding Claimant's testimony.

With regard to Claimant's assertion that the record does not contain any evidence regarding whether similarly situated employees were granted unemployment compensation benefits, we point out that we discussed this issue previously herein. We repeat that whether other similarly situated employees received unemployment benefits as alleged by Claimant is irrelevant particularly where Claimant offered no specifics with regard to this allegation. Accordingly, the Board did not err in refusing to grant a remand in order for Claimant to expand this portion of her testimony with further evidence concerning similarly situated employees.

We conclude that the Board's decision is supported by substantial evidence. The Board's order is affirmed.

JAMES R. KELLEY, Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Janet L. Degenhardt,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1538 C.D. 2007
	:	
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 24th day of January, 2008, the order of the Unemployment Compensation Board of Review in the above-captioned matter is hereby affirmed.

JAMES R. KELLEY, Senior Judge