

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Edwin Ortiz,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1611 C.D. 2007
	:	
Unemployment Compensation	:	Submitted: December 14, 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 JUDGE SIMPSON**

**FILED: February 6, 2008**

Edwin Ortiz (Claimant) petitions for review of an order of the Unemployment Compensation Board of Review (Board), which affirmed, as modified, the decision of a referee to deny Claimant unemployment compensation benefits. The Board concluded Claimant was ineligible for benefits under Section 402(b) of the Unemployment Compensation Law (Law)<sup>1</sup> because he voluntarily quit employment without necessitous and compelling cause. We affirm.

In December 2004, Claimant began working for Oxford Village Apartments (Employer) as a maintenance worker. On May 10, 2007, Employer instructed Claimant to clean up trash on its property. Claimant failed to do so, and Employer reprimanded him. Claimant then handed his keys to Employer's

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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).

representative and stated he quit. The next day, however, Claimant returned to work to give two weeks' notice of his resignation. Employer instructed him to leave immediately.

Claimant subsequently filed for unemployment compensation benefits, which were denied under Section 402(b) of the Law. Claimant appealed.

Before a referee, Claimant testified he did not intend to quit his job on May 10, 2007; rather, he merely told Employer he would be "leaving someday" due to medical reasons. Reproduced Record (R.R.) at 4a. In response, Employer required him to turn in his keys and, Claimant complied with the request. The next day, Claimant returned to work; however, Employer instructed him to leave immediately.

In opposition, Employer's representatives testified about the events leading up to Claimant's separation. Importantly, Employer's maintenance supervisor testified he did not require Claimant to hand in the keys. To the contrary, Claimant voluntarily handed in his keys and stated he quit. The next day, Claimant returned to work and gave Employer's manager notice he intended to terminate his employment in two weeks. Employer's manager did not accept this notice and instructed Claimant to leave the premises.

Upon review, the referee awarded Claimant unemployment compensation benefits for the weeks ending May 19 and May 26, 2007. More specifically, the referee determined Claimant notified Employer of his resignation

at a future date, but Employer required him to leave immediately. Because the period leading up to the intended effective resignation date is not a period of voluntary separation, the referee awarded benefits. However, the referee denied benefits for weeks ending after May 26, 2007, concluding Claimant did not demonstrate a necessitous and compelling reason for terminating his employment.

On Claimant's appeal, the Board modified the referee's order and affirmed. More specifically, the Board provided:

[Claimant] quit his employment following the argument with [Employer]. The Board finds [Claimant] did not have a necessitous and compelling reason to quit his employment nor did he make reasonable efforts to preserve the employment relationship. Accordingly, he is ineligible for benefits.

Furthermore, the Board disagrees with the [r]eferee that [Claimant] is entitled to benefits for weeks ending May 19 and 26, 2007, because [Employer] accelerated [Claimant's] two [weeks'] notice. By the time [Claimant] attempted to submit his two [weeks'] notice, he had already immediately quit his employment on May 10, 2007. [Claimant] cannot give two [weeks'] notice to quit a job he has already quit. [Claimant] is ineligible for all benefit weeks.

R.R. at 17a. Claimant appealed.

In unemployment compensation proceedings the Board is the ultimate fact-finder and is empowered to resolve conflicts in the evidence and to determine the credibility of witnesses. McCarthy v. Unemployment Comp. Bd. of Review, 829 A.2d 1266 (Pa. Cmwlth. 2003). In making these determinations, the Board may accept or reject the testimony of any witness, in whole or in part. Id. The

Board's findings are conclusive and binding on appeal if the record, viewed as a whole, contains substantial evidence to support those findings. Id. Thus, it is irrelevant whether the record contains evidence that would support contrary findings. Duquesne Light Co. v. Unemployment Comp. Bd. of Review, 648 A.2d 1318 (Pa. Cmwlth. 1994).

On appeal to this Court,<sup>2</sup> Claimant contends he is entitled to benefits for all weeks. In regard to weeks ending May 19 and May 26, 2007, Claimant initially argues he did not intend to quit on May 10, 2007 but, rather, intended to leave employment two weeks later. As a result, Claimant argues he is entitled to benefits.

Under Section 402(b) of the Law, “[a]n employe[e] 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 ....” 43 P.S. §802(b). The question of whether particular facts constitute a voluntary quit is a question of law fully reviewable by this Court. “A claimant has the burden of proving that [his] separation from employment was a discharge.” Kassab Archbold & O’Brien v. Unemployment Comp. Bd. of Review, 703 A.2d 719, 721 (Pa. Cmwlth. 1997). “Whether a claimant’s separation from employment is a voluntary resignation or a discharge is determined by examining the facts surrounding the claimant’s termination of employment.” Id. This is a question of

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<sup>2</sup> Our review is limited to determining whether constitutional rights were violated, whether an error of law was committed, or whether necessary findings of fact were supported by substantial evidence. Sheets v. Unemployment Comp. Bd. of Review, 708 A.2d 884 (Pa. Cmwlth. 1988).

law to be decided based on the Board's findings. Fekos Enters. v. Unemployment Comp. Bd. of Review, 776 A.2d 1018 (Pa. Cmwlth. 2001).

“A finding of voluntary termination is essentially precluded unless the claimant has a conscious intention to leave his employment.” Id. at 1021. “In determining the intent of the employee, the totality of the circumstances surrounding the incident must be considered.” Id.

Here, the totality of the circumstances reveal Claimant intended to terminate employment effective May 10, 2007. To this end, there was a direct conflict in the testimony regarding whether Claimant voluntarily quit by handing in his keys. Upon review, the Board rejected Claimant's testimony and credited Employer's testimony. See R.R. at 17a. More specifically, on direct examination, Employer's maintenance supervisor credibly testified as follows:

[Employer:] Did you tell [Claimant] he had to give you his keys?

[Employer's Supervisor:] No.

[Q:] Did [Claimant] tell you that he was leaving in a while for health reasons, and that he was going to be quitting soon?

[A:] No.

[Q:] Did [Claimant] give you any reason when he gave you the keys?

[A:] Just stated he will be back Monday to pick his tools up.

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[Employer's Supervisor: Claimant] said, "I'll see you on Monday. I'm done, and I quit." And he walked out.

R.R. at 11a-12a (emphasis added).

“Whether an employee has voluntarily terminated employment depends upon whether the termination was self-initiated or was initiated by action of the employer.” Porter v. Unemployment Comp. Bd. of Review, 434 A.2d 245, 246 (Pa. Cmwlth. 1981). Moreover, a return of keys “evidences immediate resignation.” See id. (conduct which is tantamount to voluntary termination is sufficient).

Here, the accepted evidence reveals that Claimant returned his keys without any action by Employer and that he stated to a supervisor he quit. These actions demonstrate a clear intent on Claimant's part to voluntarily resign. McCarthy; Porter.

Nevertheless, Claimant argues that even if he quit effective May 10, 2007, benefits are warranted for the weeks ending May 19 and May 26, 2007 because he subsequently revoked his resignation and gave Employer his two weeks' notice. More specifically, he argues under the doctrine enunciated in Walker v. Unemployment Comp. Bd. of Review, 367 A.2d 366 (Pa. Cmwlth. 1976), his voluntary quit was nullified because “[a]n employee may revoke a resignation effectively, so that it does not constitute a voluntary termination, if the employer has not taken any steps to replace the employee.” Zimmerman v. Unemployment Comp. Bd. of Review, 516 A.2d 102, 104 (Pa. Cmwlth. 1986).

Concluding Centerville Clinics, Inc. v. Unemployment Compensation Board of Review, 445 A.2d 1374 (Pa. Cmwlth. 1982) directly controls here, we reject Claimant's contention. To this end, Centerville Clinics, Inc. provides:

[O]ur ... decision in Funkhouser v. Unemployment Comp. Bd. of Review, [416 A.2d 646 (Pa. Cmwlth. 1980)], is controlling where, as here, the effective date of the claimant's resignation preceded her attempt to return to work. The testimony clearly indicates ... the claimant repeatedly assured her supervisors of her intention to resign immediately without notice. As we held in Funkhouser, Walker and the cases which followed it are therefore inapplicable because they all involved examination of an employer's action to replace an employee who revoked a future-dated resignation before it took effect.

Id. at 1375 (footnote omitted).

Here, the accepted evidence establishes that Claimant resigned immediately without notice effective May 10, 2007. R.R. at 11a-12a. Clearly, the effective date of Claimant's resignation preceded his attempt to return to work the following day. Accordingly, Walker and the cases which followed it do not apply here.

Finally, Claimant concedes he intended to voluntarily terminate his employment as of May 25, 2007. However, Claimant maintains he demonstrated good cause to excuse a voluntary quit and, therefore, is entitled to benefits for weeks ending after May 26, 2007. In particular, Claimant argues he suffered health problems that prevented him from completing work duties.

We recognize a determination that a claimant voluntarily quit is not an absolute bar to recovery of unemployment compensation benefits. Monaco v. Unemployment Comp. Bd. of Review, 523 Pa. 41, 565 A.2d 127 (1989). To the contrary, a claimant may prove necessary and compelling reasons that excuse the voluntary action of the claimant. Id. To this end, a claimant must prove: circumstances existed that produced real and substantial pressure to terminate employment; such circumstances would compel a reasonable person to act in the same manner; he acted with ordinary common sense; and he made a reasonable effort to preserve employment. Brunswick Hotel & Conference Ctr., LLC v. Unemployment Comp. Bd. of Review, 906 A.2d 657 (Pa. Cmwlth. 2006).

Medical problems can provide necessitous and compelling reasons for a voluntary quit. Fox v. Unemployment Comp. Bd. of Review, 522 A.2d 713 (Pa. Cmwlth. 1987). The claimant maintains the burden of proving the existence of a necessitous and compelling cause. Nolan v. Unemployment Comp. Bd. of Review, 797 A.2d 1042 (Pa. Cmwlth. 2002). In order to prevail in such a case, the claimant must prove that he communicated the nature of his medical problem to the employer and explained why he could not continue to perform his regularly assigned duties. Id. If the claimant does not make this initial effort, the employer can not properly exercise its managerial judgment in locating suitable and available work. Bailey v. Unemployment Comp. Bd. of Review, 653 A.2d 711 (Pa. Cmwlth. 1995).

Here, on direct examination, Claimant testified he “informed [his] supervisor that, surely, there may be a ... time that [he would] be leaving someday for medical [reasons.]” R.R. at 4a. Notably, however, Claimant did not prove he



communicated the nature of his medical condition to Employer or explained how his medical condition impeded his ability to complete assigned duties. See id. Thus, even if the Board credited Claimant's testimony, Claimant failed to produce sufficient evidence to support an award of benefits. Nolan; Bailey.

In addition, as previously discussed, Claimant quit his job effective May 10, 2007, the date Claimant alleged he first informed Employer of his medical problem. R.R. at 5a. Unquestionably, Claimant's abrupt departure from his employment denied Employer any opportunity to locate suitable and available work. Bailey. Concomitantly, Claimant failed to make any reasonable effort to preserve his employment. Brunswick Hotel & Conference Ctr., LLC. No error is apparent here.

Based on the foregoing, the Board is affirmed.

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ROBERT SIMPSON, Judge

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Board of Review,	:	
	:	
Respondent	:	

**ORDER**

AND NOW, this 6<sup>th</sup> day of February, 2008, the order of the Unemployment Compensation Board of Review is **AFFIRMED**.

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ROBERT SIMPSON, Judge