

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Alicia S. Walley, :
Petitioner :
 :
v. : No. 177 C.D. 2008
 : Submitted: July 18, 2008
Unemployment Compensation :
Board of Review, :
Respondent :

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE McCLOSKEY

FILED: August 11, 2008

Alicia S. Walley (Claimant) has filed a *pro se* petition for review of an order of the Unemployment Compensation Board of Review (Board), affirming a referee's decision denying her benefits pursuant to Section 402(b) of the Unemployment Compensation Law (UC Law),¹ because she voluntarily quit work without cause of a necessitous and compelling nature. We affirm.

Claimant began working for Fresh Grocer (Employer) as a part-time bakery manager on October 18, 2004. She worked an average of twenty-two hours a week, earning \$7.50 per hour. Her final day of employment was May 28, 2007.

Claimant filed a claim with the Bureau of UC Benefits and Allowances (Bureau). On her questionnaire she reported that "I was sick a lot of days and I thought

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

I was going to be fired so I told them that I just could not work anymore.” (O.R., Item 2).² Employer’s questionnaire indicated that Claimant had voluntarily quit her position as she “just stopped showing up for work.” (O.R., Item 3). Accordingly, the Bureau determined that Claimant voluntarily quit her job without showing a necessitous and compelling reason.

Claimant appealed the determination of the Bureau and a hearing was held before a referee. Employer did not attend the hearing. At the hearing, Claimant testified that she had quit her job with Employer. She stated that she informed her supervisor that she “was leaving because they threatened to fire me because I was taking time off, and my father had just passed away, and I was still handling business as far as that was concerned.” (O.R., Referee Hearing at 7). She testified that two managers had threatened to fire her about a week before she quit. One of the managers told her on May 13, 2007, that if she continued to miss work “they might have to let [her] go.” (O.R., Referee Hearing at 10). However, on May 28, 2007, no one told her that she was going to be fired, she just decided to leave, stating that “I don’t – have no specific reason why.” (O.R., Referee Hearing at 8).

After first testifying that she left work for no specific reason, Claimant then remembered that she left work on May 28, 2007, because she became sick and went to the hospital. She also stated that she did not tell anyone she was quitting her job when she left work on May 28, 2007. Instead, she claimed that she probably telephoned Employer on May 29, 2007, and informed a manager that she was not coming in to work. Claimant stated that she was not sure exactly when she informed Employer that she had quit.

² “O.R.” refers to the original record in this matter.

Claimant also presented the testimony of her husband, George Stepes. He stated that on May 28, 2007, Claimant was sick and went to the hospital. He stated that she remained sick for a few weeks and when she returned to work, she found out that she had been replaced. Mr. Stepes stated that Claimant told him that she did not quit her position.

Following the hearing, the referee determined that Claimant voluntarily left her employment without showing a necessitous and compelling reason. The referee found that Claimant left her employment after being warned that she had missed too many days of work and that she “might” be fired if said conduct continued. As Employer’s statement lacked the immediacy and finality of a firing, the referee concluded that Claimant’s decision to leave her employment must be considered voluntary. Claimant appealed this determination to the Board. The Board adopted and incorporated the referee’s findings of fact and conclusions of law. The Board then affirmed the decision of the referee.

Claimant now appeals to this Court.³ Claimant alleges that the Board erred in determining that she voluntarily quit her position, as Employer had threatened to fire her. We disagree.

Whether an employee was fired or voluntarily terminated from his position is a question of law to be determined in accordance with the factual findings made by the Board. Fishel v. Unemployment Compensation Board of Review, 674 A.2d 770 (Pa. Cmwlth. 1996). To be interpreted as a discharge, “[a]n employer’s language must

³ Our scope of review is limited to a determination of whether constitutional rights were violated, an error of law was committed or whether necessary findings of fact were supported by substantial evidence. Shrum v. Unemployment Compensation Board of Review, 690 A.2d 796 (Pa. Cmwlth.), petition for allowance of appeal denied, 548 Pa. 663, 698 A.2d 69 (1997).

possess the immediacy and finality of a firing....” Charles v. Unemployment Compensation Board of Review, 552 A.2d 727, 729 (Pa. Cmwlth. 1989).

In the present case, Claimant merely indicated that a manager informed her that she “might” be fired if she continued to be absent from work. We agree with the Board that Employer’s statement does not possess the immediacy and finality of a firing. In fact, Claimant testified that following this statement by the manager, she continued to work as scheduled. Approximately two weeks later, she left work for “no specific reason why.” As such, we cannot say that the Board erred in concluding that Claimant was not fired, but instead voluntarily quit her employment.

A claimant has the burden of establishing that necessitous and compelling reasons existed for quitting her employment. Empire Intimates v. Unemployment Compensation Board of Review, 655 A.2d 662 (Pa. Cmwlth. 1995). A claimant must also establish “that she acted with ordinary common sense in quitting her job, that she made a reasonable effort to preserve her employment, and that she had no other real choice than to leave her employment.” Empire Intimates, 655 A.2d at 664.

Claimant did not present any evidence that necessitous and compelling reasons existed for quitting her employment or that she made any attempt to preserve her employment. Claimant’s own testimony reveals that she decided to voluntarily terminate her employment without making any attempt to discuss the matter with Employer. As such, we cannot say that the Board erred in determining that Claimant was ineligible for benefits pursuant to Section 402(b) of the UC Law.

Accordingly, the order of the Board is affirmed.

JOSEPH F. McCLOSKEY, Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Alicia S. Walley,	:	
Petitioner	:	
	:	
v.	:	No. 177 C.D. 2008
	:	
Unemployment Compensation	:	
Board of Review,	:	
Respondent	:	

ORDER

AND NOW, this 11th day of August, 2008, the order of the Unemployment Compensation Board of Review is affirmed.

JOSEPH F. McCLOSKEY, Senior Judge