

member of the crew to get out of the vehicle and guide the driver, and the policy states that, if the procedure is not followed, the crew might be responsible to pay for any and all damages to the vehicle.² Claimant was aware of this policy; in fact, he had attended a safety meeting on May 5, 2007, where a video was shown and the back up procedure was discussed. On May 7, 2007, while Claimant and his assistant were making a service call, Claimant had his assistant back up the company van. Claimant did not get out of the vehicle to direct the assistant, and, as the assistant backed up, the van struck a tree causing damage to the rear bumper. Employer advised Claimant that he would be responsible for one half of the damages to the van because he failed to follow Employer's policy; however, Claimant refused to pay. Claimant's last day of work was May 8, 2007. (Findings of Fact, Nos. 1-7, 9.)

Subsequently, Claimant applied for benefits. The local service center denied Claimant's application for benefits pursuant to section 402(b) of the Law. Claimant appealed, arguing that he did not quit his employment but was discharged. The referee held a hearing to determine whether Claimant had been fired or had voluntarily terminated his employment.

Testifying on his own behalf, Claimant asserted that he was fired because he refused to follow Employer's order to pay for half the damages to the van. Claimant stated that he told Timothy Traxler, Employer's owner, and Eric

² This policy further states that the failure to comply with the policy will result either in a written warning or termination, depending on the circumstances. (R.R. at item 7, number 31.)

Sweeney, Claimant's supervisor, that he should not have to pay for any damages because he was not driving the van when the accident occurred and because Employer's insurance should take care of the damages. According to Claimant, Traxler responded that Claimant was fired if he did not pay, and Sweeney told Claimant to turn in his keys and his uniforms. (N.T. at 13-14.)

Employer offered the testimony of Traxler and Sweeney to rebut Claimant's allegations. Traxler testified that, at a meeting to discuss the May 7, 2007, incident, he informed Claimant that, pursuant to Employer's policy, Claimant and the assistant would be responsible for paying to replace the damaged bumper. Traxler stated that he never indicated that he was firing Claimant. To the contrary, Traxler testified that, after being told that Claimant was quitting, Traxler tried to work something out so that Claimant would return to work. (N.T. at 21-22, 24.)

Sweeney testified that he spoke to Claimant on May 8, 2007, and Claimant stated that he had been fired; however, after checking with Traxler, Sweeney told Claimant that he was not fired and could get his truck and begin making his scheduled appointments but that he had to comply with Employer's rules and policies in the future. According to Sweeney, Claimant then stated that he quit. Sweeney testified that he tried to reason with Claimant by explaining that Claimant's failure to guide the van was wrong and that the other crew member also was responsible for paying for the bumper, but Claimant again said that he quit. Thereafter, Sweeney asked Claimant to turn in his keys, uniforms and tools. (N.T. at 28-30.)

After considering the evidence, the referee credited the testimony of Employer's witnesses and found that Claimant had voluntarily left his employment because he was dissatisfied with having to pay for half of the damages to the van. (Findings of Fact, No. 10.) The referee held that this dissatisfaction did not constitute cause of necessitous and compelling reason to leave his employment, and, therefore, Claimant was ineligible for benefits under section 402(b). Claimant appealed to the UCBR, which affirmed the denial of benefits and adopted the referee's findings, credibility determinations and legal conclusions.

On appeal,³ Claimant argues that the UCBR erred in finding him ineligible based on the voluntary quit provisions of section 402(b) of the Law. Claimant asserts that because he testified that he was fired,⁴ his eligibility for benefits should have been determined under 402(e) of the Law, and he contends that he would have been entitled to benefits under that section.⁵ We disagree.

³ Our scope of review is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with the law and whether necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

⁴ Claimant does not challenge the UCBR's determination that he did not have cause of a necessitous and compelling nature for a voluntary quit, and, therefore, that issue is waived. *Tyler v. Unemployment Compensation Board of Review*, 591 A.2d 1164 (Pa. Cmwlth. 1991) (holding that where a claimant fails to appeal an issue in his petition for review, or appeals an issue but fails to address the issue in his brief, the issue is waived). Moreover, to the extent that Claimant argues in his petition for review that his due process rights were violated because the referee did not require that a translator or an attorney be present for Claimant at the hearing, he failed to raise and discuss that issue in his brief. Accordingly, that issue is waived. *Id.*

⁵ Section 402(e) of the Law provides that an employee shall be ineligible for compensation for any week in which his unemployment is due to his discharge or temporary suspension from work for willful misconduct connected with his work. 43 P.S. §802(e). **(Footnote continued on next page...)**

In a voluntary quit case, it is the claimant's burden to prove that his separation from employment is involuntary. *Bell v. Unemployment Compensation Board of Review*, 921 A.2d 23 (Pa. Cmwlth. 2007). Here, in order to satisfy this burden, Claimant relies on his own version of the events on May 8, 2007. However, the UCBR did not find Claimant's testimony credible, choosing instead to credit the conflicting testimony of Employer's witnesses that Claimant was not fired but quit because he did not want to pay for damages to the company van. In an unemployment compensation case, the UCBR is the ultimate fact finder and is empowered to make credibility determinations, and these credibility determinations are not subject to re-evaluation on appeal. *Peak v. Unemployment Compensation Board of Review*, 509 Pa. 267, 501 A.2d 1383 (1985). Here, the credited testimony supports a denial of benefits under section 402(b) of the Law.

Accordingly, we affirm.

ROCHELLE S. FRIEDMAN, Judge

(continued...)

According to Claimant, his refusal to pay for damage he did not cause does not rise to the level of willful misconduct that would render him ineligible for benefits under section 402(e).

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Emile Michelet,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1856 C.D. 2007
	:	
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 13th day of March, 2008, the order of the Unemployment Compensation Board of Review, dated September 4, 2007, is hereby affirmed.

ROCHELLE S. FRIEDMAN, Judge