IN THE COMMONWEALTH COURT OF PENNSYLVANIA

William L. Malongowski, Petitioner	:	
v.	:	No. 1979 C.D. 2007
Unemployment Compensation Board of Review, Respondent	:	Submitted: February 15, 2008

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY FILED: March 19, 2008

William L. Malongowski (Claimant), *pro se*, petitions for review of an order of the Unemployment Compensation Board of Review (Board) affirming the Referee's decision denying Claimant benefits pursuant to Section 402(b) of the Unemployment Compensation Law (Law).[1] We affirm.

Claimant was employed by Trans Force, Inc.[2] (Employer) as a part time truck driver from May 14, 2007 until July 25, 2007. Claimant applied for unemployment compensation benefits with the Duquesne UC Service Center

[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 his employment without cause of a necessitous and compelling nature is ineligible for benefits.

[2] Trans Force is an employment agency that finds jobs in the trucking industry for truck drivers.

(Service Center). By determination mailed on August 3, 2007, the Service Center determined that Claimant was eligible for benefits pursuant to Section 402(b) of the Law because he voluntarily quit his employment with Employer to accept a definite job offer with another employer.

Employer appealed the Service Center's determination and a hearing ensued before the Referee at which Employer and Claimant, *pro se*, appeared and presented evidence. Based on the evidence presented, the Referee reversed the Service Center's determination and denied Claimant benefits pursuant to Section 402(b) of the Law. Claimant appealed the Referee's decision to the Board.

Upon review, the Board affirmed the Referee's decision without making any independent findings of fact and conclusions of law. The facts in this matter, as adopted by the Board, are as follows.

The Claimant began working for Employer as a part time truck driver on May 14, 2007. Claimant began part time concurrent employment with Yellow Freight on July 15, 2007 as a driver. Employer was Claimant's primary employer. Claimant's last assignment with Employer was at Shemin Nurseries which ended on July 25, 2007. Claimant stopped reporting to Employer after July 25, 2007 without calling off and without explanation. Claimant had no further contact with Employer prior to the date of the Referee's hearing.

Claimant decided that he wished to explore whether full time employment might become available with Yellow Freight. Claimant had no offer of full time employment from Yellow Freight at the time of his separation from Employer or thereafter. Claimant's employment with Yellow Freight was and remained part time employment without substantial change in the terms and conditions of that employment. Continuing work was available for Claimant with Employer.

Based on the foregoing findings of fact, the Board, by adopting the Referee's conclusions, concluded that: (1) Claimant left employment with one of two concurrent part time employers with no promise of full time employment or employment beyond that which Claimant was already engaged; and (2) Claimant did not leave his employment with Employer to increase his hours or to accept full time employment. Accordingly, the Board concluded that Claimant did not have a necessitous and compelling reason for leaving his employment with Employer. Therefore, the Board affirmed the Referee's decision that Claimant was ineligible for benefits pursuant to Section 402(b) of the Law. Claimant requested reconsideration which the Board denied. This appeal followed.

Herein, Claimant argues that the Board's findings of fact are incorrect. Claimant alleges that he misunderstood what he was being asked by the Referee with regard to whether or not he called off work and left his employment without explanation. Claimant contends that he did try to contact Employer on several different occasions and that when he did reach Employer, he was told that they were in a board meeting and would call him back but they did not return his phone call. Claimant also contends that continuing work was not available for him with Employer. Claimant argues that, although Employer was his primary employer, he was trying to secure full time employment with either employer. Finally, Claimant argues that he is permitted to collect partial unemployment compensation benefits while working for two employers.

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.

We begin by addressing Claimant's assertions that the Board's findings of fact are incorrect. Claimant first asserts that he misunderstood what he was being asked by the Referee with regard to whether or not he called off work and

left his employment without explanation. However, the transcript of the hearing before the Referee reveals that Claimant appeared to comprehend and understand the questions asked of him by the Referee. Claimant did not express to the Referee that he did not understand any of the questions.[3] See Certified Record (C.R.), Transcript of August 22, 2007 Hearing.

Claimant next asserts that he did try to contact Employer on several different occasions between July 25, 2007 and the hearing before the Referee. Claimant asserts further that when he did reach Employer, he was told that they were in a board meeting and would call him back but they did not return his phone call. The record does not support this version of the facts. At the hearing before the Referee, Claimant testified that he did not contact Employer after his last assignment at Shemin Nurseries ended on July 25, 2007 because he was waiting for Yellow Freight to call him to work. Id. at 12;15. Accordingly, the Referee's findings, as adopted by the Board, that Claimant stopped reporting to Employer after July 25, 2007 and that Claimant had no further contact with Employer prior to the date of the hearing before the Referee are supported by Claimant's own testimony.

Claimant next asserts that continuing work was not available for him with Employer. At the hearing before the Referee, Employer testified that Claimant had never been terminated and that continuing work was still available. Id. at 18. Accordingly, the finding that continuing work was available with Employer is supported by the record.

Finally, Claimant asserts that, although Employer was his primary employer, he was trying to secure full time employment with either employer and

[3] We point out that a *pro se* litigant must to some extent assume the risk that his lack of legal training will prove his undoing. Vann v. Unemployment Compensation Board of Review, 508 Pa.

(Continued....)

that he is permitted to collect partial unemployment compensation benefits while working for two employers. The record shows that when Claimant decided not to contact Employer after his assignment ended with Shemin Nurseries on July 25, 2007, he was waiting for Yellow Freight to call him to full time work. Id. at 12;15. However, the record also shows through Claimant's testimony, that during the time that he was working concurrently part time for Employer and Yellow Freight, Yellow Freight had not offered him full time employment as of July 25, 2007 when he stopped reporting to and/or contacting Employer for additional work. Id. at 12-16. Claimant testified that he thought Yellow Freight would be calling him in a week or two and that if Yellow Freight called him for full time employment, he did not want to be on an assignment for Employer "going out east somewhere". Id. at 15-16.

A claimant is eligible for receiving benefits under Section 402(b) if he or she quits one job to accept a firm offer of other employment and the firm offer of employment that the claimant accepts ultimately becomes unavailable. Empire Intimates v. Unemployment Compensation Board of Review, 655 A.2d 662 (Pa. Cmwlth. 1995); Brennan v. Unemployment Compensation Board of Review, 504 A.2d 432 (Pa. Cmwlth. 1986); Antonoff v. Unemployment Compensation Board of Review, 420 A.2d 800 (Pa. Cmwlth. 1980). Where a claimant is working concurrently for two employers and quits one job to pursue the other, this Court must analyze whether the claimant had a "genuine desire to continue to work". Empire Intimates, 655 A.2d at 664 (quoting Luongo Unemployment Compensation Case, 190 A.2d 344, 346 (Pa. Super. 1963)). As stated by this Court:

> Therefore, the common denominator is whether a claimant voluntarily left job number one with a reasonable expectation of maintaining a source of income

139, 148, 494 A.2d 1081 (1985).

> from employment at job number two. Where that expectation falls short through no fault of [his or] her own, i.e., the job becomes unavailable, the courts have held that the claimant had good cause for quitting job number one, thus entitling the claimant to benefits. However, when a claimant working two available jobs concurrently chooses one over the other, [his or] her assessment of the benefits and disadvantages of each job is still relevant; there is no unknown external factor suddenly limiting [his or] her source of income.

Id. at 664-65.

In the present case, the record shows that Claimant quit his employment with Employer based on the hope that Yellow Freight would offer him full time employment. The record shows further that, based on this hope, Claimant made no attempt to preserve his relationship with Employer after his assignment with Shemin Nurseries ended. Claimant's testimony shows that he did not have a firm offer of full time employment with Yellow Freight when he stopped reporting to his primary employer.

The legislature has declared that unemployment reserves are "to be used for the benefit of persons unemployed through no fault of their own." Section 3 of the Law, 43 P.S. §752. Herein, Claimant did not quit his job to pursue other employment that ultimately became unavailable. To the contrary, Claimant quit his concurrent employment with Employer on the outside chance that Yellow Freight would offer him full time employment. In other words, there was no unknown external factor suddenly limiting his source of income. Thus, Claimant's reduction in his income was derived solely from a personal decision that unfortunately proved to be to his detriment.

Accordingly, we hold that the Board did not err in concluding that Claimant did not have a necessitous and compelling reason for quitting his concurrent employment with Employer. Therefore, the Board's order is affirmed.

JAMES R. KELLEY, Senior Judge

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O R D E R

AND NOW, this 19th day of March, 2008, the order of the Unemployment Compensation Board of Review in the above captioned matter is affirmed.

JAMES R. KELLEY, Senior Judge