

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Elizabeth Aitken, :
Petitioner :
 :
v. : No. 2232 C.D. 2009
 : Submitted: May 21, 2010
Unemployment Compensation :
Board of Review, :
Respondent :

BEFORE: HONORABLE BERNARD L. MCGINLEY, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE LEAVITT

FILED: October 20, 2010

Elizabeth Aitken (Claimant) petitions for review of an adjudication of the Unemployment Compensation Board of Review (Board) finding her ineligible for unemployment compensation benefits. In doing so, the Board affirmed the decision of the Referee that Claimant was not eligible for benefits under Section 402(b) of the Unemployment Compensation Law¹ (Law) because she voluntarily left her job without a necessitous and compelling reason. In this appeal, we

¹ Section 402(b) of the Law, Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §802(b), provides in relevant part:

An employe shall be ineligible for compensation for any week –

(b) In which his unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature....

consider whether the Board erred in concluding that Claimant's working conditions, while stressful, did not give her a necessitous and compelling reason to terminate her employment. Finding no error, we affirm.

Claimant began working for Levy Restaurants (Employer) in July 2003. She was last employed as "a Senior Suites Manager," full-time at a final annual salary of \$40,400. Claimant resigned her employment on November 23, 2008, and applied for unemployment compensation benefits. The Altoona UC Service Center denied the application.

Claimant appealed, and a hearing was held before the Referee. Claimant appeared *pro se*. Employer's General Manager of Operations, Luis Rivera, also participated in the hearing, testifying via telephone.

Claimant testified that she worked for several years at Employer's restaurant at Lincoln Financial Field in Philadelphia. In August 2008, after it lost its Lincoln Financial Field contract, Employer transferred her to Raymond James Stadium in Tampa, Florida. Claimant testified that she was unhappy at the new location, which had a stressful and uncomfortable working environment. Specifically, Claimant worked long hours; operations were disorganized; and "upper management" spoke to Claimant in a condescending manner. One supervisor in particular would "yell a lot" and impose unrealistic time pressures on Claimant, who was assigned many tasks to complete simultaneously. Reproduced Record at 87a (R.R. ____).

In late October or early November 2008, Claimant requested three days of leave, beginning November 23rd, so that she could spend the Thanksgiving holiday with family in Philadelphia. When Claimant heard nothing by November 22nd, she spoke to the Director of Operations, who denied her the requested leave.

Claimant resigned effective November 23, 2008. She explained that at the time of her resignation she had been considering asking for a transfer to one of Employer's other properties because of job dissatisfaction, but the denial of her leave request "put [her] over the edge," causing her to resign. R.R. 86a. Claimant explained that if the leave request had been approved, she "probably would have asked for a transfer" and continued working pending the transfer approval. R.R. 87a. In March 2009, Claimant returned to work for Employer on a part-time basis.²

Employer's witness, Rivera, testified that he did not work directly with Claimant, but he confirmed that the working environment in Tampa was stressful. Because the food service business is fast-paced, he explained that supervisors sometimes speak to employees in a quick manner that might be construed as rude or brusque. Rivera testified that Claimant's leave request was denied because it was requested for an extremely busy time at the stadium.

The Referee denied benefits. The Referee acknowledged Claimant's dissatisfaction with her working conditions but found that, based on Claimant's own testimony, she resigned because she was unhappy that Employer had denied her leave request. The Referee also found that Employer's denial was not unreasonable given its operational demands. Accordingly, the Referee concluded that Claimant's reason for leaving her employment was not a necessitous and compelling one, rendering her ineligible for benefits. Claimant appealed. The Board adopted the Referee's findings and conclusions as its own, and it affirmed. Claimant now petitions for this Court's review.³

² Claimant did not specify whether she returned to Employer's Tampa location or moved to a different location.

³ Our scope of review is limited to determining whether constitutional rights have been violated, errors of law were committed, or whether findings of fact are supported by substantial evidence. **(Footnote continued on the next page . . .)**

On appeal, Claimant argues that the Board erred. Claimant asserts that the Board misconstrued her testimony in finding that the denial of her leave request prompted her resignation. Rather, Claimant argues that her testimony established that she was overworked; was under extreme stress; and was treated poorly by upper management. Given these working conditions, Claimant had no choice but to resign. Indeed, Claimant asserts that she was constructively discharged from her employment by intolerable working conditions and Employer's unreasonable denial of her request for three days of leave.

In response, the Board argues that while Claimant may have had other reasons to quit, the actual reason for her resignation was the denial of her leave request. This action did not provide Claimant a necessitous and compelling reason to quit.

Under Section 402(b) of the Law, a claimant who voluntarily terminates her employment without a necessitous and compelling reason is not entitled to unemployment compensation benefits. 43 P.S. §802(b). "Cause of a necessitous and compelling nature" is a broad term that has been defined as "circumstances which produce pressure to terminate employment that is both real and substantial, and which would compel a reasonable person under the circumstances to act in the same manner." *Taylor v. Unemployment Compensation Board of Review*, 474 Pa. 351, 359, 378 A.2d 829, 832-833 (1977). In making this determination, we look to "the factual matrix at the time of separation." *Hussey Copper Ltd. v. Unemployment Compensation Board of Review*, 718 A.2d 894, 899

(continued . . .)

Sheets v. Unemployment Compensation Board of Review, 708 A.2d 884, 885 n.3 (Pa. Cmwlth. 1998).

(Pa. Cmwlth. 1998). “[U]nless the precipitating event gave Claimant a necessitous and compelling reason to quit, then benefits should be denied.” *Id.* Where a claimant’s personal desire for time off conflicts with a reasonable requirement of the employer, denial of the leave request is not a necessitous and compelling reason to voluntarily terminate employment. *Du-Co Ceramics Company v. Unemployment Compensation Board of Review*, 546 Pa. 504, 510, 686 A.2d 821, 824 (1996).

Before the Referee, Claimant testified that the denial of the leave request “put me over the edge and made [me make] that decision at that time.” R.R. 86a. Claimant acknowledged that had her leave been granted, she would have addressed the issue of her working conditions by asking for a transfer. Stated otherwise, Claimant’s job dissatisfaction is not relevant because the reason for her resignation was the denial of her leave request.⁴ Claimant’s testimony supports the Board’s finding that Claimant quit because her leave request was denied.⁵ Further, Employer’s denial of her leave request did not give Claimant a necessitous and compelling reason for quitting her job.⁶ Employer’s decision was reasonable, given the busy time of year for which Claimant sought leave.

⁴ What is more, mere dissatisfaction with working conditions is not a necessitous and compelling reason to quit. *Nolte v. Unemployment Compensation Board of Review*, 358 A.2d 114, 115 (Pa. Cmwlth. 1976). Claimant argues that the situation went beyond dissatisfaction as the conditions with Employer were intolerable, giving her no choice but to quit. Claimant contends that she was constructively discharged because of the “intolerable conditions.” Claimant’s Brief at 11. This is essentially a rehash of Claimant’s argument that she had a necessitous and compelling reason to quit her job; thus, we will not address this argument further.

⁵ Findings of fact made by the Board are conclusive on appeal when the record, taken as a whole, contains substantial evidence to support those findings. *Taylor v. Unemployment Compensation Board of Review*, 474 Pa. 351, 355, 378 A.2d 829, 831 (1977).

⁶ Although Claimant suggests that it was not reasonable for Employer to wait until the last minute to deny her leave request, she does not argue that the denial of leave, by itself, gave her a **(Footnote continued on the next page . . .)**

Whether Claimant’s resignation was prompted by the denial of her leave request or by her working conditions, she is not eligible for benefits on this record. The claimant must establish that she acted with common sense in quitting, made a reasonable effort to preserve the employment relationship, and had no other real choice than to resign. *Malloy v. Unemployment Compensation Board of Review*, 523 A.2d 834, 836 (Pa. Cmwlth. 1987). Here, Claimant did not make *any* effort to preserve her employment. Claimant did not speak with anyone in management about her working conditions. Although she testified that she was considering asking for a transfer, she never discussed this possibility with management. Instead, she quit without making any effort to remedy any of the alleged “unfair working conditions” she experienced.

In sum, the Board did not err in concluding, based on Claimant’s own testimony, that she resigned without cause of a necessitous and compelling nature. Accordingly, we affirm the decision of the Board holding Claimant ineligible for benefits.

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(continued . . .)

necessitous and compelling reason to quit. Further, Claimant’s attempt to tie the leave request to her working conditions by saying she desperately needed the time to de-stress is not borne out by the record. She testified that she asked for time off to return home to Philadelphia for a few days, but did not link the request to working conditions.

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Board of Review,	:	
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ORDER

AND NOW, this 20th day of October, 2010, the order of the Unemployment Compensation Board of Review in the above-captioned matter, dated October 6, 2009, is hereby AFFIRMED.

MARY HANNAH LEAVITT, Judge