

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Betty J. Pearson, :
Petitioner :
v. : No. 2277 C.D. 2007
Unemployment Compensation : Submitted: May 23, 2008
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 SENIOR JUDGE KELLEY

FILED: June 26, 2008

Betty J. Pearson (Claimant), *pro se*, petitions for review of an order of the Unemployment Compensation Board of Review (Board) which affirms the Referee’s decision that she is ineligible for unemployment compensation benefits pursuant to Section 402(b) of the Unemployment Compensation Law (Law).¹ We affirm.

Claimant was employed by Macy’s Retail (Employer) from 1975 through August 13, 2007 as a full-time sales associate. Employer informed Claimant during the last weeks of her employment that she was “salary capped.” This meant

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

that there would be no future raise in pay and no possibility of advancement. Employer offered Claimant a severance package that included two weeks of salary for every year of employment. Claimant accepted Employer's severance package offer.

Thereafter, Claimant filed a claim for unemployment compensation benefits with the Scranton UC Service Center. By determination mailed September 6, 2007, the Service Center ruled that Claimant was ineligible for benefits pursuant to Section 402(b) of the Law. The Service Center found that Claimant did not have knowledge that her job would have been affected if she did not accept Employer's severance package.

Claimant appealed the Service Center's determination and a hearing was held before a Referee. Claimant appeared and presented testimony on her own behalf. No Employer representative or witness appeared for the hearing even though a notice of the hearing that was sent to Employer's address was not returned as undeliverable. The Referee found that Claimant quit her job and that continuing work was available. Therefore, the Referee concluded that Claimant did not meet her burden of proof to show a necessitous and compelling reason to quit her job. The Referee stated that the fact that Employer told Claimant there would be no possibility of either promotion or increase in pay might dampen her enthusiasm for continued employment; however, dampened enthusiasm is not a necessitous and compelling reason to quit. Accordingly, the Referee affirmed the Service Center's determination and ruled that Claimant was ineligible for benefit pursuant to Section 402(b) of the Law.

Claimant appealed the Referee's decision and order to the Board. The Board affirmed. In doing so, the Board adopted and incorporated the Referee's

findings of fact and conclusion of law without making any independent findings or conclusions. This appeal followed.

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). An adjudication cannot be in accordance with the law if it is not decided on the basis of law and facts properly adduced; therefore, appellate review for the capricious disregard of material, competent evidence is an appropriate component of appellate consideration if such disregard is properly before the reviewing court. Leon E. Wintermyer, Inc. v. Workers' Compensation Appeal Board (Marlowe), 571 Pa. 189, 812 A.2d 478 (2002). When determining whether the Board capriciously disregarded the evidence, the Court must decide if the Board deliberately disregarded competent evidence that a person of ordinary intelligence could not conceivably have avoided in reaching a particular result, or stated another way, if the Board willfully or deliberately ignored evidence that any reasonable person would have considered to be important. Id. at 487 n. 12; Porco.

Herein, Claimant contends that she established through uncontroverted evidence that she was told by Employer that she was salary capped and that she would never receive a promotion or a raise no matter how well she performed her duties. Claimant argues that this adverse employment action constituted necessitous and compelling reasons for terminating her employment. Claimant contends that Employer's conduct was a substantial unilateral change in her employment

conditions. Claimant argues further that that the mere fact that she was never going to be eligible for a promotion or merit increase amounted to an unjustified demotion in job position. Claimant contends that the Board capriciously disregarded competent evidence establishing that she had necessitous and compelling reasons to quit. In addition, Claimant contends that the Board disregarded the fact that a similarly situated employee, who also terminated his employment with Employer on the same date as she, did in fact receive unemployment compensation benefits.

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). 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.

In establishing that a voluntary quit was reasonable, a claimant "must establish that he acted with ordinary common sense in quitting his job, that he made a reasonable effort to preserve his employment, and that he had no other real choice than to leave his employment." PECO Energy Company v. Unemployment Compensation Board of Review, 682 A.2d 58, 61 (Pa. Cmwlth. 1996) (quoting Stroh-Tillman v. Unemployment Compensation Board of Review, 647 A.2d 660, 662 (Pa. Cmwlth. 1994)). If a claimant does not take all "necessary and reasonable steps

to preserve the employment relationship, he or she has failed to meet the burden of demonstrating necessitous and compelling cause." PECO, 682 A.2d at 61.

Upon review of the record in this matter, we conclude that the Board did not err in denying Claimant benefits pursuant to Section 402(b) of the Law. Claimant was the only party to present testimony in this matter. Claimant testified that Employer informed her that she was "salary capped" and would no longer be eligible for pay increases or promotion. Claimant testified further that Employer offered her two weeks salary for every year she worked as severance. Claimant testified that she accepted this severance package because there was no room for advancement and that there was no alternative solution for the situation.

While Claimant argues that her voluntary termination was a result of a substantial change in employment conditions, Claimant did not offer any testimony as to how her job conditions would be changed as a result of the "salary cap" or if she did not accept the severance package.² There was no evidence that Employer retracted any guaranteed raises or promotions when it informed Claimant that she was "salary capped." In addition, Claimant did not offer any testimony or evidence to support her allegation that another similarly situated employee was receiving unemployment compensation benefits.

We further reject Claimant's contention that the substantial diminution of possible future promotions or merit increases constituted an unjustified demotion and that this issue should have been addressed by the Board. Claimant offered no testimony that she was going to be demoted through a job change or that her current

² It is well-settled that an employer's imposition of a substantial unilateral change in the terms of employment constitutes a necessitous and compelling cause for an employee to terminate her employment. A-Positive Electric v. Unemployment Compensation Board of Review, 654 A.2d 299, 302 (Pa. Cmwlth. 1995).

salary was going to be decreased as a result of Employer's actions or if she did not accept the severance package. As Claimant points out herself, future promotions or merit increases were only possibilities and not a definite event. Thus, the Board did not err by not considering whether Claimant was unjustifiably demoted.

We agree with the Board that Claimant's displeasure with being "salary capped" was mere dissatisfaction with her working conditions. However, mere dissatisfaction with one's working conditions does not constitute cause of a necessitous and compelling nature for terminating one's employment. Brunswick Hotel & Conference Center, LLC v. Unemployment Compensation Board of Review, 906 A.2d 657 (Pa. Cmwlth. 2006); McKeown v. Unemployment Compensation Board of Review, 442 A.2d 1257 (Pa. Cmwlth. 1982).

Accordingly, the Board's order is affirmed.

JAMES R. KELLEY, Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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| Betty J. Pearson, | : | |
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| Petitioner | : | |
| | : | |
| v. | : | No. 2277 C.D. 2007 |
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| Unemployment Compensation | : | |
| Board of Review, | : | |
| | : | |
| Respondent | : | |

ORDER

AND NOW, this 26th day of June, 2008, the order of the Unemployment Compensation Board of Review in the above captioned matter is affirmed.

JAMES R. KELLEY, Senior Judge