IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PPL Electric Utilities,	:	
Petitioner	:	
	:	
v.	:	No. 2309 C.D. 2011
	:	Submitted: May 4, 2012
Unemployment Compensation	:	
Board of Review,	:	
Respondent	:	

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE ANNE E. COVEY, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE LEAVITT FILED: August 29, 2012

PPL Electric Utilities (Employer) petitions for review of an adjudication of the Unemployment Compensation Board of Review (Board) granting William T. Conyers (Claimant) benefits. The Board affirmed a Referee's findings that Claimant was available for work within his medical restrictions and that Employer did not offer him work within those restrictions. Accordingly, the Board held that Claimant had a necessitous and compelling reason to leave his job and was not ineligible for benefits under Section 402(b) of the Unemployment Compensation Law (Law)[1]. The Board also found that Claimant was eligible for

[1] Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §§802(b). In relevant part, Section 402(b) provides that "[a]n employe shall be ineligible for compensation for any week … [i]n which his unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature …." 43 P.S. §802(b).

benefits under Section 401(d) of the Law,[2] as he was able and available for suitable work. Concluding that the Board did not err, we affirm.

Claimant last worked as a utility worker at Employer's facility in Wilkes-Barre, located approximately three miles away from his home.[3] In 2009, because of his bilateral carpal tunnel syndrome, Claimant was placed under medical restrictions that prevented him from wearing rubber gloves or sleeves; hammering; or climbing. He was permitted to use hand tools and to lift items that weighed less than 25 pounds. The record is unclear about whether he was permitted to drive.[4] Reproduced Record at 69a (R.R. ___). Employer accommodated Claimant's medical restrictions.

In August 2010, Claimant's co-workers informed Employer that Claimant had been "looking at gun magazines," "had purchased an assault rifle," and "was viewing mass murder websites on company computers." R.R. 28a. On August 20, 2010, Employer removed Claimant from work and directed him to see a psychologist. Claimant was out of work from August 20, 2010, to December 1, 2010, during which time Employer continued to pay Claimant his salary.

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[2] Section 401(d) of the law provides, in relevant part, that "[c]ompensation shall be payable to any employe who is or becomes unemployed, and who… [i]s able to work and available for suitable work[.]" 43 P.S. §801(d)(1).

[3] Claimant worked as a utility worker from June 2010 to August 2010; prior to that time he worked as a lineman leader.

[4] On his September 15, 2009, medical release, Claimant's doctor checked the CDL driving box but *did not* check the non-CDL driving box or the "no restrictions" column. R.R. 69a. By contrast, Claimant's September 9, 2009, medical release had both the CDL and non-CDL driving boxes checked, along with the corresponding no restrictions column. *See* R.R. 68a. Thus, based on only the September 15th form, Claimant would appear to have been subject to CDL driving restrictions when he was removed from work. However, Claimant testified that he was not subject to any driving restrictions at that time. *See* R.R. 33a.

The psychologist evaluated Claimant and found him not to present a danger to himself or others. However, he recommended therapy for Claimant, who was upset by the accusations of his co-workers. Certified Record, Item 9 (C.R., Item__). In December of 2010, after six therapy sessions, the psychologist cleared Claimant to return to work, with the recommendation that Claimant be assigned to a different work-group.

On December 1, 2010, Employer contacted Claimant and informed him that he was to report for work in the rubber boots division of its Systems Facility Center in Hazleton on December 6, 2010. The Hazleton facility is located approximately 28 miles from Claimant's home. Claimant informed Employer that because of changes in his medical condition and new work restrictions, he could not drive that far. Employer requested medical documentation, which Claimant provided on December 3, 2010. The medical directive prohibited Claimant from long distance driving but did not specify a mileage restriction; it did state that Claimant should work at the "nearest work location." C.R., Item 12. Claimant's lifting allowance was further reduced to ten pounds or less. Employer contacted Claimant in January 2011 and informed him that it had no work available within his new restrictions. Employer did not contact Claimant again.

Because of a lack of work, Claimant filed for unemployment compensation benefits on April 2, 2011, and the UC Service Center granted Claimant benefits. Employer appealed, and a hearing was held before a Referee.

At the hearing, Claimant testified. He stated that he wanted to return to work, particularly at the Wilkes-Barre facility, but Employer did not offer any positions within his restrictions. Regarding his new driving restrictions, Claimant stated that he experienced pain when driving and had been suffering from side-

effects associated with his medication. Finally, Claimant stated that he did not refuse work with Employer. Rather, he stated that when Employer informed him of the job at the Hazleton facility, he simply stated that he did not think the job met his medical restrictions, which had changed.

Employer offered the testimony of Brian Matweecha, Claimant's field manager. Matweecha stated that prior to December 2010, he did not know that Claimant was subject to any driving restrictions. When the psychologist cleared Claimant to return to work, he advised that Claimant should not return to work at a location where he would have contact with his former co-workers. Matweecha testified that this made it impossible for Claimant to return to the Wilkes-Barre facility because it was small and all employees work the same shift. Claimant would undoubtedly see, or run into, the co-workers who had made the accusations. The closest facility where work within Claimant's physical restrictions could be made available was the Hazleton facility. When Claimant told Matweecha that an assignment to Hazleton was a problem, Matweecha directed Claimant to get a medical report. Claimant did not appear for work at the Hazleton facility but did, after some time, call Matweecha and state that he wanted to work and would check with his doctor to see if his restrictions could be revised once again. Matweecha stated that Claimant never quit his job.

The Referee found in favor of Claimant and granted him benefits. Specifically, the Referee found that Claimant never quit and, as such, remained an employee of Employer. Referee's Decision/Order at 2, Finding of Fact 13 (Referee's Decision at ___, F.F. ___). The Referee considered Claimant's separation to be a leave of absence. The Referee also found that Claimant informed Employer that his medical condition made driving to Hazleton a problem

and provided Employer with documentation stating he was prohibited from driving long distances and that he had to work at the "nearest work location." *See* Referee's Decision at 1-2, F.F. 8-11. The Referee found that Employer informed Claimant it had no work available within his restrictions. Referee's Decision at 2, F.F. 12.

Based on these findings, the Referee concluded that Claimant was available to work and had informed Employer of his medical restrictions. Employer did not offer Claimant work within those restrictions. Employer appealed to the Board, and it affirmed. Employer now petitions for this Court's review.[5]

On appeal,[6] Employer contends that the Board erred because Claimant did not offer evidence that he took reasonable steps to find transportation to Hazleton. Specifically, Employer maintains that Claimant failed to establish that the transportation inconveniences he faced were "so serious and unreasonable as to present a virtually insurmountable problem." Employer's Brief at 8. Thus,

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[5] Our review is limited to determining whether constitutional rights were violated, whether errors of law were committed, and whether findings of fact are supported by substantial evidence. *Beddis v. Unemployment Compensation Board of Review*, 6 A.3d 1053, 1055 n.2 (Pa. Cmwlth. 2010). We review the case in the light most favorable to the party who prevailed before the Board, drawing all logical and reasonable inferences from the testimony. *Taylor v. Unemployment Compensation Board of Review*, 474 Pa. 351, 355, 378 A.2d 829, 831 (1977).

[6] The Board's findings of fact are conclusive on appeal if supported by substantial evidence. *Rossi v. Unemployment Compensation Board of Review*, 544 Pa. 261, 266 n.4, 676 A.2d 194, 197 n.4 (1996). In the case *sub judice*, Employer does not specifically dispute any of the Board's factual findings. Accordingly, they are binding on appeal. *Beddis*, 6 A.3d at 1055. However, we note that in Employer's petition for review it alleges the Board's findings are not supported by substantial evidence because the Referee found that Claimant had demonstrated he was unable to obtain transportation to his work site. However, the Referee never made such a finding of fact. *See* Referee's Decision at 1-2, F.F. 1-13. Thus, Employer's argument cannot be construed as challenging any of the Referee's specific factual findings.

Employer argues that Claimant voluntarily quit at the moment he stated to Matweecha that the job at Hazleton would not fall within his medical restrictions.

In response, the Board argues that Employer's legal theory is misplaced because this is actually a medical health quit case, not a transportation inconvenience case. The burden was on Employer to provide suitable work for Claimant within his medical restrictions. The Board argues that the record shows that Claimant was able to work and available for work; informed Employer of his medical restrictions; and was told that Employer had no work available within his medical restrictions.

The central issue is whether this is a medical health quit case or a transportation inconvenience case, which are governed by different principles. Employer argues that Claimant was able to do the job at Hazleton but was simply unable to travel there. In a transportation inconvenience case, insurmountable commuting problems can constitute just cause justifying a voluntary quit. *Kawa v. Unemployment Compensation Board of Review*, 573 A.2d 252, 254 (Pa. Cmwlth. 1990). However, the employee must demonstrate reasonable efforts to remedy the commuting problem. Claimant presented no such evidence and, thus, Employer contends that Claimant did not have a necessitous and compelling reason not to report to work at the Hazleton facility.

Medical problems can also provide cause of a necessitous and compelling nature to voluntarily quit a job. *Genetin v. Unemployment Compensation Board of Review*, 499 Pa. 125, 128, 451 A.2d 1353, 1355 (1982). Because the Law's purpose is not to provide disability coverage for those medically unable to work, the employee must be able to work and available for suitable work. *Id.* at 129, 451 A.2d at 1355. When a medical condition renders an

employee unable to perform his regular job duties, he bears the burden of proving: (1) that he has a certifiable medical condition; (2) that he communicated his medical condition to the employer; and (3) that he is able to work and available for suitable work within his restrictions. *Id.* at 130-131, 451 A.2d at 1356. Once the employee meets this burden, the employer must prove that it offered the claimant suitable work which the claimant rejected.

From 2009 to August 20, 2010, Claimant had a medical condition that limited his ability to work, and Employer accommodated these restrictions. When Employer contacted Claimant on December 1, 2010, Employer offered Claimant a position in the rubber boots division, which was within his known medical restrictions as of 2009 and within the psychologist's recommendation. Claimant immediately informed Employer of the changes in his medical condition and explained that under his new medical restrictions, he would not be able to drive to Hazleton. Consistent with Employer's directive, Claimant provided medical documentation. The burden then shifted to Employer to offer suitable employment within those restrictions.

Employer argues that Claimant was not under any driving restrictions prior to being offered the job at the Hazleton facility and, therefore, it offered Claimant a suitable position. However, Claimant's work restrictions prior to December 2010 are irrelevant; rather, Claimant's restrictions in December of 2010 are the relevant medical restrictions. When told by Employer that he could return to work, Claimant informed Employer of his medical changes and documented them. Employer did not challenge the opinion of Claimant's doctor; therefore, it is those conditions which Employer had to accommodate. Employer argues that the

job at the Hazleton facility met those restrictions and, therefore, this is a transportation inconvenience case. We disagree.

The Referee found that Claimant did not quit his job at all. Referee's Decision at 2, F.F. 13. After Claimant documented his medical restrictions, he never heard from Employer. He was not advised, for example, that his documentation was in any way inadequate. Rather, Employer advised Claimant that it had no work for him within his medical restrictions. It was Employer that construed those medical restrictions as not permitting Claimant to drive as far as Hazleton.

We conclude that this is a medical necessity case and not a transportation inconvenience case. If Employer had informed Claimant after receiving his medical documentation that the job at its Hazleton facility satisfied his medical restrictions, this could be a transportation inconvenience case. Instead, Employer told Claimant it could not accommodate his medical restrictions.

Substantial evidence supports the Board's conclusion that Employer did not offer work that fell within Claimant's medical restrictions limiting him to work at Employer's "nearest work location," *i.e.*, the Wilkes-Barre facility. Employer's argument that it offered Claimant suitable work at the next closest facility that would meet both the remainder of his doctor's physical restrictions and its psychologist's recommendation does not matter. It never communicated this point to Claimant after receiving his documentation.

Accordingly, we affirm.

MARY HANNAH LEAVITT, Judge

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PPL Electric Utilities, Petitioner	:	
v.	:	No. 2309 C.D. 2011
Unemployment Compensation Board of Review, Respondent	:	

O R D E R

AND NOW, this 29th day of August, 2012, the order of the Unemployment Compensation Board of Review, dated November 22, 2011, in the above-captioned matter is hereby AFFIRMED.

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MARY HANNAH LEAVITT, Judge