

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Lisa M. Hellams,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 2491 C.D. 2011
	:	SUBMITTED: July 13, 2012
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, Judge**  
**HONORABLE RENÉE COHN JUBELIRER, Judge**  
**HONORABLE ANNE E. COVEY, Judge**

**OPINION NOT REPORTED**

**MEMORANDUM OPINION BY  
JUDGE LEADBETTER**

**FILED: August 8, 2012**

Petitioner, Lisa M. Hellams, proceeding *pro se*, appeals from the order of the Unemployment Compensation Board of Review (Board), which found Petitioner eligible for benefits under Section 402(b) of the Unemployment Compensation Law (the Law), Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. § 802 (b), but ineligible for benefits under Section 401(d)(1), 43 P.S. § 801 (d)(1), concluding that she was not available for work.<sup>1</sup> We affirm.

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<sup>1</sup> Section 402(b) provides that a claimant shall be ineligible for benefits where the claimant's unemployment is due to voluntarily leaving work without cause of a necessitous and **(Footnote continued on next page...)**

Petitioner was last employed by Conemaugh Memorial Medical Center (Employer) as a unit clerk at a final rate of \$12.81 per hour from September 11, 2006, through July 9, 2011. Petitioner gave notice to Employer that she was leaving her employment because she and her family were relocating to South Carolina. Petitioner relocated to South Carolina because her father-in-law was suffering from a reoccurrence of kidney cancer and her husband was suffering from Lou Gehrig's disease and wished to be closer to his family. Following relocation, Petitioner was her husband's primary caregiver.

Petitioner applied for unemployment benefits, which were denied by the Unemployment Compensation Service Center because she was unavailable for work. Petitioner appealed and on September 29, 2011, a referee held a telephone hearing, at which Petitioner testified.<sup>2</sup> Petitioner testified that she resigned from her job because her husband wanted to relocate to South Carolina following his diagnosis. She also testified that she only looked for work on internet web sites because she does not have anyone to care for her husband. The referee denied benefits concluding that Petitioner was ineligible under Section 402(b) of the Law because she terminated her employment without necessitous and compelling cause and under Section 401(d)(1) because she was unavailable for work. Petitioner appealed to the Board, which reversed the referee in part, finding her eligible under Section 402(b) of the Law and affirmed the denial of benefits under Section 401(d)(1). The Board found that Petitioner had been unable to work since moving because she had been providing constant care for her husband. Board Opinion at

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**(continued...)**

compelling nature. Section 401(d)(1) provides that in order to receive benefits a claimant must be able and available for suitable work. 43 P.S. § 801 (d)(1).

<sup>2</sup> Employer did not participate in the telephone hearing.

2, Finding of Fact No. 7. The Board concluded that Petitioner's testimony regarding caring for her husband rebutted the presumption of availability. This appeal followed.

Claimant argues that the Board erred because although she is caring for her husband, she is available for work and has been looking for work. As noted above, Section 401(d)(1) provides that in order to receive benefits, an employee must be "able to work and available for suitable work." 43 P.S. § 801 (d)(1). To establish availability for work, a claimant must be ready and able to accept employment, and be actually and currently attached to the labor force. *Ruiz v. Unemployment Comp. Bd. of Review*, 911 A.2d 600 (Pa. Cmwlth. 2006). It is the claimant's burden to prove she is available for work. *Hamot Med. Ctr. v. Unemployment Comp. Bd. of Review*, 645 A.2d 466 (Pa. Cmwlth. 1994). Whether a claimant is available for work is a question of fact for the Board. *Gettig Eng'g v. Unemployment Comp. Bd. of Review*, 473 A.2d 749 (Pa. Cmwlth. 1984).

A review of the record supports the Board's determination that Petitioner was not available to work. Petitioner testified

I haven't been really available to go look for any type of work because I really don't have anybody here right now to sit with my husband while I do this. I have been looking on the internet sites and so on and so forth but as of this, no, I'm not working. I've been daily taking care of my husband.

Original Record at Item No. 13, Notes of Testimony at 4. This testimony demonstrates that Petitioner was unavailable to work as she was caring for her husband.<sup>3</sup>

Accordingly, we affirm.

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**BONNIE BRIGANCE LEADBETTER,**  
Judge

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<sup>3</sup> Petitioner is ineligible for compensation up to date of the referee hearing on September 29, 2011. If her availability to work has changed following the hearing, Petitioner may contact the Department of Labor and Industry. *See High v. Commonwealth*, 505 Pa. 379, 383, 479 A.2d 967, 969 (1984) (stating that “[e]ach week of unemployment is the subject of a separate claim, the validity of which is determined by a consideration of conditions existing within that week; consequently, a work stoppage which is initially a strike may subsequently be converted into a lockout.”) [quoting *Burger Unemployment Comp. Case*, 77 A.2d 737 (Pa. Super. 1951)]. The Department may then make a new determination regarding her availability to work and her eligibility for benefits.

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Board of Review,	:	
	:	
Respondent	:	

**ORDER**

AND NOW, this 8th day of August, 2012, the order of the Unemployment Compensation Board of Review is hereby AFFIRMED.

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**BONNIE BRIGANCE LEADBETTER,**  
Judge