

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Richard T. Rehermann,	:	
Petitioner	:	
	:	
v.	:	
	:	
Unemployment Compensation	:	
Board of Review,	:	No. 254 C.D. 2011
Respondent	:	Submitted: July 8, 2011

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER

FILED: September 7, 2011

Richard T. Rehermann (Claimant) petitions this Court for review of the December 22, 2010 order of the Unemployment Compensation Board of Review (UCBR) affirming the decision of the Referee and denying benefits. Claimant essentially presents one issue for this Court’s review: whether the UCBR erred and/or abused its discretion by finding that Claimant did not have a necessitous and compelling reason to leave his employment. For reasons that follow, we affirm the UCBR’s order.

Claimant was hired by Glaxosmithkline (Employer) as a full-time sales representative beginning March of 1990. In April of 2010, Employer announced that it would be completing a corporate restructuring, and downsizing by about 50% of its sales force. Claimant was never informed that his specific job was in jeopardy or that he would be part of the possible layoffs. Employer offered tenured employees, including Claimant, an early retirement incentive package, to be followed by layoffs if an insufficient number of employees accepted the package. Claimant subsequently

accepted the package, ending his employment on May 14, 2010. On May 21, 2010, Employer announced layoffs, issuing Claimant a Notice of Termination of Employment on the same date. The notice listed Claimant's termination date as July 20, 2010.¹

Claimant subsequently applied for Unemployment Compensation (UC) benefits. On August 27, 2010, the Altoona UC Service Center denied benefits under Section 402(b) of the Unemployment Compensation Law (Law).² Claimant appealed and a hearing was held by a Referee. On October 12, 2010, the Referee affirmed the decision of the UC Service Center. Claimant appealed to the UCBR. On December 22, 2010, the UCBR affirmed the decision of the Referee. Claimant appealed to this Court.³

Claimant argues that because Employer offered him a severance package and stated there would be subsequent layoffs wherein Claimant could potentially lose healthcare benefits, he had no choice but to accept the severance package. We disagree.

An employee who claims to have left employment for a necessitous and compelling reason must prove that: (1) circumstances existed which produced real and substantial pressure to terminate employment; (2) such circumstances would compel a reasonable person to act in the same manner; (3) the claimant acted with ordinary common sense; and, (4) the claimant made a reasonable effort to preserve her employment.

¹ According to the factual findings below, May 14, 2010 is last day that Claimant actually worked, notwithstanding Employer's post-resignation Notice of Termination stating July 20, 2010 as Claimant's date of "termination."

² Act of December 5, 1936, Second Ex.Sess., P.L. (1937) 2897, *as amended*, 43 P.S. § 802(b).

³ This Court's review is limited to determining whether the findings of fact were supported by substantial evidence, whether constitutional rights were violated, or whether errors of law were committed. *Johnson v. Unemployment Comp. Bd. of Review*, 869 A.2d 1095 (Pa. Cmwlth. 2005).

Brunswick Hotel & Conference Ctr., LLC v. Unemployment Comp. Bd. of Review, 906 A.2d 657, 660 (Pa. Cmwlth. 2006).

Moreover, in cases involving the voluntary termination of employment in the context of corporate downsizing, we have held that, [s]peculation pertaining to an employer's financial condition and future layoffs, however disconcerting, does not establish the requisite necessitous and compelling cause. Essentially, the law is that *mere speculation about one's future job circumstances, and attendant benefits, without more, does not render a decision to voluntarily terminate employment necessitous and compelling.*

Petrill v. Unemployment Comp. Bd. of Review, 883 A.2d 714, 717 (Pa. Cmwlth. 2005) (citation and quotation marks omitted) (emphasis added).

Here, Claimant specifically testified that “[he] *thought* [he] was at risk, in jeopardy of losing a number of benefits if [he] was caught up in the involuntary separation, which was to happen in June.” Original Record (O.R.), Item No. 10 at 5 (emphasis added). He further testified that he was never told his specific job was in jeopardy, and when asked if he felt he had a choice in the matter he responded “[w]ell, you always have a choice, but I had to do what I had to do based on what was going on at the time.” O.R., Item No. 10 at 9.

As Claimant was merely speculating that he would be caught up in the layoffs and was at risk of losing benefits, he did not meet his burden of proving a necessitous and compelling reason for accepting the early retirement package. Accordingly, the UCBR did not err or abuse its discretion in denying Claimant benefits.

For all of the above reasons, the order of the UCBR is affirmed.

JOHNNY J. BUTLER, Judge

