IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Lee Street Garage, Petitioner	:	
v.	:	No. 2567 C.D. 2009
Unemployment Compensation Board of Review, Respondent	:	Submitted: July 9, 2010

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE COHN JUBELIRER **FILED: August 23, 2010**

Lee Street Garage (Employer) petitions for review of an order of the Unemployment Compensation Board of Review (Board) reversing the decision of the Unemployment Compensation Referee (Referee) and finding Robert S. Greer (Claimant) not disqualified from receiving unemployment compensation benefits under Section 402(b) of the Pennsylvania Unemployment Compensation Law

(Law).[1] Employer contends that Claimant is ineligible for unemployment benefits under Section 402(b) because Claimant voluntarily terminated his employment.

Claimant filed for unemployment benefits on July 16, 2009. On July 20, 2009, the Indiana Unemployment Compensation Service Center (Service Center) issued a determination declaring Claimant ineligible for benefits under Section 402(b). Claimant appealed this determination and, on August 26, 2009, a Referee held a hearing on the matter. On August 28, 2009, the Referee issued a decision affirming the Service Center's determination that Claimant was ineligible for benefits. (Referee Decision/Order, August 28, 2009, Reproduced Record (R.R.) at 40.) Claimant appealed the Referee's determination to the Board. The Board made the following findings of fact:

1. The claimant was last employed as a full-time mechanic by Lee Street Garage for seven months at a final rate of $18.00 per hour and his last day of work was June 30, 2009.

2. The claimant had a heated argument with his cousin, who is the owner's wife, at the end of his shift on June 30, 2009, prior to leaving work.

3. When the claimant reported for work on July 1, 2009, the owner told the claimant to find another job and discharged him.

4. The claimant did not voluntarily quit his employment.

(Board Decision and Order, Findings of Fact (FOF) ¶¶ 1-4, R.R. at 77.) Based on these findings, the Board reversed the Referee's decision and declared that Claimant was not disqualified from receiving unemployment benefits. (Board

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

Decision and Order at 2, R.R. at 79.) Employer petitions this Court for review of the Board's decision granting benefits.[2]

Employer argues that Claimant was not discharged from his employment, but that he voluntarily quit. A claimant is ineligible for unemployment benefits 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). The issue of whether a claimant voluntarily terminated his employment is a question of law reviewable by this Court. Parducci v. Unemployment Compensation Board of Review, 447 A.2d 1108, 1109 (Pa. Cmwlth. 1982). "[A] finding of voluntary termination is essentially precluded unless the claimant had a conscious intention to leave his employment." Roberts v. Unemployment Compensation Board of Review, 432 A.2d 646, 648 (Pa. Cmwlth. 1981). In determining whether a claimant had the intention to quit, this Court must look at the totality of the circumstances. Monaco v. Unemployment Compensation Board of Review, 523 Pa. 41, 46, 565 A.2d 127, 129 (1989). Additionally, this Court "must view the record in a light most favorable to the party which prevailed before the Board, giving that party the benefit of all logical and reasonable inferences deducible from the evidence." Stringent v. Unemployment Compensation Board of Review, 703 A.2d 1084, 1087 (Pa. Cmwlth. 1997).

[2] This Court's scope of review is limited to "determining whether necessary findings of fact are supported by substantial evidence, whether errors of law were committed or whether constitutional rights were violated." Stringent v. Unemployment Compensation Board of Review, 703 A.2d 1084, 1087 (Pa. Cmwlth. 1997). "Substantial evidence is such relevant evidence which a reasonable mind might accept as adequate to support a conclusion." American General Life and Accident Insurance Company v. Unemployment Compensation Board of Review, 648 A.2d 1245, 1248 (Pa. Cmwlth. 1994).

Employer argues that the Board erred in finding that Employer discharged Claimant from his employment. Specifically, Employer argues that: (1) Claimant quit because he voluntarily left his job when there was still work to be done; (2) Claimant verbally quit during or in the immediate aftermath of the argument on June 30, 2009; and (3) Claimant's testimony is inconsistent with his statements on filings made with the Service Center and, therefore, Claimant's testimony is not sufficient to support a determination that he was discharged by Employer. For these reasons, Employer argues that this Court should reverse the Board's order and find Claimant ineligible for unemployment benefits.

Employer first argues that the Board erred in finding that Claimant was terminated because Claimant voluntarily quit his job when he left the workplace during the argument on June 30, 2009, when there was still work to do that day. (Hr'g Tr. at 4, August 26, 2009, R.R. at 35.) Employer is essentially asking this Court to adopt its preferred version of the facts. While Employer did provide testimony that would support its contention,[3] the Board found that the facts were contrary to those advanced by Employer and, in doing so, resolved all conflicts in the evidence in favor of Claimant. The law is clear that the Board is the ultimate finder of fact and arbiter of witness credibility. Peak v. Unemployment Compensation Board of Review, 509 Pa. 267, 269-70, 276-77, 501 A.2d 1383, 1385, 1388 (1985). Thus, as long as the Board's factual findings are supported by substantial evidence, those findings are conclusive on appeal. Geesey v.

[3] Employer provided only the testimony of Jeffrey Davidson, owner and manager of Employer (Owner), as evidence that Claimant did not work his full scheduled shift. Owner merely stated that "[t]here was work that day" and that Claimant "left on his own accord." (Hr'g Tr. at 6, R.R. at 36.)

Unemployment Compensation Board of Review, 381 A.2d 1343, 1344, (Pa. Cmwlth. 1978). That Employer may have given "a different version of the events, or . . . might view the testimony differently than the Board, is not grounds for reversal if substantial evidence supports the Board's findings." Tapco, Inc. v. Unemployment Compensation Board of Review, 650 A.2d 1106, 1108-09 (Pa. Cmwlth. 1994). Here, the Board found Claimant's testimony that he worked a full day and did not leave his shift early, (Hr'g Tr. at 5-6, R.R. at 36-37), credible over Owner's testimony when, in its findings of fact, it determined that the argument took place "at the end of his shift on June 30." (FOF ¶ 2, R.R. at 77.) Because there is substantial evidence to support the Board's finding that the argument took place at the end of Claimant's shift, there is no merit to Employer's argument that Claimant quit when he left with work still to be completed.

Employer also argues that, as the argument ended, Claimant made statements to the effect that he quit. During the Referee's hearing, Jeffrey Davidson, owner and manager of Employer (Owner), testified that, although he was not there at the time of the argument, other employees of Employer told him that Claimant said he quit during the argument. Owner stated, "[Claimant] had a discussion with my wife on Tuesday the 30th, at which time the argument became heated. . . . He stated that he left, he was quitting and left. And that, I think his exact words were you people will need me before I need you." (Hr'g Tr. at 4, R.R. at 35.) Owner presented to the Referee a signed statement of the incident written by his wife, Celeste Davidson, and signed by two other employees present at the

time of the argument that described the argument and Claimant's actions. Owner then tried to introduce the statement into evidence:[4]

> EW: I believe, too, your office was sent a letter wrote [sic] by my wife, signed and witnessed by two people that were there when [Claimant] quit and that was sent in with our paperwork.
>
> R: Did you see that paperwork in the file?
>
> EW: No I did not.
>
> R: Then it wasn't sent to this office.
>
> EW: I have a copy if you'd like.
>
> R: Okay, if there's something you want to submit, do you have a copy to show [Claimant]?
>
> C: That's all hearsay. I believe they should be here. That's his brother, Stanley. This man . . .
>
> R: You'll get a chance to question in a moment, [Claimant].

[4] In its brief, Employer asserts that it filled out and sent in an Employer's Notice of Application—Request for Separation and Wage Information, as well as an Employer Questionnaire (Form UC-1930E), which contained this statement written by Owner's wife and signed by two employees present at the time of the argument. (Employer's Br. at 4-5.) Employer contends that it believed these documents to be among the certified documents to which the Referee would have access and only found out they were not included after the hearing had commenced. (Employer's Br. at 5.) However, Employer has offered no proof that it mailed in either the Employer Questionnaire or Employer's Notice of Application. Employer also does not develop any argument regarding how the missing documents might have strengthened its case. Furthermore, Employer does not raise the issue of the missing documents in its Petition for Review to this Court, thereby waiving the issue altogether. Jimoh v. Unemployment Compensation Board of Review, 902 A.2d 608, 611 (Pa. Cmwlth. 2006). Therefore, even if this Court were to determine that the missing documents were mailed in and were erroneously omitted from the record, Employer has made no argument that the omission of the documents was anything more than harmless error. Employer had the opportunity to present one, or all, of the witnesses to these events at the hearing, but chose not to do so.

EW: This was the documentation that we provided with signatures and this was a response, too, that went with our, this was mailed from our garage to the office with our paperwork.

R: [Claimant], did you have any objections to this?

C: Yes I do. I want them to be—it's all hearsay.

R: Okay. I'll sustain that objection.

(Hr'g Tr. at 4-5, R.R. at 35-36.)

Hearsay evidence that is properly objected to is not competent to support a finding of fact. Walker v. Unemployment Compensation Board of Review, 367 A.2d 366, 370 (Pa. Cmwlth. 1976). Claimant properly objected to Employer's letter as hearsay; therefore, the document presented by Owner cannot be used to support Employer's argument that Claimant quit. It is not entirely clear from the testimony quoted above whether Claimant is only objecting to the document presented by Owner as hearsay or to Owner's testimony as well. Under Walker, "[h]earsay evidence, [a]dmitted without objection, will be given its natural probative effect and may support a finding of the Board, [i]f it is corroborated by any competent evidence in the record, but a finding of fact based [s]olely on hearsay will not stand." Id. at 370. However, even if this Court considered Owner's testimony to be hearsay admitted without objection, the Board found Claimant's testimony more credible than that of Owner because Owner "was not present at the time of the incident and could provide no firsthand testimony." (Board Decision and Order at 3, R.R. at 79.)

Employer also argues that Claimant's testimony is not adequate to support a determination that he was discharged because it contradicts other evidence provided by Claimant in the record. Specifically, Employer emphasizes the Claimant Questionnaire (Questionnaire), on which Claimant checked a box to indicate that he had quit his previous job. (Questionnaire at 1, R.R. at 8.) While it is clear that Claimant checked the box next to "quit" on the Questionnaire, the remainder of the form is consistent with Claimant's testimony from the Referee's hearing that he was discharged by Employer. Two questions after Claimant checked the box indicating that he quit, Claimant answered in the affirmative the following question: "[d]id your employer tell you that you would be discharged if you did not resign?"[5] (Questionnaire at 1, R.R. at 8.) Claimant then continued on to explain that Employer "[d]id not want to work with me," and "[h]e suggested I find knew [sic] employment when I spoke to him on the day after [the] argument."[6] (Questionnaire at 1, R.R. at 8.) Examined as a whole, Claimant's statements and the language on the form support the finding that Claimant was discharged and, therefore, the Questionnaire does not contradict Claimant's testimony.

Employer also argues that Claimant's Employment Separation Questionnaire (ESQ) is inconsistent with Claimant's later testimony. Employer contends that

[5] Where a claimant resigns to avoid imminent discharge, for the purposes of determining unemployment benefits, the resignation will be treated as a discharge for willful misconduct under Section 402(e) of the Law. Pennsylvania Liquor Control Board v. Unemployment Compensation Board of Review, 648 A.2d 124, 126 (Pa. Cmwlth. 1994).

[6] An employer need not use the terms "fired" or "discharged" for a termination to take place where the employer's language "possesses the immediacy and finality of a firing." Wise v. Unemployment Compensation Board of Review, 700 A.2d 1071, 1073 (Pa. Cmwlth. 1997).

Claimant's statements on the ESQ show that Claimant voluntarily quit his employment for medical reasons. On the ESQ, a claimant is asked to explain why he or she was discharged or quit. (ESQ at 1, R.R. at 10.) On his ESQ, Claimant stated, "[t]he stress [f]actor [of] working with [f]amily," and that "[t]hings promised prior to opening in Jan[uary] were not keep [sic]." (ESQ at 1, R.R. at 10.) Claimant also explained that "[t]wo week[s] prior to leaving I went to [the] hospital with chest pain [which the] doctor told me [was] mostly caused by stress." (ESQ at 1, R.R. at 10.) Claimant also offered to send medical records, if needed. (ESQ at 1, R.R. at 10.) Employer argues that, because Claimant mentioned the stressful nature of his work and his displeasure with promises that were not kept by Employer, this shows that Claimant was inclined to quit or that he did quit for medical reasons. While stress and ill feelings toward an employer might lead one to voluntarily terminate employment, there is nothing in the ESQ that is dispositive of the issue of Claimant's separation from employment. Claimant does not say that he quit his employment because of this stress or the unkept promises. The ESQ does not establish that Claimant voluntarily terminated his employment. Moreover, even if the statements provided by Claimant on the ESQ did conflict with Claimant's testimony, the credibility of a witness's testimony is determined by the Board. Stringent, 703 A.2d at 1087.

In determining whether a claimant had the intent to voluntarily terminate his employment, this Court must look at the totality of the circumstances surrounding the termination. Monaco, 523 Pa. at 46, 565 A.2d at 129. In the present case, the totality of the circumstances provides substantial evidence to support the Board's determination that Claimant was discharged by Employer. The fact that Claimant

returned to his job the day after the argument at his usual starting time, along with his credible testimony that he left at the end of his workday on the day of the argument, supports the Board's determination that Claimant did not quit on the day in question. Additionally, Claimant's testimony, found to be credible by the Board, indicates that Owner told Claimant on the morning after the argument, July 1, 2009, that Claimant was going to be laid off and that Claimant should look for a new job. (Hr'g Tr. at 3, R.R. at 34.)

Accordingly, the Board did not err in determining that Claimant was not disqualified from receiving benefits, and this Court must affirm the decision of the Board.

RENÉE COHN JUBELIRER, Judge

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	:	
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	:	
Unemployment Compensation Board of Review,	:	
	:	
Respondent	:	

O R D E R

NOW, August 23, 2010, the order of the Unemployment Compensation Board of Review in the above-captioned matter is hereby **AFFIRMED**.

RENÉE COHN JUBELIRER, Judge