IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Kristina L. Pancoast, Petitioner	:	
v.	:	No. 263 C.D. 2011
	:	Submitted: July 1, 2011
Unemployment Compensation Board of Review, Respondent	:	

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

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE LEAVITT FILED: September 20, 2011

Kristina L. Pancoast (Claimant), *pro se*, petitions for review of an adjudication of the Unemployment Compensation Board of Review (Board) which denied her appeal of a Referee's determination that her weekly benefit amount should be reduced as a result of a voluntary quit from a part-time job. Discerning no error by the Board, we affirm.

Claimant last worked for Woodlyn Associates, LLC (Employer) as a part-time billing clerk from June 7, 2010, through June 25, 2010, at a final rate of pay of $14.00 per hour. Claimant was assigned to a single client of Employer, Linwood Care Center, which required Claimant to drive to Linwood's office in New Jersey and review and copy medical records. Once she collected the necessary records, Claimant did Employer's bill collection services from her home

or at Employer's office. After her separation from employment on June 25, 2010, Claimant applied for unemployment benefits, which Employer contested.

The UC Service Center determined that Claimant had voluntarily quit and was ineligible for benefits pursuant to Section 402(b) of the Unemployment Compensation Law (Law).[1] Because Claimant's job was part-time her benefit was limited to her weekly part-time earnings, or $138. *See Unemployment Compensation Board of Review v. Fabric*, 354 A.2d 905 (Pa. Cmwlth. 1976). The UC Service Center also found that, pursuant to Section 804(a) of the Law,[2] Claimant received a fault overpayment of $798, and that pursuant to Section 2002(f) of the American Recovery and Reinvestment Act of 2009,[3] she received a fraud overpayment of $25. Claimant appealed, and a hearing was held before a Referee on October 4, 2010.

Claimant testified about how her employment ended. According to Claimant, she sent an e-mail to Employer's president, Arthur Krauss, on June 26, 2010, with the subject line "Linwood status update." Certified Record, Item 3 (C.R. ___), Exhibit SC-20. Claimant's e-mail summarized a list of items Claimant

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[1] Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §802(b). Section 402(b) provides, in relevant part, that an employee is ineligible for compensation when "his unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature." 43 P.S. §802(b).

[2] In relevant part, it provides that:

> [a]ny person who by reason of his fault has received any sum as compensation under this act to which he was not entitled, shall be liable to repay to the Unemployment Compensation Fund to the credit of the Compensation Account a sum equal to the amount so received by him and interest. . . .

43 P.S. §874(a).

[3] Section 2002 of Division B, Title II of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, 26 U.S.C. §3304, note.

needed from Linwood and stated, "I'd prefer to wait to go back until the below is ready so I can bring everything back at once." *Id.* When Claimant got no response to her e-mail she assumed the Linwood project was completed and initiated no further contact with Employer. Claimant did not learn that Employer believed she had quit until she applied for unemployment benefits.

Arthur Krauss testified for Employer. Krauss testified that on Monday, June 21, 2010, he sent Claimant an e-mail asking for a status update on the Linwood project. That same day, Claimant responded to him by e-mail that she was trying to determine when she would be able to return to the Linwood office to finish collecting the records. Claimant explained:

> Next week starts my kids summer swim team involvement which requires me to drive them to/from practice each week morning (I can't count on my oldest to drive because she works as well). This is why I've been trying to politely decline continuing to work with you. I don't need to bore you with the minutia of my life, but I knew things were going to get crazy when the kids finished school last week.
>
> So, I think the best bet is to go Wednesday. I will get there as early as I possibly can, and at least there aren't any time constraints as to when I HAVE to be back on Wednesday. I'm nervous that I can't make it back by 7 tomorrow – the traffic is such a huge variable and the ride is stressful enough without worrying about the time. I can probably drop the paperwork to you on Thursday on our way to the game.
>
> Then I'm sorry to say, I think that'll do it for me. I wish you well with the project.

C.R. 10, Employer's Exhibit E-1. Krauss interpreted this e-mail to mean that Claimant had resigned from her position. He recalled that Claimant told him again, first over the phone, and then in person, that it was "the end of her job." C.R. 10, Notes of Testimony, October 4, 2010, at 12-13. Krauss testified that the

Linwood project was still ongoing as of the date of the hearing and, if Claimant had not quit, continuing work would have been available to her. He estimated that between 10 and 15 hours of work would have been available per week.

As for the e-mail Claimant claimed she sent to Krauss on June 26, 2010, Krauss testified that Employer never received it. To support that assertion Krauss offered into evidence a printout of the results of a search he conducted of Employer's e-mail account. The printout identified all e-mail correspondence sent from or pertaining to Claimant from May 21, 2010, to July 2, 2010. There was no record of an e-mail from Claimant on June 26, 2010. Claimant did not object to this e-mail log being admitted into evidence.

Upon further questioning by the Referee, Claimant testified that Employer misinterpreted her June 21 e-mail. Claimant explained that she intended the e-mail to mean that once she completed the project they would need to discuss whether she could continue working for Employer on other projects. She claimed she never intended to quit her job. Furthermore, Claimant stated that the June 26 e-mail showed her intent to remain employed because she asked for further instructions. Claimant acknowledged that she did not make any effort to contact Employer after no one responded to that e-mail. She interpreted the silence to mean that the Linwood project was completed.

The Referee found that the language of Claimant's June 21 e-mail affirmatively showed that she quit her job with Employer when continuing work was available. Accordingly, the Referee affirmed the UC Service Center's determination that Claimant voluntarily quit without good cause and, therefore, was ineligible for benefits under Section 402(b) of the Law. Because Claimant worked for Employer during the week ending June 26, 2010, the Referee found

that there was no overpayment for that week. Accordingly, she modified the UC Service Center's award to reflect that Claimant received a fault overpayment for all claim weeks ending July 3, 2010, to August 21, 2010.[4] Finally, the Referee reversed the UC Service Center's determination of a fraud overpayment of Federal additional compensation.

Claimant appealed to the Board.[5] The Board affirmed the Referee's determination that Claimant was ineligible for benefits under Section 402(b) of the Law and that there was no fraudulent overpayment of Federal benefits. The Board modified the Referee's decision regarding the fault overpayment of state benefits, holding that it was a non-fault overpayment. Claimant now petitions for this Court's review.[6]

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[4] The Referee noted that the overpayment was to be calculated based upon a part-time wage rate of $175 per week. While not addressed in her determination, it appears the Referee calculated Claimant's potential part-time wages by assuming she would work 12.5 hours per week, at a rate of $14.00 per hour. This is based upon Employer's testimony that there would have been between 10 and 15 hours of work per week available to Claimant. Claimant has not challenged the Referee's determination in this regard.

[5] On appeal to the Board, Claimant tried to offer new evidence to support her contention that she sent Employer two e-mails on June 26, 2010, indicating she planned to continue working on the Linwood project. Pursuant to its regulation, and established case law, the Board did not consider this information because it had not directed the taking of additional evidence. *See* 34 Pa. Code §101.106 (noting the Board can either review based upon the evidence previously submitted or direct the taking of additional testimony). *See also Tener v. Unemployment Compensation Board of Review*, 568 A.2d 733, 738 (Pa. Cmwlth. 1990).

[6] 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 in order to determine if substantial evidence exists. *Taylor v. Unemployment Compensation Board of Review*, 474 Pa. 351, 355, 378 A.2d 829, 831 (1977). Substantial evidence is such relevant evidence a reasonable mind might accept as adequate to support a conclusion. *Chishko v. Unemployment Compensation Board of Review*, 934 A.2d 172, 176 n.4 (Pa. Cmwlth. 2007).

On appeal, Claimant presents five questions for our review, which we restate as follows. First, Claimant alleges that the Referee's determination is based upon findings of fact that are not supported by substantial evidence in the record. Next, Claimant contends that the Referee erred by not finding that Employer received her second e-mail. She posits that the Referee violated her due process rights by admitting Employer's e-mail log into evidence. Finally, Claimant requests court costs. For the reasons that follow, we conclude that all of Claimant's arguments lack merit.

The Unemployment Compensation Law was enacted in order to assist people who become unemployed through no fault of their own. Section 3 of the Law, 43 P.S. §752.[7] Accordingly, Section 402(b) of the Law provides that an employee will be ineligible for compensation if her "unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature...." 43 P.S. §802(b).[8] If an employee fails to to take all reasonable steps to preserve her employment, her separation will be considered a voluntary termination.

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[7] It states, in relevant part, as follows:

> The Legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this Commonwealth require the exercise of the police powers of the Commonwealth in the enactment of this act for the compulsory setting aside of unemployment reserves to be used *for the benefit of persons unemployed through no fault of their own*.

43 P.S. §752 (emphasis added).

[8] In relevant part, it states:

> An employe shall be ineligible for compensation for any week - -
>
> ***
>
> (b) In which his unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature. . . .

43 P.S. §802(b).

Dopson v. Unemployment Compensation Board of Review, 983 A.2d 1282, 1284 (Pa. Cmwlth. 2009).

Before this Court, Claimant contends that the Referee's findings of fact two through five are "not supported by substantial evidence of record and are taken out of context." Claimant's Brief at 13. Accordingly, Claimant argues that the Board erred in basing its decision upon these facts. The challenged findings of fact state:

> 2. By email on June 21, 2010, the claimant informed the employer that she was having difficulty scheduling time to perform the employer's work due to other employment, her spouse's medical appointment and her children's activities.
>
> 3. The claimant explained she had been trying to politely decline continuing work.
>
> 4. The claimant concluded, "Then I'm sorry to say, I think that'll do it for me. I wish you well with the project."
>
> 5. The claimant did not inform the employer of what aspect, if any, of the employment she was unable to accept.

Referee's Decision, Findings of Fact 2-5. Specifically, Claimant argues that findings of fact two through four are taken out of context because she never informed Employer that she could not continue her employment. Claimant argues, further, that her June 26 e-mail, in which she asked for further instruction on how to proceed, clearly contradicts finding of fact number five. We disagree with Claimant's assertions.

It is well-settled that the Board is the ultimate fact-finding body empowered to resolve conflicts in evidence, to determine credibility of witnesses, and to determine the weight to be accorded evidence. *See Unemployment*

Compensation Board of Review v. Wright, 347 A.2d 328, 329 (Pa. Cmwlth. 1975). Accordingly, we will not disturb those findings on appeal, unless they are not supported by substantial evidence. *Dulgerian v.Unemployment Compensation Board of Review*, 439 A.2d 1342, 1344 (Pa. Cmwlth. 1982).

A review of the record reveals that the Referee's findings of fact two through five are supported by substantial evidence. Each finding is based squarely upon Claimant's June 21 e-mail to Employer. Claimant disagrees with how the Board interpreted her statements and the weight it assigned to this evidence. We decline Claimant's invitation to reweigh and reinterpret the evidence.

Claimant's remaining issues relate to the e-mail she alleges she sent to Employer on June 26. Claimant argues that this e-mail was evidence of her intent to continue working for Employer. Claimant maintains that Employer must have received the e-mail and that the Referee erred in admitting Employer's e-mail log, which Employer offered to show that it did not receive an e-mail from Claimant on June 26. Again, Claimant's arguments lack merit.

To begin, Claimant did not object to admission of the e-mail log. Therefore, she cannot now contest its admission. *See Pifer v. Unemployment Compensation Board of Review*, 639 A.2d 1293, 1295 n.4 (Pa. Cmwlth. 1994)(noting a failure to object to a Referee's determination results in waiver). Claimant argues that she did not know she could object to the introduction of this evidence and that her due process rights were violated. Claimant is incorrect. Due process does not require the Referee to advise a claimant on rules of evidence or other points of law. *DeMeno v. Unemployment Compensation Board of Review*, 413 A.2d 796, 798 (Pa. Cmwlth. 1980). Moreover, Claimant chose to proceed *pro se*, and it bears repeating that a layperson choosing to represent herself in a legal

proceeding assumes the risk that her lack of expertise and legal training will prove to be her undoing. *Vann v. Unemployment Compensation Board of Review*, 508 Pa. 139, 148, 494 A.2d 1081, 1086 (1985).

Having found that Employer's e-mail log was properly admitted into evidence, we reject Claimant's arguments that Employer received her June 26 e-mail, and that the e-mail evidenced her desire to continue working. The Board, like the Referee, determined that Claimant's June 21 e-mail resulted in an immediate voluntary quit. Therefore, the Board must have determined that either Employer never received the June 26 e-mail, or the contents of the e-mail did not indicate Claimant's willingness to continue working for Employer. The record contains evidence that supports both interpretations. Thus, Claimant essentially is requesting that we reweigh the evidence, which, of course, this Court cannot do. *Wright*, 347 A.2d at 329.

In summary, there is substantial evidence in the record supporting the Board's conclusion that Claimant voluntarily quit. Therefore, the Board's determination is proper.[9] Accordingly, we affirm.

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MARY HANNAH LEAVITT, Judge

[9] Having found the Board's determination to be proper, we need not address Claimant's contention that she be awarded costs.

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	:	
Unemployment Compensation	:	
Board of Review,	:	
Respondent	:	

O R D E R

AND NOW, this 20th day of September, 2011, the order of the Unemployment Compensation Board of Review, dated December 8, 2010, in the above-captioned matter is hereby AFFIRMED.

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MARY HANNAH LEAVITT, Judge