

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Kelli Tilson, :
Petitioner :
v. : No. 288 C.D. 2010
Unemployment Compensation : Submitted: August 6, 2010
Board of Review, :
Respondent :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE LEAVITT

FILED: October 6, 2010

Kelli Tilson (Claimant), *pro se*, petitions for review of an adjudication of the Unemployment Compensation Board of Review (Board) denying her claim for unemployment compensation benefits. The Board found that Claimant voluntarily quit her job without cause of a necessitous and compelling nature, rendering her ineligible for benefits under Section 402(b) of the Unemployment Compensation Law (Law).¹ Discerning no error in the Board’s adjudication, we affirm.

Claimant was employed by Manpower, Inc. (Employer), a temporary employment agency, and was assigned to work as a laborer at FCI Electronics. Her last day of work for Employer was June 22, 2009. Claimant sought unemployment

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §802(b). It provides, in relevant part, 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.” *Id.*

compensation benefits, claiming that she had been laid off. The Altoona UC Service Center determined that Claimant had voluntarily quit her job and was ineligible for benefits under Section 402(b) of the Law, 43 P.S. §802(b). The UC Service Center also assessed a \$1,925 non-fault overpayment for benefits Claimant received for claim weeks ending July 18 through September 26, 2009.² Claimant appealed, and a hearing was held before the Referee.

Lynn Gardini, a Senior Staffing Specialist for Employer and Claimant's supervisor, testified that Claimant's last day of work was June 22, 2009; she did not report to work from June 23 to July 1. Gardini recalled that Claimant telephoned her on July 1, 2009, and stated that she would not be able to return to work because of a personal issue involving her child. Gardini stated that work would have been available for Claimant had she not voluntarily quit her job.

Claimant offered a different version of the events surrounding her separation from employment. Claimant testified that on June 22 she left work because of a death in the family, having been assured that her job would be available when she returned. On July 7, 2009, Claimant learned from her aunt, who is also employed by Employer, that Employer was laying off employees. Upon hearing this news, Claimant called Gardini, who confirmed that Claimant would be among the laid off employees. Claimant denied telling Gardini on July 1 that she had a personal issue with her child.

The Referee accepted as credible Gardini's testimony and version of events. The Referee found that Claimant voluntarily quit her employment without

² Section 804(b)(1) of the Law provides in relevant part: "Any person who other than by reason of his fault has received with respect to a benefit year any sum as compensation under this act to which he was not entitled shall not be liable to repay such sum but shall be liable to have such sum deducted from any future compensation payable to him" 43 P.S. § 874(b)(1).

cause of a necessitous and compelling nature and was ineligible for benefits under Section 402(b) of the Law, 43 P.S. §802(b). The Referee also affirmed the UC Service Center's assessment of a \$1,925 non-fault overpayment for benefits Claimant had received but to which she was not entitled.

Claimant appealed to the Board. The Board adopted the Referee's findings of fact and conclusions of law, and affirmed his decision. Claimant now petitions this Court for review.³

On appeal,⁴ Claimant argues that the Board erred in concluding that she voluntarily quit her job on July 1, 2009. Claimant maintains that Employer permitted her to take time off beginning June 22, 2009, because of her grandmother's death, and then furloughed her and a number of other employees on July 9, 2009.

This case involves conflicting testimony on the reason for Claimant's separation from employment. Claimant testified that she was laid off, whereas Employer's witness testified that she quit for personal reasons while continuing work remained available. It is well settled that the Board is the ultimate fact-finder, empowered to resolve conflicts in evidence and determine the credibility of witnesses. *Rosenberger v. Unemployment Compensation Board of Review*, 376 A.2d

³ Claimant has attached several documents to her brief which are not part of the certified record. This Court is precluded from reviewing evidence contained in a party's brief that was not part of the record below. *Pottorff v. Unemployment Compensation Board of Review*, 681 A.2d 244, 247 (Pa. Cmwlth. 1996). See also PA. R.A.P. 1951(a)(3) (on review, the record before this Court shall consist of, *inter alia*, "[t]he pleadings, evidence and proceedings before the government unit."). Therefore, we will not consider the extra-record documents Claimant has attached to her brief.

⁴ Our scope of review is limited to determining whether the Board's adjudication is in violation of constitutional rights, errors of law were committed, or whether findings of fact are supported by substantial evidence. *Kirkwood v. Unemployment Compensation Board of Review*, 525 A.2d 841, 843 (Pa. Cmwlth. 1987). Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Taylor v. Unemployment Compensation Board of Review*, 474 Pa. 351, 355, 378 A.2d 829, 831(1977).

1018, 1021 (Pa. Cmwlth. 1977). Here, the Board found Employer's witness credible and resolved the conflicts in evidence in Employer's favor. We are bound by the Board's determination and affirm its conclusion that Claimant voluntarily quit her job, which is supported by Employer's credited testimony.

When a claimant voluntarily terminates her job and seeks unemployment compensation benefits, she bears the burden of proving that she had a necessitous and compelling reason for quitting. *Draper v. Unemployment Compensation Board of Review*, 718 A.2d 383, 385 (Pa. Cmwlth. 1998). Cause of necessitous and compelling nature is defined as circumstances that produce pressure to terminate employment that is both real and substantial, and which would compel a reasonable person under the circumstances to act in the same manner. *Taylor*, 378 A.2d at 832-833.

In the case at bar, the Referee found that Claimant informed Employer that she was resigning due to an issue with her child. Claimant offered no evidence as to the nature of her child's situation; why it caused her to terminate her employment; or what steps she took to preserve her employment. In fact, Claimant denied ever telling Gardini that there was a problem with her child. Accordingly, there is no record on which it can be found that Claimant had a necessitous and compelling reason to quit available employment.⁵

For all of the foregoing reasons, we affirm the decision of the Board.

MARY HANNAH LEAVITT, Judge

⁵ Claimant suggests in her brief that the assessment of a non-fault overpayment in this case was improper. We disagree. Claimant received \$1,925 in unemployment compensation benefits to which she was not entitled. The UC Service Center correctly assessed a non-fault overpayment under Section 804(b)(1) of the Law, 43 P.S. §874(b)(1). *See supra* note 2.

