

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Emily A. Drach, :  
Petitioner :  
 :  
v. :  
 :  
Unemployment Compensation :  
Board of Review, : No. 289 C.D. 2011  
Respondent : Submitted: July 29, 2011

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge  
HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY JUDGE McGINLEY

FILED: August 31, 2011

Emily Drach (Claimant), *pro se*, challenges the order of the Unemployment Compensation Board of Review (Board) which affirmed the referee's denial of benefits under section 402(b) of the Unemployment Compensation Law (Law).<sup>1</sup>

The facts as initially found by the referee and confirmed by the Board, are as follows:

1. The claimant was last employed as a telesales representative for Citizen's Telecom Services-Frontier on 6/29/10.
2. Due to an acquisition of another company, the employer required all telesales representatives to take on some of the duties of the sales and service representatives temporarily.

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<sup>1</sup> Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §802(b).

3. The change was originally scheduled for July 5, 2010 through July 30, 2010<sup>2</sup> and all telesales representatives were adjusted by 50%.

4. If the representatives did not make their goal, they were given a 3 month average based on their previous commission.

5. Normally a sales and service representative received 6 weeks of training, but since telesales representatives had knowledge of the employer's systems, they were to receive 12 hours of training.

6. The claimant received 4 hours of training due to being absent 8 hours of the training.

7. Due to an increase in business on June 29, 2010, the employer required the claimant, along with all the telesales representatives, to perform the temporary duties.

8. On June 29, 2010 the claimant attempted to perform the new duties for approximately 45 minutes, then left work early.

9. The claimant called off work the following day, then had scheduled time off until July 6, 2010.

10. On July 6, 2010 the claimant came in and resigned due to the changes in her job responsibilities.

Referee's Decision, August 19, 2010, (Decision), Findings of Fact Nos. 1-10 at 1-2.

The referee determined:

In this case, the employer's temporary modification of the employer's [sic] job responsibilities was reasonable

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<sup>2</sup> Employer's witness testified that the temporary change was to last until September 30, 2010. Notes of Testimony, October 13, 2010 (N.T.), at 10.

due to the demands of their [sic] business and furthermore, the claimant was being compensated for the changes and the claimant did not make a proper attempt to try the increased job responsibilities prior to leaving. Therefore, the claimant has not shown necessitous and compelling reasons for leaving and benefits are denied under Section 402(b) of the Law.

Decision at 2.

The Board confirmed the referee's decision that Claimant did not establish necessitous and compelling reasons for voluntarily terminating her employment with Citizen's Telecom Services-Frontier (Employer).

On appeal, Claimant contends that Employer's unilateral change of her employment conditions created cause of a necessitous and compelling nature to voluntarily quit her employment, and that she made a reasonable effort to preserve her employment with Employer.<sup>3</sup>

### **I. Did Claimant Shoulder Her Burden and Prove Cause of Necessitous and Compelling Nature to Voluntarily Terminate Her Employment?**

Claimant argues that Employer expected Claimant to perform the job of sales and service representative although she was hired as a telesales representative, and did not provide her with sufficient training to do so, that she was required by Employer to achieve an unreasonable sales quota given the part-

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<sup>3</sup> This Court's review in an unemployment case is limited to a determination of whether constitutional rights were violated, errors of law were committed, or essential findings of fact were not supported by substantial evidence. Lee Hospital v. Unemployment Compensation Board of Review, 637 A.2d 695 (Pa. Cmwlth. 1994).

time nature of her employment and that the added stress caused by her changed conditions of employment threatened her fragile physical state.<sup>4</sup>

Whether a termination of employment is voluntary is a question of law subject to this Court's review. Westwood v. Unemployment Compensation Board of Review, 532 A.2d 1281 (Pa. Cmwlth. 1987). An employee voluntarily terminating employment has the burden of proving that such termination was necessitous and compelling. Willet v. Unemployment Compensation Board of Review, 654 A.2d 280 (Pa. Cmwlth. 1995).

A necessitous and compelling cause for voluntarily leaving one's employment results from 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. Philadelphia Parking Authority v. Unemployment Compensation Board of Review, 654 A.2d 280 (Pa. Cmwlth. 1995).

Claimant testified, "there were changes in the condition of employment," and that "these conditions are different then [sic] what I was hired for." N.T. at 6. However, Erica McPherson (McPherson), Telesales supervisor and Employer's witness credibly testified as to the temporary nature of the Claimant's changed working conditions:

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<sup>4</sup> Claimant suffers from Polycythemia, a rare blood disorder, and is recovering from recent brain surgery.

**[McPherson]:** It was just temporary for the Verizon acquisition because...the Verizon call centers were going online on July 1<sup>st</sup> on to our system, and we needed all hands on deck...

**[Kellie Knesis (Knesis), Senior Manager, Human Resources]:** ...How long was [sic] the temporary job additional responsibilities to last?

**[McPherson]:** Originally it was to go from July 5<sup>th</sup> to September 30<sup>th</sup> and it went from June 29<sup>th</sup> up until September 13<sup>th</sup>...

**[Knesis]:** Okay. And at that time, they went back to their normal telesales duties?

**[McPherson]:** Yes.

N.T. at 9-10.

McPherson also testified that the training given to the telesales staff was sufficient for the sales and services job they were expected to perform because much of it was the same as telesales:

**[Knesis]:** Were the telesales staff trained to take calls, did they receive training for the new expanded duties?

**[McPherson]:** Yes. There were four hours of collections, four hours of repair, and an additional eight hours for ... additional order entry for what they didn't already did [sic] know.<sup>[5]</sup>

**[Knesis]:** ...Could you please explain for the Referee why the training was only four weeks in addition...

**[McPherson]:** ...they know the order entry system already...they already know how to read the bill...When it came to...setting up new service or moving service that was the additional training that was needed...

N.T. at 10.

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<sup>5</sup> The Board found that employees were given 12 hours of training where Employer's witness testified that employees received 16 hours of training. This discrepancy has no effect on Claimant's argument.

Employer may modify employment specifications with regard to time, place and manner, and such modifications will not constitute a necessitous and compelling reason for employee's resignation for employment compensation purposes as long as employer acts reasonably and in good faith. Radnor Twp. School Dist. v. Unemployment Compensation Board of Review, 580 A.2d 934 (Pa. Cmwlth. 1990).

Employer's temporary modification of Claimant's job responsibilities to assist with the Verizon acquisition was made in good faith to aid Employer during a busy time. The modification was reasonable under the circumstances, as employees were provided training in unfamiliar areas, and was only intended to last a short period of time.

Claimant also alleges that she was required to meet an unfair sales quota under the changed conditions. Claimant testified that "if your quota was not met for the month you would get no commission at all. I working 16 hours was expected to sell with people working 20 to 24 hours a week." N.T. at 5. McPherson credibly testified that this was not the case:

**[McPherson]:** All those [sales calls] were adjusted by 50 percent. If you did not make your goal, you got a three month average of your previous month commission...if you made your sales goal you got whichever commission was higher, whether it be your three month average or your sales goal if you made the quota.

N.T. at 11. McPherson also stated that this practice was put in place as of June 29, 2010, to last for the duration of the temporary period during the Verizon acquisition, and that Claimant was unaware of this because she voluntarily quit

before this could be communicated to her. N.T. at 13. The Board credited McPherson's testimony that sales representatives who did not meet their goal were given a 3 month average based upon their previous commission. Referee's F.F. No. 4 at 1.

In unemployment compensation proceedings, the Board is the ultimate fact-finding body empowered to resolve conflicts in evidence, to determine the credibility of witnesses, and to determine the weight to be accorded evidence. Unemployment Compensation Board of Review v. Wright, 347 A.2d 328 (Pa. Cmwlth. 1975). Findings of fact are conclusive upon review provided that the record, taken as a whole, provides substantial evidence to support the findings. Taylor v. Unemployment Compensation Board of Review, 474 Pa. 351, 378 A.2d 829 (1977).

Claimant finally argues that the increase in stress caused by her changed employment conditions created cause of a necessitous and compelling nature to voluntarily terminate her employment with Employer, because her medical condition precluded her from being exposed to additional stresses. Claimant however admitted in her testimony that her supervisor was unaware of her recent surgery and medical history. N.T. at 14.

Claimant has not shouldered her burden of proving that she had a necessitous and compelling reason to voluntarily terminate her employment. Employer's temporary modifications to her employment conditions were made in good faith and were reasonable under the circumstances.

## **II. Did Claimant Take All Reasonable and Necessary Steps to Preserve Her Employment?**

Claimant argues that she took all reasonable steps to preserve her employment by contacting her union representative on two separate occasions, to no avail.

However, Claimant, herself, testified that she did not file an actual grievance with the union relating to the change in her working conditions. N.T. at 9. Additionally, McPherson credibly testified for Employer that on June 29, 2010, Claimant was at work from 2:45 p.m. – 3:54 p.m. and took only one phone call. N.T. at 10. McPherson also testified that “[Claimant] left on the 29<sup>th</sup>, she called off the 30<sup>th</sup>, she already had a vacation day in for the 1<sup>st</sup>, and then the 5<sup>th</sup> was our holiday and on the 6<sup>th</sup> she came in, cleaned out her desk and wrote the resignation letter.” N.T. at 11.

Where employee has failed to take all necessary and reasonable steps to preserve the employment relationship, he or she has failed to meet burden of demonstrating necessitous and compelling cause for voluntary termination, and thus is not entitled to unemployment compensation benefits. PECO Energy Co. v. Unemployment Compensation Board of Review, 682 A.2d 58 (Pa. Cmwlth. 1996).

Claimant did not prove that she took all reasonable and necessary steps to preserve her employment.



Accordingly, this Court affirms.

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BERNARD L. McGINLEY, Judge

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| Emily A. Drach,           | : |                   |
|                           | : |                   |
| Petitioner                | : |                   |
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| v.                        | : |                   |
|                           | : |                   |
| Unemployment Compensation | : |                   |
| Board of Review,          | : | No. 289 C.D. 2011 |
|                           | : |                   |
| Respondent                | : |                   |

**ORDER**

AND NOW, this 31st day of August, 2011, the order of the Unemployment Compensation Board of Review in the above captioned matter is affirmed.

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BERNARD L. MCGINLEY, Judge