

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Maryann T. Ford,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
Unemployment Compensation	:	
Board of Review,	:	No. 306 C.D. 2012
	:	
Respondent	:	Submitted: October 12, 2012

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE ANNE E. COVEY, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE COVEY

FILED: November 15, 2012

Maryann T. Ford (Claimant) petitions for review of the Unemployment Compensation Board of Review's (UCBR) January 27, 2012 order adopting and affirming the Referee's decision disallowing benefits and assessing an overpayment. The general issue for this Court's review is whether the UCBR erred by concluding that Claimant did not have good cause for refusing the Montgomery County Intermediate Unit's (Employer) offer of suitable work. Claimant specifically asks that we determine whether the Referee erred by: (1) failing to require Employer to give Claimant a complete job description so she could assess her ability to do the job; (2) failing to give full weight and credibility to Claimant's physical limitations, and placing too great a weight on Claimant's initial response to the offered position; and, (3) failing to give full weight and consideration to the financial burdens Claimant would face if she accepted the offered position. We affirm.

Claimant was employed as a teacher's assistant from October 2001 through June 21, 2011, earning \$49,018.00 per year, when she was furloughed. Claimant received UC benefits. On August 18, 2011, Employer verbally offered Claimant a job as a one-to-one teacher's assistant from August 24, 2011 through June 30, 2012, at a salary of \$23,232.00 for that period. Claimant declined the offer without providing a reason. By August 22, 2011 letter copied to the Philadelphia UC Service Center (UC Service Center), Employer confirmed the offer and Claimant's rejection. When completing the UC Service Center's questionnaire as to her refusal of suitable work, Claimant's specified reasons were: "The salary was much less than previous salary" and "The net salary was very low and would have negatively impacted my social security." Certified Record (C.R.) Item 4.

On September 8, 2011, pursuant to Section 402(a) of the Unemployment Compensation Law (Law),¹ the UC Service Center deemed Claimant ineligible for benefits for the duration of the temporary employment she refused (i.e., from the week ending August 27, 2011 through June 30, 2012). On September 23, 2011, the UC Service Center also determined that Claimant had received a \$536.00 benefit overpayment.² Claimant appealed from both determinations. In her petition appealing from the eligibility determination, Claimant stated, *inter alia*, "Accepting this rate of pay would create financial hardship. Physically unable to run or stand due to plantar fasciitis." C.R. Item 6.

On November 7, 2011, a hearing was held before a Referee. Employer's Human Resources Assistant Director, Danielle Hey, testified that she made the job offer to Claimant over the phone, and Claimant refused the employment offer without explanation. Ms. Hey acknowledged that the proposed position would require some

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

² The amount Claimant received for the week ending August 27, 2011, for which she was deemed ineligible.

walking throughout the day, plus standing and other physical assistance, depending upon the needs of the particular student to which Claimant would have been assigned. She also acknowledged that Claimant was not given the written job description at the time the offer was made. A copy of Employer's teacher assistant position description was, however, admitted in the record without objection.

Claimant testified that she refused the employment offer primarily because she suffered from plantar fasciitis diagnosed in June 2011. A copy of her physician's September 23, 2011 letter, confirming her diagnosis and stating that she could not work at a job that required her to stand for more than 20 to 30 minutes at a time, was admitted into evidence. Claimant acknowledged that she did not give this reason to Ms. Hey at the time the offer was made. She stated, "knowing the job, I knew I couldn't run after . . . or even walk fast to catch up to a student." Notes of Testimony, November 7, 2011 (N.T.) at 9. She acknowledged, however, that while an assigned student's needs would dictate the level of physical assistance she would have to give, she did not seek such specifics before declining the position. Claimant further testified that she has experienced plantar fasciitis twice before in the past five years, but it never prevented her from working, so she never notified Employer of her condition. Claimant agreed that if she had been physically capable of doing the offered job, she would have accepted it despite the reduction in pay. Claimant's proffered reason for failing to mention her physical limitations on the UC Service Center's questionnaire was: "I guess I answered this too quickly. I didn't think about it, sir." N.T. at 18.

On November 10, 2011, the Referee affirmed the UC Service Center's determination, and ordered recovery of the overpayment. Claimant appealed to the

UCBR which, by order issued January 27, 2012, adopted and affirmed the Referee's decision. Claimant appeals to this Court.³

Section 402(a) of the Law provides that “[a]n employe shall be ineligible for compensation for any week . . . [i]n which his unemployment is due to failure, without good cause, . . . to accept suitable work when offered to him . . . by any employer.” Section 402(a) of the Law requires this Court to make separate determinations of whether the work offered is suitable, and whether a claimant had good cause to decline it. *Big Mountain Imaging v. Unemployment Comp. Bd. of Review*, 48 A.3d 492 (Pa. Cmwlth. 2012). The claimant has the burden of proving both. *Rising v. Unemployment Comp. Bd. of Review*, 621 A.2d 1152 (Pa. Cmwlth. 1993).

The Law defines “suitable work” as:

all work which the employe is capable of performing. In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to his health, safety and morals, his physical fitness, prior training and experience, and the distance of the available work from his residence. The department shall also consider among other factors the length of time he has been unemployed and the reasons therefor, the prospect of obtaining local work in his customary occupation, his previous earnings, the prevailing condition of the labor market generally and particularly in his usual trade or occupation, prevailing wage rates in his usual trade or occupation, and the permanency of his residence. However, notwithstanding any other provisions of this subsection no work shall be deemed suitable in which . . . the remuneration, hours or other conditions of the work offered are substantially less favorable to the employe than those prevailing for similar work in the locality

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

Section 4(t) of the Law, 43 P.S. § 753(t). Although the Law does not specifically define “good cause,” the Pennsylvania Supreme Court has stated that “good faith, as used in this context, includes positive conduct on the part of the claimant which is consistent with a genuine desire to work and to be self-supporting.” *Lattanzio v. Unemployment Comp. Bd. of Review*, 461 Pa. 392, 398, 336 A.2d 595, 598 (1975) (quoting *Bentz v. Unemployment Comp. Bd. of Review*, 155 A.2d 461, 463 (Pa. Super. 1959)). This Court recently held that “[g]ood cause exists where a claimant maintains a real and substantial reason for refusing suitable work.” *Big Mountain Imaging*, 48 A.3d at 495.

Based upon what Employer knew about Claimant at the time the job offer was made, it was suitable work that she was capable of performing. Claimant had been a teacher’s assistant for approximately 10 years. At the time Claimant was furloughed, she assisted in an emotional support class with approximately 11 students who were in third, fourth or fifth grade. Although Claimant had not previously been a one-to-one assistant, she was familiar with the expectations of the position. Employer had no reason to know that Claimant was in any way physically unable to do the job. Claimant offered no reason for her refusal.

Claimant argues that the Referee erred by failing to require Employer to give her a complete job description so she could have determined her ability to do the job. We disagree. Although it is clear that Claimant was not specifically offered a job description, based upon the record, it does not appear that a job description was necessary. First, there is no requirement in the Law that an employer supply a written job description when a verbal offer of suitable employment is made. Second, Claimant declined the job on the spot without asking for details, so there was no reason for Ms. Hey to send Claimant a job description. Third, the position description at issue does not specify that it is for a classroom versus one-to-one assistant, so the description for the offered position was the same as the job Claimant

performed for 10 years. Finally, Claimant acknowledged that she knew what the job required, which is why she turned it down. Under the circumstances, the fact that Employer did not provide Claimant with a written job description is not reversible error.

Claimant next argues that the Referee erred by failing to give full weight and credibility to her physical limitations as reported by her treating physician, and by placing too great a weight on Claimant's initial response to the offered position, which were pre-hearing statements. We disagree. This Court has stated:

[I]t is well settled that the [UCBR] is the ultimate finder of fact in unemployment compensation proceedings. Thus, issues of credibility are for the [UCBR] which may either accept or reject a witness' testimony whether or not it is corroborated by other evidence of record. Findings of fact are conclusive upon review provided that the record, taken as a whole, contains substantial evidence to support the findings.

Chapman v. Unemployment Comp. Bd. of Review, 20 A.3d 603, 607 (Pa. Cmwlth. 2011) (citations omitted). Claimant testified that the primary reason she refused Employer's employment offer was that her medical condition prevented her from being able to perform the job. The Referee did not find Claimant's testimony credible because Claimant immediately refused the employment offer, without informing Employer or the UC Service Center that she refused the position for medical reasons. The UCBR expressly adopted the Referee's findings and conclusions that Claimant failed to meet her burden of showing good cause for refusing the job offer. Because the UCBR may give Claimant's initial response the weight it deems necessary, and its finding was supported by Claimant's subsequent answer on the UC Service Center's questionnaire, there was not "too great a weight" placed on the evidence, so we will not disturb the UCBR's findings.

Claimant finally argues that the Referee erred by failing to give full weight and consideration to the financial burdens Claimant would face if she accepted the offered position. We disagree. First, substantially lower wages are not alone sufficient to make an offer of work unsuitable. *Rising*; *see also* 43 P.S. § 753. Second, despite that the job Employer offered was at less than half of Claimant's pre-furlough salary, Claimant gave conflicting reasons for her refusal. Although Claimant stated in her questionnaire that accepting the job would cause her financial hardship, and at the hearing Claimant testified that she is her sole source of income, and that she tried substituting for one day because she needed the money, Claimant offered no specific evidence of a financial hardship. That, coupled with her statement that she would have accepted the job despite the reduction in pay **but for** the plantar fasciitis, does not support a conclusion that Claimant would have experienced financial hardship if she had accepted the offered position.

Because the record clearly establishes that Claimant did not have good cause to refuse Employer's offer of suitable work that she was capable of performing, the UCBR's order is affirmed.

ANNE E. COVEY, Judge

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ORDER

AND NOW, this 15th day of November, 2012, the Unemployment Compensation Board of Review's January 27, 2012 order is affirmed.

ANNE E. COVEY, Judge