

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

David L. Grams,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
Unemployment Compensation	:	
Board of Review,	:	No. 351 C.D. 2011
	:	
Respondent	:	Submitted: August 26, 2011

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

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER

FILED: October 12, 2011

David L. Grams (Claimant) petitions for review of the January 3, 2011 order of the Unemployment Compensation Board of Review (Board), reversing the Referee's determination and denying benefits pursuant to Section 401(d)(1) of the Unemployment Compensation Law (Law).¹ The issue before this Court is whether the Board erred in determining that Claimant was not able and available for suitable work during the weeks at issue. For the following reasons, we vacate and remand the order of the Board.

Claimant was employed as a part-time maintenance laborer by Red Coach Manor (Employer) starting in January of 2010. On April 22, 2010, Claimant was mowing grass and sustained a shoulder injury. He informed Employer of his injury and went home. That same day he went to the emergency room. Claimant

¹ Act of December 5, 1936, Second Ex.Sess, P.L. (1937) 2897, *as amended*, 43 P.S. § 801(d)(1).

informed Employer that he would be unavailable to work until further notice. Claimant filed for unemployment compensation benefits effective August 1, 2010. The Unemployment Compensation (UC) Service Center denied benefits, and Claimant appealed. A hearing was held before a Referee. The Referee issued a determination reversing the UC Service Center's determination concluding that Claimant's health problems were a necessitous and compelling reason for voluntarily quitting his job, and that he was genuinely and realistically attached to the work force because he was cleared for sedentary work. Employer appealed, and the Board issued an order reversing the Referee's determination and denying benefits. The Board determined that Claimant did meet his burden of proving a necessitous and compelling reason for quitting because of his health problems. However, the Board determined that Claimant was not realistically and genuinely attached to the labor market at the time of his application for UC benefits, and was not given clearance to return to work. Claimant appealed to this Court.²

Section 402(b) of the Law provides 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” 43 P.S. § 802(b). There is no dispute that Claimant had a necessitous and compelling reason for quitting his employment.

Claimant argues that the Board erred as a matter of law in finding that he was not realistically and genuinely attached to the labor market at the time of his application for benefits. Specifically, he contends that the Board erred in denying

² “Our standard of review is limited to determining whether the Board’s adjudication is in violation of constitutional rights, whether an error of law has been committed, or whether the factual findings are supported by substantial evidence.” *Brunswick Hotel & Conference Ctr., LLC v. Unemployment Comp. Bd. of Review*, 906 A.2d 657, 660 n.2 (Pa. Cmwlth. 2006).

benefits even though he testified that he was able to do sedentary work and Employer introduced no evidence to the contrary. We agree.

Section 401(d)(1) of the Law provides: “Compensation shall be payable to any employe who is or becomes unemployed, and who . . . [i]s able to work and available for suitable work” 43 P.S. § 801(d)(1).

[A] claimant must be ready and able to accept employment, and be actually and currently attached to the labor force. It is not necessary that a job vacancy exist, only that the market exists. Thus, a claimant must minimally show he is able to do some type of work, and that there is a reasonable opportunity for securing such work.

Ruiz v. Unemployment Comp. Bd. of Review, 911 A.2d 600, 603 (Pa. Cmwlth. 2006) (citations omitted). Further, “[a] claimant is attached to the labor force as long as she is able to do some type of work and there is a reasonable opportunity for securing such work in the vicinity of her residence.” *Wilder & Miller, P.C. v. Unemployment Comp. Bd. of Review*, 525 A.2d 852, 856 (Pa. Cmwlth. 1987).

Claimant voluntarily quit his job with Employer effective August 1, 2010. Claimant’s attorney indicated that he sent Employer’s attorney a letter dated September 20, 2010, which included a September 15, 2010 doctor’s report that stated that Claimant was able to perform sedentary duties.³ Employer testified that its attorney had forwarded the letter, and had no objection to it being offered into the record in this case. It is clear, therefore, that on or about September 20, 2010, Employer was made aware that Claimant was available for sedentary work. While it is true that based on this evidence, Claimant was not realistically and genuinely attached to the labor market as of August 1, 2010, the Board made no findings concerning Claimant’s availability after either September 15 or 20, 2010. It also

³ This letter was sent for purposes of Claimant’s workers’ compensation claim.

made no credibility determinations concerning the testimony related to Claimant's ability to do sedentary work.

For the reasons stated above, we vacate and remand this matter so that the Board may make additional findings of fact and/or credibility determinations consistent with this opinion.

JOHNNY J. BUTLER, Judge

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ORDER

AND NOW, this 12th day of October, 2011, the January 3, 2011 order of the Unemployment Compensation Board of Review is vacated and this matter is remanded for additional findings of fact and/or credibility determinations consistent with this opinion.

Jurisdiction relinquished.

JOHNNY J. BUTLER, Judge