

Claimant was represented by counsel at the hearing before Referee Robert Simon. She testified along with her husband and Gary Cravener, a former co-worker, and Gregory Riggatire, the president of Omni Electric, Inc., testified for Employer. Claimant was last employed as a full-time secretary from September 2001 until her last day of work on October 3, 2007. The referee found as follows:

2. The claimant became upset with the employer's president and then was a no-call/no-show for work for three days in September 2007.
3. On October 3, 2007, [Riggatire] asked the claimant some questions about work that the claimant had done.
4. The claimant felt that the president was upset with something.
5. [Riggatire] said that the claimant had a bad attitude.
6. The claimant's husband called the claimant on the phone.
7. The claimant told her husband that the president had said that the claimant had a bad attitude.
8. The claimant's husband came to the office.
9. The claimant, the employer's president, and the claimant's husband were discussing things loudly.
10. The president said "let's end this. I'll see you in the morning."
11. The claimant collected all of her belongings and left.
12. The claimant never returned to work.
13. The claimant's husband came to the office on October 4, 2007 for the claimant's pay check.

(continued...)

Why was the testimony of Gary Cravener, stating that Mr. Riggatire stated to him that he had to fire me, [d]isregarded?

Why did the UC Board of Review determine [that] I voluntarily left work without a cause of necessitous and compelling nature, when [I] supplied documentation supporting this?

Brief of Petitioner, p. 5.

14. The president asked the claimant's husband if the claimant had quit.

15. The claimant's husband replied that she [sic] did not know and that the president would have to pick that up with the claimant.

Referee's Findings of Fact 2 -15.²

Concluding that Claimant voluntarily quit, the referee reasoned:

Section 402(b) of the Law provides that a claimant shall be ineligible for compensation for any week in which claimant's unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature. Since the claimant voluntarily terminated this employment, the burden rests upon the claimant to show cause of a necessitous and compelling nature for so doing.

....

There were a number of discrepancies in the testimony. The discrepancies have been [resolved] by the Referee in making the above findings of facts. The discrepancies were resolved in favor of the employer, in large part, because the words used by the employer cannot reasonably be taken to mean that the claimant is being discharged without there having been at least some discussion of the claimant no longer working for the employer. The record contains no such evidence.

Consequently, the Referee holds that the claimant voluntarily failed to return to work. Therefore, benefits must be denied under Section 402(b) because the claimant offered nothing rising to the level of a necessitous and compelling reason for doing so.

Referee's Decision/Order, p. 2. The Board concluded that the determination made by the Referee was proper and therefore adopted and incorporated his findings and conclusions and affirmed.

²Claimant challenges Finding of Fact No. 2, stating that she missed work in August, not September, and that she had a doctor's note excusing her from work for those days.

Initially, the Court will consider the Board's argument that Claimant's brief must be quashed and her petition dismissed because her brief is not amenable to meaningful appellate review, citing *Shapowal v. Unemployment Compensation Board of Review*, 553 A.2d 487 (Pa. Cmwlth. 1989) (affirming Board denial of benefits where *pro se* claimant failed to properly state any questions for the Court's consideration). The Board also cites Pa. R.A.P. 2116, providing that no question will be considered which is not set forth in the statement of the questions involved or suggested thereby, and it points out that Claimant's statement of the questions contains no reference to the arguments made in her petition for review.

Claimant stated in her petition for review that the Board's order should be reversed because "[t]here were inconsistencies in my case[.] Information provided & testimonies were incorrect on the fact finding sheet – Dates were not correct – At one point the UC Service had me employed elsewhere not at Omni Electric." Petition for Review, p. 1. Her statement of the questions only asked why the referee resolved credibility in favor of Employer. The Board argues that these questions present no issue for review and that Claimant's petition should be quashed under *Daly v. Unemployment Compensation Board of Review*, 631 A.2d 720 (Pa. Cmwlth. 1993) (quashing a *pro se* claimant's petition where he failed to raise any issues for the Court's review).

The Board also directs the Court to Pa. R.A.P. 2119(a), under which the argument in a brief must be "followed by such discussion and citation of authorities that are deemed pertinent[.]" and to Pa. R.A.P. 2119(c), under which the argument "must set forth ... a reference to the place in the record where the matter referred to appears...." The Board contends that Claimant's challenges to the referee's credibility determination lack any support by citation to pertinent legal

authority and that her undeveloped arguments therefore are waived, citing *Rapid Pallet v. Unemployment Compensation Board of Review*, 707 A.2d 636 (Pa. Cmwlth. 1998) (holding that undeveloped arguments without citation to legal authority will not be considered). Additionally, her brief violates Pa. R.A.P. 2111(d) by setting forth an inappropriate scope of review and standard of review and Pa. R.A.P. 124 by failing to follow double-spacing requirements.

The Board argues that Claimant's defective brief should be quashed under *Kochan v. Department of Transportation, Bureau of Driver Licensing*, 768 A.2d 1186 (Pa. Cmwlth. 2001) (holding that brief out of compliance with Rules of Appellate Procedure precludes meaningful appellate review). After its review of the submitted briefs, the petition for review and the record, the Court reluctantly concludes that it must quash Claimant's brief because it is defective and dismiss her petition. Meaningful appellate review cannot be conducted. *See Grosskopf v. Workmen's Compensation Appeal Board (Kuhns Market)*, 657 A.2d 124 (Pa. Cmwlth. 1995) (holding that when appellant files inadequate brief, it is not role of the court to become appellant's counsel).³ Accordingly, the Court dismisses Claimant's petition.

DORIS A. SMITH-RIBNER, Judge

³Even if the Court addressed the merits, a review of the record reveals that Employer met its burden of proving that Claimant voluntarily left the job. Although Claimant appears to seek review of the referee's credibility determinations and his resolution of evidentiary conflicts and to resolve those questions in her favor, it is well-settled that "[q]uestions of credibility and the resolution of evidentiary conflicts are within the sound discretion of the Board, and are not subject to re-evaluation on judicial review." *Miller v. Unemployment Compensation Board of Review*, 405 A.2d 1034, 1036 (Pa. Cmwlth. 1979).

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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| Laurie E. Kevana, | : | |
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| Petitioner | : | |
| | : | |
| v. | : | No. 379 C.D. 2008 |
| | : | |
| Unemployment Compensation Board of | : | |
| Review, | : | |
| | : | |
| Respondent | : | |

ORDER

AND NOW, this 9th day of October, 2008, the petition for review in the above-captioned matter is dismissed.

DORIS A. SMITH-RIBNER, Judge