

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

The Housing Authority of the	:	
County of Venango,	:	
Petitioner	:	
	:	
v.	:	No. 406 C.D. 2011
	:	SUBMITTED: September 2, 2011
Unemployment Compensation	:	
Board of Review,	:	
Respondent	:	

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge  
HONORABLE ROBERT SIMPSON, Judge  
HONORABLE JAMES R. KELLEY, Senior Judge**

**OPINION NOT REPORTED**

**MEMORANDUM OPINION BY  
PRESIDENT JUDGE LEADBETTER**

**FILED: December 6, 2011**

The Housing Authority of the County of Venango petitions for review of the order of the Unemployment Compensation Board of Review (Board), granting benefits to Tamala L. Ross on the grounds that she resigned in lieu of an imminent termination (*i.e.*, an involuntary resignation) and the Authority failed to demonstrate that Ross engaged in willful misconduct. On appeal, the Authority contends that the Board erred in finding that Ross resigned in lieu of certain termination because she had the right to appeal any discharge to the Civil Service Commission. After review, we reverse.

According to the unchallenged findings of the Board, Ross was employed as the executive director of the Venango County Housing Authority. She

was placed on paid administrative leave in April 2010, pending a hearing into charges of misconduct and ineffectiveness on the job. Following a hearing, the Authority offered Ross the opportunity to resign in lieu of termination. While not the subject of fact-finding, there does not appear to be any dispute that if discharged, Ross was entitled to appeal her separation to the State Civil Service Commission. Ross accepted the offer, resigned and subsequently filed for unemployment compensation benefits.

The Board, which made its own findings and conclusions, found that Ross's separation from employment was involuntary, thereby requiring a determination of whether Ross was disqualified from receiving benefits under Section 402(e) of the Unemployment Compensation Law, Act of December 5, 1936, Second Ex.Sess., P.L. (1937) 2897, *as amended*, 43 P.S. § 802(e) (relating to discharge for willful misconduct).<sup>1</sup> Due to the Authority's failure to put on any evidence of willful misconduct and Ross's failure to admit to any wrongdoing, the Board awarded benefits and the instant appeal followed.

Relying on *Hill v. Unemployment Compensation Board of Review*, 385 A.2d 1032 (Pa. Cmwlth. 1978), the Authority argues that Ross's right to appeal any discharge to the Civil Service Commission rendered her discharge less than certain, thereby precluding the conclusion that her resignation was involuntary, *i.e.*, that she was discharged. In *Hill*, this court stated: "[T]he existence of a right to appeal the threatened discharge rendered the prospect of

---

<sup>1</sup> In general, a claimant who resigns to avoid the possibility of termination is considered to have voluntarily terminated employment. *Pa. Liquor Control Bd. v. Unemployment Comp. Bd. of Review*, 648 A.2d 124 (Pa. Cmwlth. 1994). However, where the claimant resigns in order to avoid imminent and certain termination, the claimant's separation will be treated as a discharge for willful misconduct. *Id.*

discharge less than a certainty. [Claimant's] quit was not therefore made in the fact [sic] of a certain discharge . . . .” *Id.* at 1033. We agree that *Hill* is controlling.<sup>2</sup> Because we are bound by that precedent, the order of the Board is reversed.

---

**BONNIE BRIGANCE LEADBETTER,**  
President Judge

---

<sup>2</sup> Under Section 952 of the Civil Service Act, Act of August 5, 1941, P.L. 752, added by the Act of June 26, 1989, P.L. 47, *as amended*, 71 P.S. § 741.952, the Commission may order, *inter alia*, reinstatement, lost wages and benefits.

