

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Linda Lutz, :
Petitioner :
 :
v. : No. 452 C.D. 2009
 : Submitted: July 17, 2009
Unemployment Compensation :
Board of Review, :
Respondent :

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE PELLEGRINI

FILED: August 12, 2009

Linda Lutz (Claimant) appeals *pro se* from an order of the Unemployment Compensation Board of Review (Board) affirming the decision of the Referee denying her unemployment compensation benefits because her voluntary termination was without cause of a necessitous and compelling nature pursuant to Section 402(b) of the Unemployment Compensation Law.¹ For the reasons that follow, we affirm.

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §802(b). That section provides, in relevant part:

An employe shall be ineligible for compensation for any week –

(Footnote continued on next page...)

Claimant was employed full-time by Gai-Tronics Corporation (Employer) as an assembler beginning in January 2006. Claimant sat at a table and had complained at various times to Employer that her work was placed too close behind her. At the direction of a supervisor, skids and carts had been moved so that Claimant and other assemblers had enough room to work. On November 4, 2008, Claimant was working on the assembly line at a table when another employee, who was African-American, stacked work behind where Claimant was working which she believed created a safety hazard. Claimant yelled at the co-worker, "What are you doing, boy?" The next day, Claimant was called into Employer's human relations office and told by the human relations representative that the term "boy" was considered by the co-worker to be a racial slur and not to use it again. Before the meeting concluded, Claimant got up, threw her identification badge on the desk and walked out, voluntarily terminating her employment.

Claimant filed for unemployment compensation benefits alleging that she was being harassed and discriminated against and could no longer work in a hostile environment. The Office of UC Benefits denied benefits finding that Claimant voluntarily terminated her employment without a necessitous and compelling reason. Claimant filed an appeal alleging that the co-worker was

(continued...)

(b) In which his unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature, irrespective of whether or not such work is in "employment" as defined in this act.

creating unsafe working conditions and that her supervisor continued to ignore it. Further, when she approached the co-worker about the situation, he tried to make it a racial situation and Employer had done so as well.

Employer did not appear at the hearing before the Referee. Claimant testified regarding the incident which caused her to quit her job stating that work was being put too close behind her and there were safety issues that had been going on for a while. “I said to the young guy that gave us the work – when he placed the thing right behind my table and I had no room to work, I said, what are you doing boy? And he ran and made it, you know – ran around telling everybody I made a racial slur to him.” (January 8, 2009 Notes of Testimony at 5.) Claimant stated that she wasn’t aware that the use of the word “boy” was a racial slur and that she went into her boss’ office and explained to her that she didn’t mean it as a racial slur. But she also explained that she was upset because that co-worker was once again creating an unsafe work condition by putting the skid of work too close behind her where she had no room to work and that she had to take big boxes off the skid and take things out of the boxes. She stated that this particular co-worker had done this several times in the past and that she almost tripped over the skids. She and a different co-worker had brought this up to their boss and they all agreed that it was a safety issue. The boss made the male co-worker take some of the work away.

Claimant stated that when she was called into the human resources office and told that she was not allowed to use the word “boy” in the workplace or anywhere else, that upset her because “for her telling me that I wasn’t allowed to

use the word boy anywhere else. I mean I know if you're in a workplace, and they have rules, that's, their rules, but if I want to call my grandson a boy, I felt I have the right to call him boy." (January 8, 2009 Notes of Testimony at 6-7.) She also felt that they totally neglected dealing with the safety issues that had been pressing. As for quitting, she stated that she took her pass off and threw it on the desk, walked out and got her stuff and left before the end of her shift. She didn't say anything and did not report back for work the next day or talk to Employer about returning to work. To conclude, Claimant stated that she felt she was continuously harassed about the safety issues, she was reprimanded when she used the word "boy," and she felt that she was being discriminated against because she used the word "boy." She also felt that if the word "boy" was a racial slur, employers should let their employees know up front.

The Referee found that Claimant yelled at an African-American co-worker "What are you doing boy" when she believed he stacked work too close to her, and Employer instructed Claimant not to use the term "boy" because it was taken as a racial slur. The Referee also found that during the meeting in which Employer was discussing this issue with Claimant, Claimant threw her pass card on the table, walked out and left before the end of her shift. The Referee denied Claimant benefits because Claimant voluntarily left her employment when she became upset after being instructed by Employer not to use the word "boy" because it was a racial slur. The Referee stated:

The claimant voluntarily left employment because she felt the employer could not tell her what she could or could not say and that the employer did not take her safety concerns seriously. The claimant did not provide

sufficient evidence that the workplace was unsafe or that working conditions were intolerable. The claimant did not make reasonable efforts to preserve the employment relationship and has not proven a necessitous and compelling reason to quit.

(Referee’s January 13, 2009 decision at 2.) Claimant appealed to the Board which affirmed the Referee’s decision, and this appeal followed.²

Claimant contends that the Referee erred in denying her benefits because she had a necessitous and compelling reason to voluntarily quit her employment. She explains that she was repeatedly subjected to unsafe working conditions that she reported to Employer but Employer failed to correct the safety issues, and when Employer no longer wanted to deal with those issues, it launched

² Our scope of review of the Board’s decision is limited to determining whether an error of law was committed, constitutional rights were violated or findings of fact were supported by substantial evidence. *Frazier v. Unemployment Compensation Board of Review*, 833 A.2d 1181 (Pa. Cmwlth. 2003.)

We note that in Claimant’s petition for review, she alleges: “Fair consideration was not given to the fact that my separation was a result of continued, uncorrected safety issues and the associated retaliation for my reporting them to the employer as the company did not attend the hearing and deny my allegations, I dispute the referee’s decision and find it shows partiality to the company. Furthermore it dismisses my right to work in a retaliation free and safe work environment.” Claimant’s statements are without merit. She has provided no evidence of retaliation, impartiality by the Referee or retaliation by Employer. Simply because the Referee did not find in her favor does not support her bald statements. Moreover, Employer has the option to attend or not attend the hearing because it is Claimant who requested the hearing.

Claimant also argues in her “Summary of Argument” that specific details relating to the hearing were not disclosed prior to the hearing which somehow prejudiced her by limiting her ability to appropriately present details and facts necessary to her case. She does not specify which details other than to mention that Employer did not attend the hearing to deny her claims.

an unfounded attack on her personal character.³ Claimant also argues that she made a reasonable effort to preserve her employment by working under the unsafe conditions that even a safety officer deemed unacceptable.

While Claimant alleges that the working conditions were so unbearable due to safety issues and that she actually quit her employment because of them, she made no mention of those problems when she was called into Employer's human resources office and only quit her job after being told not to call a co-worker "boy." The "racial slur" issue had nothing to do with overall safety issues on the job. Had Claimant really been concerned with safety issues, she would not have quit her job before attempting to discuss with Employer the possibility of moving to another part of Employer's facility. Moreover, if safety was a real problem for Claimant, she, as a reasonable person, would have attempted to work out some other arrangement before quitting in anger over an unrelated issue. Here, Claimant did not act with ordinary common sense and did nothing to preserve her employment.

³ When a claimant voluntarily leaves available work and applies for unemployment compensation benefits, the claimant has the burden of establishing that he terminated his employment for cause of a necessitous and compelling nature. *Collier Stone v. Unemployment Compensation Board of Review*, 876 A.2d 485 (Pa. Cmwlth. 2005.) "In order to show a necessitous and compelling reason to quit, the claimant must show that circumstances existed which produced real and substantial pressure to terminate employment; such circumstances would compel a reasonable person to act in the same manner; the claimant acted with ordinary common sense; and the claimant made a reasonable effort to preserve her employment." *Id.* at 484.

Accordingly, the order of the Board is affirmed.

DAN PELLEGRINI, JUDGE

