

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Heather Bossert, :  
 :  
 : Petitioner :  
 : :  
 : No. 560 C.D. 2012 :  
 : v. :  
 : :  
 : Submitted: October 5, 2012 :  
 :  
 : Unemployment Compensation :  
 : Board of Review, :  
 : :  
 : Respondent :

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge  
HONORABLE PATRICIA A. McCULLOUGH, Judge  
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

**OPINION NOT REPORTED**

MEMORANDUM OPINION  
BY JUDGE McCULLOUGH

FILED: January 30, 2013

Heather Bossert (Claimant) petitions, pro se, for review of the February 16, 2012 order of the Unemployment Compensation Board of Review (Board), which affirmed as modified a referee’s determination and held that Claimant is ineligible for benefits under sections 402(a) and 4(t) of the Unemployment Compensation Law (Law).<sup>1</sup> We affirm.

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<sup>1</sup> Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. §§802(a) and 753(t). Section 402(a) of the Law provides, in relevant part, that an employee is ineligible for compensation for any week in which her unemployment is due to failure, without good cause, to accept “suitable work” when offered to her by any employer. 43 P.S. §802(a). In turn, “suitable work” is defined in pertinent part by section 4(t) of the Law to mean “all work which the employee is capable of performing.” 43 P.S. §753(t).

This case returns to us following our decision in LTI Orthotic Prosthetic Center v. Unemployment Compensation Board of Review, (Pa. Cmwlth, No. 861 C.D. 2011, filed January 4, 2012), wherein we vacated the Board's decision and remanded to the Board to make findings as to whether LTI Orthotic Prosthetic Center (Employer) acted in good faith when it offered Claimant reemployment and whether Claimant had good cause to refuse the offer. The facts and procedural history of this case are detailed in LTI Orthotic Prosthetic Center, but for purposes of this appeal, they may be summarized as follows.

Claimant was employed by Employer as a billing clerk; her last date of active employment was June 24, 2010, when she left for medical reasons and remained out of work for maternity leave. Employer granted Claimant eight weeks of maternity leave beginning July 20, 2010, and ending on September 13, 2010. On September 8, 2010, Claimant saw her doctor, and he advised her to remain off work until September 22, 2010, and provided her with a medical excuse. Claimant then notified Employer of the appointment and doctor's order. Employer told Claimant that if she did not return to work by September 13, 2010, she would no longer have a job with the company and Employer would start interviewing for her position. On September 19, 2010, Claimant filed a claim for unemployment compensation benefits.

After receiving notice that Claimant was seeking benefits, Employer's office manager, Linda Schmidt, called Claimant on October 1, 2010. Schmidt told Claimant that her position was still available, even though Employer was in the process of interviewing for the position, and that Employer wanted her to come back to work on October 4, 2010. In response, Claimant stated that she had already been approved for unemployment compensation benefits, and she did not return to work on

October 4, 2010. On October 8, 2010, the local service center issued a determination denying Claimant benefits, and Claimant appealed.

Following a hearing, the referee found that Claimant failed to contact Employer after September 8, 2010, to determine her status and then did not return to work on October 4, 2010, after Employer offered her continuing employment. Accordingly, the referee denied benefits, determining that Claimant voluntarily left work and failed to prove that she had a necessitous and compelling reason to do so.<sup>2</sup>

Claimant appealed, and the Board reversed the referee's decision. The Board determined that Employer discharged Claimant and that she did not engage in willful misconduct.<sup>3</sup> The Board also considered whether Claimant's failure to return to work on September 13, 2010, the date on which Employer told Claimant that she must return to work, constituted a voluntary separation and, if it did, whether Claimant had necessitous and compelling cause for not returning to work at that time. Because Claimant's doctor instructed her to remain out of work until September 22, 2010, the Board concluded that Claimant had a valid reason not to return to work on September 13, 2010. Therefore, the Board granted Claimant unemployment compensation benefits for all weeks after the week ending September 25, 2010.

Employer appealed to this Court, arguing, *inter alia*, that Claimant was ineligible for benefits because she refused its offer to come back to work on October 4, 2010. We first determined that Claimant was not discharged but voluntarily

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<sup>2</sup> Pursuant to section 402(b) of the Law, an individual is ineligible for unemployment compensation benefits if her unemployment is due to voluntarily leaving work without cause of necessitous and compelling nature. 43 P.S. §802(b).

<sup>3</sup> Section 402(e) of the Law states that an employee is ineligible for unemployment compensation benefits for any week in which her unemployment is due to her discharge or temporary suspension from work for willful misconduct connected with her work. 43 P.S. §802(e).

resigned and that Employer's failure to accommodate her medical situation constituted a necessitous and compelling reason for terminating her employment. Id., slip op. at 7-8.

We next observed that even if Claimant had a necessitous and compelling reason to leave her employment, she must also establish good cause for refusing an offer of suitable work in order to be eligible for benefits. Although there was no dispute that Claimant was offered her old job back on October 1, 2010, the Board made no findings regarding whether that offer was made in good faith and whether Claimant had good cause to refuse the offer. Id., slip op. at 8-9. Accordingly, we vacated the Board's decision and remanded to the Board to make additional findings regarding these material facts. Id., slip op. at 9.

On remand, the Board issued the following relevant findings of fact:

\* \* \*

5. After [Employer] received notice that [Claimant] had filed for unemployment compensation benefits it contacted [Claimant] on October 1, 2010, and indicated that she could return to work on October 4, 2010, but that [Employer] was interviewing for the position.

6. [Claimant] did not bother returning to work as of October 4, 2010, as she assumed that [Employer] was not definitely offering her a permanent job.

7. [Claimant] believed that [Employer] would only return her to the old position for a short period of time and then hire someone else permanently.

8. In fact, [Employer] did not replace [Claimant] and was interested in re-hiring [Claimant] as an employee.

9. [Employer] was not acting in bad faith when it told [Claimant] she could return to work as of October 4, 2010.

(Board's Findings of Fact Nos. 5-9.)

Based upon these findings, the Board concluded that Claimant is ineligible for benefits under sections 402(a) and 4(t) of the Law because Employer offered Claimant suitable work when it sought to reemploy her at her previous position on October 4, 2010, and that Claimant did not have good cause for refusing Employer's offer.

On appeal to this Court,<sup>4</sup> Claimant argues that the Board erred in determining that Employer's offer of reemployment was made in good faith. According to Claimant, the job offer was "a ploy to prevent [Claimant] from receiving unemployment benefits or it was a temporary offer of employment until someone else was hired." (Claimant's brief at 10.) For the same reason, Claimant argues that the Board erred in concluding that she did not give good cause to refuse Employer's offer to return to work.

Essentially, Claimant's arguments challenge the Board's findings as unsupported by the evidence. We note that in unemployment cases the Board is the ultimate finder of fact, empowered to resolve conflicts in evidence, assess the credibility of witnesses, and determine the weight to be accorded evidence. Bell v. Unemployment Compensation Board of Review, 49 A.3d 49 (Pa. Cmwlth. 2012). The fact that a claimant may have "given a different version of events, or ... might view the testimony differently than the Board, is not grounds for reversal if substantial evidence supports the Board's findings." Tapco, Inc. v. Unemployment Compensation Board of Review, 650 A.2d 1106, 1108-1109 (Pa. Cmwlth. 1994). Substantial evidence is defined as "such relevant evidence as a reasonable mind

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<sup>4</sup> Our scope of review is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with the law, and whether findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

might accept as adequate to support a conclusion.” Peak v. Unemployment Compensation Board of Review, 509 Pa. 267, 275, 501 A.2d 1383, 1387 (1985). To determine if there is substantial evidence to support the Board’s decision, this Court must examine the testimony in the light most favorable to the prevailing party, giving that party the benefit of all reasonable inferences that can be logically and reasonably drawn therefrom. Taylor v. Unemployment Compensation Board of Review, 474 Pa. 351, 355, 378 A.2d 829, 831 (1977).

Pursuant to section 402(a) of the Law, a claimant is ineligible for benefits when her “unemployment is due to failure, without good cause ... to accept suitable work when offered to [her] by ... any employer ....” The burden is on the claimant to prove that the work offered was not suitable and that she had good cause for refusing it. Rising v. Unemployment Compensation Board of Review, 621 A.2d 1152 (Pa. Cmwlth. 1993). To demonstrate good cause, a claimant must offer real and substantial reasons, as opposed to imaginary or whimsical ones, for refusing suitable work. Eck v. Unemployment Compensation Board of Review, 651 A.2d 689 (Pa. Cmwlth. 1994); Barillaro v. Unemployment Compensation Board of Review, 387 A.2d 1324 (Pa. Cmwlth. 1978).

Here, the Board found that Employer acted in good faith when it offered Claimant reemployment beginning on October 4, 2010. (Board’s Findings of Fact No. 9.) At the hearing, Schmidt testified that she was “surprised” when she received Claimant’s request for unemployment compensation benefits because Claimant’s position was still available. (N.T. at 13.) Schmidt stated that when she called Claimant on October 1, 2010, and offered Claimant reemployment, she told Claimant that Employer would “be happy to have her back.” Id. Claimant admitted that Employer told her that she could return to work on October 4, 2010. (Id. at 17.) Viewing the above testimony in the light most favorable to Employer, we conclude

that it constitutes substantial evidence to support the Board's finding that Employer acted in good faith when it offered Claimant reemployment.

The Board's finding that Claimant did not have good cause to refuse the offer is likewise supported by the evidence. As the Board noted, Claimant simply assumed that Employer was going to lay her off shortly after hiring her. Claimant's concerns about the employment offer were not founded but, rather, were speculative in nature. It is well-settled that mere speculation is insufficient to demonstrate good cause because speculation is inherently imaginative and dependent on future circumstances that may never exist. See Eck. See also Petrill v. Unemployment Compensation Board of Review, 883 A.2d 714 (Pa. Cmwlth. 2005) (concluding that claimant's "feelings of uncertainty" surrounding his decision to retire were "based on speculation rather than on what he actually knew to be true" and reiterating that "mere speculation about one's future job circumstances" is an insufficient reason to forego employment); Shrum v. Unemployment Compensation Board of Review, 690 A.2d 796 (Pa. Cmwlth. 1997) (concluding that a claimant did not have a necessitous and compelling reason for voluntarily terminating an employment relationship because the claimant's "speculative concern" that she may lose her job in the future "was not a real and substantial reason to refuse continued suitable employment as a matter of law"). Therefore, the Board properly concluded that Claimant did not establish a real or substantial reason not to return to her previous position.

Accordingly, we affirm.

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PATRICIA A. McCULLOUGH, Judge

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Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

**ORDER**

AND NOW, this 30<sup>th</sup> day of January, 2013, the February 16, 2012 order of the Unemployment Compensation Board of Review is hereby affirmed.

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PATRICIA A. McCULLOUGH, Judge