



Claimant worked as a full time secretary for American Tax & Advisory Group (Employer) from September 13, 2010, to October 1, 2010. Despite the availability of continuing work with Employer, Claimant did not return to work after October 1, 2010, and informed Employer's office manager that she was resigning.

Claimant thereafter applied for benefits at the Altoona UC Service Center, which found Claimant eligible for benefits pursuant to Section 402(b) of the Law because her voluntary quit "was in violation of a contract with her previous [e]mployer, who threatened to take legal action[,]'" leaving Claimant with no alternative to resolve the situation. Original Record (O.R.) at Item 4. However, the UC Service Center further concluded that Claimant had not earned six times her weekly benefit amount during her short tenure with Employer, and thusly determined that Claimant was ineligible for benefits pursuant to Section 401(f) of the Law, 43 P.S. §801(f).<sup>2</sup> Employer appealed, basing its challenge on the UC Service Center's

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<sup>2</sup> Section 401(f) reads:

Compensation shall be payable to any employe who is or becomes unemployed, and who—

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(f) Has earned, subsequent to his separation from work under circumstances which are disqualifying under the provisions of subsections 402(b), 402(e), 402(e.1) and 402(h) of this act, remuneration for services in an amount equal to or in excess of six (6) times his weekly benefit rate irrespective of whether or not such services were in "employment" as defined in this act. The provisions of this subsection shall not apply to a suspension of work by an

*(Continued....)*

conclusion that Claimant was eligible under Section 402(b) of the Law, and a hearing was scheduled before a Referee.

Despite notice thereof, Claimant failed to appear before the Referee at the scheduled hearing, and the Referee decided the matter on the basis of the documents within the record, as well as the testimony and evidence entered by Employer. The Referee concluded that the absence of any testimony and credible evidence as to the reason Claimant voluntarily left her employment, and an insufficient showing that any such reason was of a necessitous and compelling nature, rendered Claimant ineligible for benefits pursuant to Section 402(b) of the Law. The Referee further concluded that since Claimant's separation from employment was disqualifying, the issue of Claimant's ineligibility pursuant to Section 401(f) of the Law was moot. Accordingly, the Referee denied benefits.

Claimant appealed to the Board. The Board, noting that it could not consider additional evidence provided thereto by Claimant after the hearing before the Referee, adopted the findings and conclusion of the Referee, and affirmed by

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individual pursuant to a leave of absence granted by his last employer, provided such individual has made a reasonable effort to return to work with such employer upon the expiration of his leave of absence.

The UC Service Center noted that prior to the filing of the claim at issue, Claimant had previously been denied benefits under Section 402(b). O.R. at Item 4.

order dated February 2, 2011.<sup>3</sup> Claimant now appeals, *pro se*, from the Board's order.<sup>4</sup>

Claimant argues that the Board erred in concluding that Claimant did not have a reason of necessitous and compelling nature to leave her position with Employer.<sup>5</sup> We disagree.

A determination of whether a claimant's separation from employment was a voluntary resignation or a discharge is made by examining the totality of the facts surrounding the claimant's termination of employment. Pennsylvania Liquor Control Board v. Unemployment Compensation Board of Review, 648 A.2d 124 (Pa.

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<sup>3</sup> In a separate order dated March 9, 2011, the Board denied Claimant's request for a reconsideration of its order affirming the Referee.

<sup>4</sup> This Court's review of the Board's decision is set forth in Section 704 of the Administrative Agency Law, 2 Pa.C.S. §704, which provides that the Court shall affirm unless it determines that the adjudication is in violation of the claimant's constitutional rights, that it is not in accordance with law, that provisions relating to practice and procedure of the Board have been violated, or that any necessary findings of fact are not supported by substantial evidence. See Porco v. Unemployment Compensation Board of Review, 828 A.2d 426 (Pa. Cmwlth. 2003).

<sup>5</sup> Claimant has also presented a second stated issue, asserting that Employer's testimony satisfied Claimant's burden to show a reason of necessitous and compelling nature for her separation from employment. Claimant, however, has failed to address or develop this issue, and has failed to address any specific evidence of Employer in regards to her burden, within her brief to this Court. As such, Claimant has waived this issue. Diehl v. Unemployment Compensation Board of Review, 4 A.3d 816 (Pa. Cmwlth. 2010), petition for allowance of appeal denied, \_\_\_ Pa. \_\_\_, 20 A.3d 1192 (2011) (failure to develop an issue in appellate brief results in waiver of that issue). Notwithstanding Claimant's waiver, we disagree that anything within the evidence presented by Employer could be read as satisfying Claimant's burden (discussed *infra*), in light of the Board's determination that the competent evidence of record did not establish that Claimant had cause of a necessitous and compelling nature to quit. The Board is the ultimate fact finder and is, therefore, entitled to make its own determinations as to witness credibility and evidentiary weight. Peak v. Unemployment Compensation Board of Review, 509 Pa. 267, 501 A.2d 1383 (1985).

Cmwlth. 1994), petition for allowance of appeal denied, 540 Pa. 615, 656 A.2d 120 (1995). The question of whether particular facts constitute a voluntary quit is a question of law fully reviewable by this Court. Chamoun v. Unemployment Compensation Board of Review, 542 A.2d 207 (Pa. Cmwlth. 1988). The claimant bears the burden of proving a necessitous and compelling reason for voluntarily terminating the employment relationship. Mutual Pharmaceutical Company, Inc. v. Unemployment Compensation Board of Review, 654 A.2d 37 (Pa. Cmwlth. 1994).

A determination that a claimant voluntarily quit is not an absolute bar to the recovery of unemployment compensation benefits. Monaco v. Unemployment Compensation Board of Review, 523 Pa. 41, 565 A.2d 127 (1989). A claimant may prove necessary and compelling reasons that could excuse the voluntary action of the claimant. Id. A cause of necessitous and compelling nature is one that results from circumstances which produce pressure to terminate employment which is both real and substantial and which would compel a reasonable person under the circumstances to act in the same manner. Id.

Herein, Claimant argues that her resignation with Employer was necessary because her prior employer, First Senior Financial Group, advised Claimant that she had, in Claimant's words, "signed a marketing agreement & I would be pursued legally if I breached this agreement, to the fullest extent of the law." O.R. at Item 2. In its testimony before the Referee, Employer noted that its

Office Manager was told by Claimant that she was not returning to work because she had signed “a noncompete form with her old employer,” and that Claimant was therefore frightened that her former employer might sue her. O.R., Item 11, Transcript of Testimony at 3. Employer further testified that it informed Claimant of its opinion that that the noncompete/marketing agreement was unenforceable, and that Employer still wanted Claimant to remain in its employment. Id.

Claimant failed to satisfy her burden of proving necessary and compelling reasons that produced pressure to terminate her employment which was both real and substantial, and which would compel a reasonable person under the circumstances to act in the same manner, by not appearing and presenting at the Referee’s hearing any testimony or evidence in her favor – including, and especially, the purported noncompete/marketing agreement upon which Claimant now solely relies.<sup>6</sup> Monaco. Accordingly, this Court can discern no error in our review of the record before us, based upon the Board's findings in its role as fact finder, and its concomitant role in determining credibility and weighing the evidence entered before it. Pennsylvania Liquor Control Board; Peak. This Court must examine the evidence of record in the light most favorable to the party who prevailed before the Board, and to give that party the benefit of all inferences that can be logically and reasonably

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<sup>6</sup> We note that Claimant has not requested a remand proceeding, in order to present testimony and evidence, from either the Board or this Court.

drawn from the testimony. Chapman v. Unemployment Compensation Board of Review, 20 A.3d 603 (Pa. Cmwlth. 2011).

Claimant also attempts to argue that she was confused by incorrect information purportedly given to her by the UC Service Center, and that her involvement in other unemployment proceedings with her prior employer complicated this matter. Notwithstanding Claimant's failure to develop these arguments with any specificity in her brief to this Court,<sup>7</sup> these arguments must fail. While this Court is cognizant of, and sympathetic to, the frequent necessity and incumbent difficulty of *pro se* representation by unemployed claimants in matters such as this, it is axiomatic that a layperson who chooses to represent herself in a legal proceeding must assume the risk that her lack of expertise and legal training may prove to be her undoing. Finfinger v. Unemployment Compensation Board of Review, 854 A.2d 636 (Pa. Cmwlth. 2004).

Accordingly, we affirm.

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JAMES R. KELLEY, Senior Judge

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<sup>7</sup> As noted previously, Claimant's failure to develop these arguments constitutes a waiver thereof. Diehl.

