

After Claimant's last day of work, she applied at the service center for unemployment compensation benefits. The service center denied her request for benefits and Claimant appealed. A hearing was then conducted before a referee, at which Claimant and Employer presented evidence. The referee determined that Claimant voluntarily left her work without cause of a necessitous and compelling nature and denied Claimant benefits.

Claimant appealed to the Board, which made the following findings of fact:

1. The claimant was employed with Distributed Network Software from September 11, 2008 through October 23, 2008 as an office manager at \$13.00 an hour.
2. The claimant did not like the owner's management style and considered him to be rude.
3. Another employee who resigned from her employment with the employer several weeks before the claimant started her employment had the same opinion of the owner.
4. When the former employee submitted her resignation letter to the owner he read it and then shredded it in her presence.
5. On October 23, 2008, the claimant and the owner met in the owner's office to discuss her work.

(b) In which his unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature

6. A disagreement occurred and the owner accused the claimant of yelling at him, repeatedly saying: "Don't yell at me, I'm not your husband."
7. The claimant denied that she was yelling at the owner.
8. The claimant was not, in fact, yelling at the owner.
9. The claimant was standing near the door to the owners' office at the time.
10. The owner then walked over to the claimant and said: "go, go, go, go."
11. The owner then physically pushed her out the door.
12. The owner shut the door to his office behind the claimant.
13. The claimant quit her position at the end of the day because the owner physically pushed her.
14. The owner denied ever touching the claimant.

(Board's decision at p. 1, 2.)

Based on the above findings, which were supported by the testimony of Claimant and her witness, the Board concluded that Claimant met her burden of proving that she had a necessitous and compelling cause for quitting her position. Specifically, the Board concluded that the owner physically pushed Claimant out of his office and that such behavior was

completely inappropriate and that Claimant was therefore, not ineligible for benefits under Section 402(b) of the Law. This appeal followed.²

On appeal, Employer argues that Claimant did not meet her burden of proving that she voluntarily left her employment for necessitous and compelling reasons.

When a claimant has voluntarily terminated her employment, she has the burden of demonstrating that her cause for doing so was of a necessitous and compelling nature. Korpics v. Unemployment Compensation Board of Review, 833 A.2d 1217 (Pa. Cmwlth. 2003). To show a necessitous and compelling reason to quit, a claimant must show that circumstances existed that produced real and substantial pressure to terminate employment, that such circumstances would compel a reasonable person to act in the same manner, that the claimant acted with ordinary common sense and that the claimant made a reasonable effort to preserve employment. Comitalo v. Unemployment Compensation Board of Review, 737 A.2d 342 (Pa. Cmwlth. 1999).

In this case, the Board found Claimant's testimony that the owner physically pushed her out of his office, to be credible. Credibility issues and evidentiary weight are within the discretion of the Board. Peak v. Unemployment Compensation Board of Review, 509 Pa. 267, 501 A.2d 1383 (1985). Employer argues, however, that while the Board is free to reject the referee's credibility determination, such is only proper where there

² This court's review is limited to determining whether constitutional rights were violated, whether an error of law was committed and whether necessary findings are supported by substantial evidence. Central Dauphin School District v. Unemployment Compensation Board of Review, 893 A.2d 831 (Pa. Cmwlth. 2006).

is conflicting evidence and the Board's reasons for reversing are plain from the record and adequate for judicial review. Spencer v. Unemployment Compensation Board of Review, 504 A.2d 991 (Pa. Cmwlth. 1986), petition for allowance of appeal denied, 514 Pa. 651, 524 A.2d 497 (1987), cert. denied, 484 U.S. 915 (1987).

We observe in this case, that there was conflicting testimony. Claimant testified that the owner pushed her out of his office. Owner testified that he did not push Claimant out of his office. As recognized by Employer, the Board is free to make its own credibility determinations and here the Board chose to credit the testimony of Claimant. In Peak, which was decided after Spencer, the Supreme Court implicitly rejected the suggestion that where there is conflicting evidence, the Board is required to indicate its reason for overturning the referee's credibility determination. Carter v. Unemployment Compensation Board of Review, 629 A.2d 212, 216 (Pa. Cmwlth. 1993). "Peak held a simple statement by the Board that 'it chose to believe the employer not the employee' was plain enough reason to allow an adequate appellate review." Id.³

³ We observe that in instances where only one party presents testimony which is credited by the referee, the Board may not thereafter disregard such without stating its reasons for doing so. Treon v. Unemployment compensation Board of Review, 499 Pa. 455, 453 A.2d 960 (1982). In Treon, the only testimony presented was that of the claimant, which was consistent and uncontradicted. Based on the claimant's testimony the referee made four findings of fact. On appeal, the Board adopted three of the findings but did not explain why it did not adopt the fourth. The Supreme Court stated that the Board has the right to disbelieve a party's testimony, even though that testimony was uncontradicted. Id. at 460, 453 A.2d 962. "If particular findings are inconsistent, incredible or unsupported by the evidence, the Board must so indicate. The Board may not simply disregard findings made by the referee which are based upon consistent and *Footnote continued on next page ...*

Employer also appears to argue that the real reason that Claimant quit her job was because she was dissatisfied with her working conditions and such does not amount to a necessitous and compelling reason to quit. Employer's argument, however, is based upon its preferred version of the facts and ignores those found by the Board. Borough of Coaldale v. Unemployment Compensation Board of Review, 745 A.2d 728 (Pa. Cmwlth. 2000).

As previously stated, the Board credited the testimony of Claimant that the owner physically pushed her out of his office and that such was the reason for her quit. An employee who is subjected to abusive conduct and harassment has a necessitous and compelling cause for voluntarily terminating employment. Whisner v. Unemployment Compensation Board of Review, 446 A.2d 336 (Pa. Cmwlth. 1982).⁴

uncontradicted testimony without stating its reason for doing so." Id. at 461, 453 A.2d at 962.

In this case, unlike Treon, both Claimant and Employer presented testimony. The testimony was contradictory as to the reason why Claimant left her employment. Because of the contradictory testimony the Board was not required to state its reasons for crediting Claimant's testimony.

⁴ Employer also maintains that the Board's findings of fact nos. 3 and 4 are not relevant to the present matter. The Board considered such findings which described the owner's demeanor with another employee to be relevant to the manner in which the owner treated Claimant. Regardless, however, such findings, at most, were harmless error, for the Employer's abusive and harassing conduct of Claimant provided a necessitous and compelling cause for Claimant to voluntarily terminate the employment relationship.

In accordance with the above, the decision of the Board is affirmed.

JIM FLAHERTY, Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Distributed Network	:	
Software, LLC,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 643 C.D. 2009
	:	
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

ORDER

Now, March 12, 2010, the order of the Unemployment Compensation Board of Review, in the above-captioned matter, is affirmed.

JIM FLAHERTY, Senior Judge