

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Carol S. Bangura, :
Petitioner :
v. :
Unemployment Compensation Board :
of Review, :
Respondent :

: No. 65 C.D. 2008
: Submitted: August 15, 2008

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE PELLEGRINI

FILED: September 9, 2008

Carol S. Bangura (Claimant) appeals *pro se* from a decision of the Unemployment Compensation Board of Review (Board) denying her appeal from an order of the Referee denying her unemployment compensation benefits. Because we agree with the Board that Claimant failed to establish a necessitous and compelling reason to quit her employment or, in the alternative, that she was discharged, we affirm.

Claimant was employed by the Pennsylvania Human Relations Commission (Employer) from February 26, 2007, through August 22, 2007, when she left work. Unemployment compensation benefits were denied by the

Department of Labor and Industry (Department) because it found that she voluntarily quit. Claimant appealed, and a hearing was held before a Referee.

Before the Referee, Claimant testified that she was issued an Employee Performance Review (EPR) from her supervisor, Debi Riggs-Shaw (Supervisor Riggs-Shaw), in August 2007, and that she was dissatisfied with her review in one area. Claimant requested a meeting to discuss the matter with Employer. A meeting was held on August 7, 2007, at which Claimant and her union steward, Riggs-Shaw, Carlene Neal (Regional Director Neal) and Human Resources Director Richard Fairfax (Director Fairfax) were present. She testified that at the meeting, she raised her concerns at being rated as “needs improvement” in the “interpersonal relations-equal employment opportunity” category of the EPR because she felt she had not been given credit for some of the work she performed. During the meeting, Claimant’s union steward attempted to question Supervisor Riggs-Shaw, Claimant’s immediate supervisor, as to how she arrived at the conclusions for Claimant’s EPR. At that point, Claimant testified that she and Supervisor Riggs-Shaw began to speak over one another, and Supervisor Riggs-Shaw stood and pointed her finger at Claimant loudly, telling her to wait “just a minute, let me [Riggs-Shaw] talk.” Claimant testified that Regional Director Neal remarked that it appeared as though she enjoyed Supervisor Riggs-Shaw’s reaction and that she then left the meeting stating that she was glad everyone saw Supervisor Riggs-Shaw point her finger and speak loudly to her.

Claimant testified that following the meeting, she sent an e-mail to Regional Director Neal stating that she was going to file a formal complaint

against Employer because of the comments made to her by Supervisor Riggs-Shaw and Regional Director Neal at the meeting. Claimant testified that she requested that she be moved from the unit immediately because she considered the finger pointing and being loudly spoken to threatening and was now afraid of Supervisor Riggs-Shaw. Claimant then took an approved leave from work from August 8, 2007, through August 21, 2007.

Claimant testified that she left work on August 22, 2007, because she felt that she had been physically accosted by her supervisor at the EPR meeting, was subject to harassment by her supervisor, and was dissatisfied that her request to change supervisors was not granted as she felt she could no longer work under the supervision of Supervisor Riggs-Shaw. She also testified that to continue working for Supervisor Riggs-Shaw would aggravate her anxiety and migraine problems of which she testified Employer was aware. Moreover, Claimant testified that she had received an e-mail that informed her that if she exceeded her annual leave, she would be taken off payroll, which she considered a termination.

Regional Director Neal testified that at the August 7, 2007 meeting, after Supervisor Riggs-Shaw loudly told Claimant to let her finish speaking, Claimant grinned and asked if everyone present saw Supervisor Riggs-Shaw's action. Regional Director Neal then remarked to Claimant that it looked like she had enjoyed the confrontation. Regional Director Neal testified that it was at this point that Claimant left the meeting. After the meeting concluded, Regional Director Neal testified that Claimant sent e-mails to her and Supervisor Riggs-Shaw for much of the day, commenting on the meeting and requesting a transfer

because she was afraid of Supervisor Riggs-Shaw. Regional Director Neal stated that while Claimant was on approved leave, she informed her that she had received her transfer request, but that such a request had to be evaluated consistent with Employer's standards and that in the meantime she would remain under the supervision of Riggs-Shaw. She also testified that while on leave, she sent Claimant an e-mail notifying her that she was close to using up her annual leave and that if she were to exceed her available annual leave, she would be removed from the payroll. The e-mail did not inform Claimant that she was to be terminated, and Regional Director Neal testified that Claimant was never in danger of losing her job. Supervisor Riggs-Shaw and Director Fairfax's testimony supported Regional Director Neal's testimony.

The Referee found that the record did not show that Claimant had been physically accosted by Supervisor Riggs-Shaw, that continuing work was available had she not chosen to quit, and that she failed to pursue a formal grievance with her union about her dissatisfaction prior to her resignation. The Referee held that Claimant had failed to prove that she had a necessitous and compelling reason for voluntarily leaving her employment and, therefore, was ineligible for unemployment compensation benefits. Claimant then appealed to the Board, which affirmed the Referee's decision adopting its findings of fact and finding that Claimant was not credible in her fear of Supervisor Riggs-Shaw and that she did not credibly establish that she had a medical reason which would require a change in her work position. This appeal followed.¹

¹ Our scope of review is limited to determining whether Claimant's constitutional rights have been violated, whether an error of law has been committed, or whether substantial evidence **(Footnote continued on next page...)**

On appeal, Claimant maintains that the Board overlooked her testimony and evidence, which she argues would support her claim of constructive discharge and a hostile work environment. As the testimony offered by both sides in this matter is largely consistent, the issue is whether as a matter of law that testimony supports a finding that either Claimant had a necessitous and compelling reason² to leave her employment or, alternatively, that she was discharged.

As to whether Claimant made out that she had a necessitous and compelling reason to quit, Supervisor Riggs-Shaw's pointing her finger at Claimant during a heated discussion does not rise to the level of an actual physical threat or abusive conduct, especially when Claimant's response to Supervisor Riggs-Shaw's action was to grin and comment "did you see that?" Simply, resentment of a reprimand or personality conflicts do not amount to a necessitous and compelling reason to quit one's employment. *Spadaro v. Unemployment Compensation Board of Review*, 850 A.2d 855 (Pa. Cmwlth. 2004). Moreover, as

(continued...)

exists to support the findings of fact. *Baldauf v. Unemployment Compensation Board of Review*, 854 A.2d 689 (Pa. Cmwlth. 2004). The Board's findings are conclusive on appeal provided the record taken as a whole contains substantial evidence to support those findings. *Guthrie v. Unemployment Compensation Board of Review*, 738 A.2d 518 (Pa. Cmwlth. 1999).

² In order to prove a necessitous and compelling reason for quitting employment, a claimant must establish that circumstances existed which produced real and substantial pressure to terminate employment, that like circumstances would force a reasonable person to quit, that the claimant acted with ordinary common sense, and that the claimant made a reasonable effort to preserve employment. *The Western and Southern Life Insurance Company v. Unemployment Compensation Board of Review*, 913 A.2d 331 (Pa. Cmwlth. 2006). Mere dissatisfaction with working conditions is not a necessitous and compelling reason to terminate one's employment.

the Board found, the proffered testimony did not show that sufficient evidence existed to prove that her working conditions aggravated her medical condition to a degree that she had a reason to quit due to any purported medical condition. Because there was insufficient evidence to support the conclusion that she was harassed or suffered from physical intimidation, the Board properly concluded that Claimant failed to establish that she has a necessitous and compelling reason under Section 402(b)³ to voluntarily terminate her employment.

Claimant also appears to argue that the e-mail she received while on leave which informed her that if she used up her available leave time she would be removed from the payroll was a discharge. In order for an action to be interpreted as a “discharge,” the language must possess the immediacy and finality of a firing. *Fishel v. Unemployment Compensation Board of Review*, 674 A.2d 770 (Pa. Cmwlth. 1996). In the present case, the e-mail itself did not say that Claimant was going to be discharged or that there would be no work available to her. It merely informed her that if she were to exhaust her available leave time and then request more time off, she would be taken off payroll. All that e-mail did was state the obvious – if one does not have available leave, one will not be paid. Moreover, Regional Director Neal credibly testified that work was available and that Claimant was in no danger of being discharged. Because Claimant failed to prove that Employer discharged her, the Board properly found that she was ineligible for unemployment compensation benefits.

³ Unemployment Compensation Law (Law), Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §802(b).

Accordingly, the order of the Board is affirmed.

DAN PELLEGRINI, JUDGE

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ORDER

AND NOW this 9th day of September, 2008, the Order of the Unemployment Compensation Board of Review of December 31, 2007, at No. B-468222, is affirmed.

DAN PELLEGRINI, JUDGE