

Claimant was employed by the School District of Philadelphia (Employer) as a full time teacher from September 9, 2002, through May 5, 2008. In October 2007, Claimant took a leave of absence to care for her mother who was terminally ill. Claimant's mother passed away in February 2008, and Claimant did not return to work. In April 2008, Employer advised Claimant that she had to return to work, resign or be considered out on unauthorized leave. Claimant resigned. She then applied to be restored to her position for the following school year. When her application was denied by Employer, Claimant applied for unemployment compensation benefits. The Unemployment Compensation Service Center denied her application, and Claimant appealed.

At a hearing before a Referee, Claimant testified that she took a leave of absence to care for her mother. After her mother died, Claimant did not return to work because of her medical condition. Claimant provided Employer with a doctor's letter that Claimant should remain on leave until the Fall 2008 school term. Claimant, however, did not ask Employer for a medical leave of absence or seek her union's assistance in this regard. When questioned why she did not seek a medical leave of absence, Claimant responded that "it wasn't offered ... [and] I honestly didn't think of it...." Notes of Testimony at 8 (N.T.____).

Ethel McLane, a benefits services specialist for the school district, testified on behalf of Employer. McLane explained that after Claimant was denied restoration to a full time position, she could have applied for work as a substitute teacher or for a long term teaching position. Claimant did neither.

After considering the evidence, the Referee found two bases for denying Claimant unemployment compensation benefits. First, the Referee

concluded that in failing to request a medical leave of absence, Claimant did not act with ordinary common sense to preserve her employment, rendering her ineligible for unemployment compensation benefits.² Second, the Referee concluded that because Claimant did not seek work as a substitute teacher in the upcoming school year, her application for unemployment benefits was barred. The Board adopted the findings of the Referee as its own and affirmed the determination of the Referee.

On appeal, Claimant contends that several of the Board's Findings of Fact are not supported by substantial evidence.³ Claimant argues that "erroneous statements [were] presented as facts in the appeal hearing." Claimant brief at 6. Specifically, she contends that there is no evidence (1) that she was a member of a union, thereby making erroneous the finding that the union could have assisted her in seeking a medical leave of absence; (2) that Employer had offered her three

² A claimant bears the burden of proving a necessitous and compelling reason for voluntarily terminating the employment relationship. *Nolan v. Unemployment Compensation Board of Review*, 797 A.2d 1042, 1046 (Pa. Cmwlth. 2002). A claimant must establish both that he acted with ordinary common sense in quitting his job and that he had made a reasonable effort to preserve his employment. *Spadaro v. Unemployment Compensation Board of Review*, 850 A.2d 855, 860 (Pa. Cmwlth. 2004). In cases where employment is terminated for medical reasons, the claimant may meet his burden by showing adequate health reasons existed to justify the voluntary termination, communicating such reasons with the employer and being available for work if reasonable accommodations can be made. *Genetin v. Unemployment Compensation Board of Review*, 499 Pa. 125, 451 A.2d 1353 (1982).

³ The scope of appellate review in unemployment compensation cases is limited to determining whether constitutional rights were violated, whether errors of law were committed or whether findings of fact are supported by substantial evidence. *Grieb v. Unemployment Compensation Board of Review*, 573 Pa. 594, 599, 827 A.2d 422, 425 (2003). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Morehead v. Civil Service Commission of Allegheny County*, 769 A.2d 1233, 1238 (Pa. Cmwlth. 2001.)

options, *i.e.*, to return to work, resign or go out on unauthorized leave, when only two options were offered because she was already out on unauthorized leave; (3) that she had any options other than resignation; or (4) that she could have been hired as a substitute teacher for the following school year. These claims lack merit.

Claimant herself testified that she was a member of the teacher's union; indeed, she stated she "had to be." N.T. at 9. Claimant also testified that Employer offered her the option to "[e]ither return to work, resign, [or] otherwise I'm out on unauthorized leave." N.T. at 7. Additionally, when questioned about the option of requesting a medical leave of absence, Claimant admitted that she did not pursue the option, stating "I honestly didn't think of it..." N.T. 7 at 8. Finally, Employer's witness testified that Claimant could have, but did not, apply for substitute work or a long term assignment, and this testimony was not rebutted by Claimant.⁴

In an unemployment compensation case, the Board is the ultimate fact finder and is empowered to make credibility determinations. *Peak v. Unemployment Compensation Board of Review*, 509 Pa. 267, 276-277, 501 A.2d 1383, 1388-1389 (1985). Questions of credibility and the resolution of evidentiary conflicts are within the discretion of the Board and are conclusive on appeal as long as the record, taken as a whole, contains substantial evidence to support the

⁴ Claimant relies on a conversation she had with Ms. McLane after the hearing and an "Exhibit D" attached to her brief as support for her contention that school policy barred her from performing substitute work. This evidence is not part of the certified record and may not be considered on appeal. It is beyond cavil that an appellate court is limited to considering only those facts which have been duly certified in the record on appeal. *Pugh v. Workers' Compensation Appeal Board (Transpersonnel, Inc.)*, 858 A.2d 641, 645 n.7 (Pa. Cmwlth. 2004).

findings. *Id.* Because the Board's findings are supported by credited testimony of record, they are conclusive on appeal and not subject to judicial reevaluation.

Accordingly, the order of the Board is affirmed.

MARY HANNAH LEAVITT, Judge

