IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Maria C. Michalski, Petitioner	:	
v.	:	No. 748 C.D. 2011
Unemployment Compensation Board of Review, Respondent	:	Submitted: September 9, 2011

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY FILED: October 25, 2011

Maria C. Michalski (Claimant) petitions for review of the order of the Unemployment Compensation Board of Review (Board) affirming the decision of a Referee denying Claimant benefits pursuant to the provisions of Section 402(b) of the Unemployment Compensation Law (Law).[1] We affirm.

[1] Act of December 5, 1936, Second Ex. Sess. P.L. (1937) 2897, as amended, 43 P.S. § 802(b). Section 402(b) of the Law provides, in pertinent part:

> An employe shall be ineligible for compensation for any week—
>
> * * *
>
> (b) In which his unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature, irrespective of whether or not such work is "employment" as defined in this act.

Claimant filed a claim for unemployment compensation benefits with the Altoona UC Service Center upon the termination of her employment as an administrative assistant for Youth Services Agency (Employer). The Service Center representative issued a determination denying her benefits pursuant to Section 402(b) of the Law on the basis that she had voluntarily quit her employment with Employer, that she had not demonstrated a necessitous and compelling reason for leaving her job, and that she did not exhaust all other alternatives prior to quitting her job.

Claimant appealed this determination and a hearing was conducted before a Referee on January 25, 2011. See N.T. 1/25/11[2] at 1-15. On January 25, 2011, the Referee issued a Decision/Order in which she made the following relevant findings of fact: (1) Claimant learned that her daughter had been offered a six-week temporary teaching position; (2) Claimant's daughter had two children and no arranged childcare; (3) Claimant e-mailed Employer and requested time off but did not notify Employer that the time off would be temporary; (4) Employer told Claimant that she was approved for a 12-week leave under the Family Medical Leave Act (FMLA)[3]; (5) Claimant told Employer that she was not sure that she could continue to work her regular schedule after the 12 weeks of leave and that she was, therefore, going to resign her employment; and (6) Claimant did not ask Employer whether she could take less time off under FMLA or whether she could take intermittent FMLA. Referee's Decision at 1.

Based on the foregoing, the Referee concluded:

> In the instant case, a personal choice to provide care for children is not a necessitous and compelling reason to

[2] "N.T. 1/25/11" refers to the transcript of the hearing conducted before the Referee.

[3] 29 U.S.C. §§ 2601-2654.

> resign. The claimant's grandchildren had childcare from their mother, but the family made the decision that the mother would accept the job offer and the claimant would watch the children until other arrangements could be made. However, the claimant did not request only a week off. Instead, she did not specify her needs, and only inquired about her options. The employer approved her for 12 weeks of leave under FMLA, but the Claimant did not investigate whether she could use only some of the approved time, or use it intermittently. As the claimant did not have a necessitous and compelling reason to resign, and did not make all reasonable efforts to preserve her employment before she resigned, she is ineligible for benefits under Section 402(b) of the Law.

Referee's Decision at 2. Accordingly, the Referee issued an order affirming the Service Center's determination and denying Claimant benefits under Section 402(b) of the Law. Id.[4]

On June 29, 2010, Claimant appealed the Referee's order to the Board. On September 2, 2010, the Board issued a Decision and Order affirming the Referee's determination that Claimant was ineligible for benefits pursuant to Section 402(b) of the Law by expressly adopting and incorporating the Referee's findings and conclusions. Claimant then filed the instant petition for review.[5,6]

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[4] The Referee's order also stated that Claimant had a non-fault overpayment under Section 804(b) of the Law, 43 P.S. § 874(b). However, the Referee's determination in this regard is not at issue in the instant appeal.

[5] This Court's scope of review in an unemployment compensation appeal is limited to determining whether an error of law was committed, whether constitutional rights were violated, or whether necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa.C.S. § 704; Hercules, Inc. v. Unemployment Compensation Board of Review, 604 A.2d 1159 (Pa. Cmwlth. 1992). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Wheelock Hatchery, Inc. v. Unemployment Compensation Board of Review, 648 A.2d 103 (Pa. Cmwlth. 1994).

[6] The Board denied Claimant's request for reconsideration of its order by order dated May 9, 2011.

The sole claim raised by Claimant in this appeal is that the Board erred in affirming the Referee's determination that she is ineligible for benefits pursuant to Section 402(b) of the Law. More specifically, Claimant cites to her version of the events regarding the separation of her employment from Employer to support the conclusion that she was fired by Employer.

We initially note that, in general, a claimant has the burden of proving entitlement to unemployment compensation benefits. Jennings v. Unemployment Compensation Board of Review, 675 A.2d 810 (Pa. Cmwlth. 1996). In a voluntary quit case, this Court must first decide whether the facts surrounding the claimant's separation from employment constitutes a voluntary resignation or a discharge. Charles v. Unemployment Compensation Board of Review, 552 A.2d 727 (Pa. Cmwlth. 1989). Where a claimant without any action by employer resigns, leaves, or quits employment that action amounts to a voluntary quit for purposes of unemployment compensation benefits. Monaco v. Unemployment Compensation Board of Review, 523 Pa. 41, 565 A.2d 127 (1989); Fishel v. Unemployment Compensation Board of Review, 674 A.2d 770 (Pa. Cmwlth. 1996); Charles. Whether a termination is a voluntary quit is a question of law subject to this Court's review. Dopson v. Unemployment Compensation Board of Review, 983 A.2d 1282 (Pa. Cmwlth. 2009).

A claimant who voluntarily quits her employment also bears the burden of proving that the termination was caused by reasons of a necessitous and compelling nature. Du-Co Ceramics Company v. Unemployment Compensation Board of Review, 546 Pa. 504, 686 A.2d 821 (1996); Taylor v. Unemployment Compensation Board of Review, 474 Pa. 351, 378 A.2d 829 (1977). Although the Law does not define what

constitutes "cause of a necessitous and compelling nature", our Supreme Court has described it as follows:

> "[G]ood cause" for voluntarily leaving one's employment (i.e. that cause which is necessitous and compelling) results from circumstances which produce pressure to terminate employment that is both real and substantial, and which would compel a reasonable person under the circumstances to act in the same manner.

Taylor at 358-359, 378 A.2d 832-833.

In establishing that a voluntary quit was reasonable, a claimant must establish that she acted with ordinary common sense in quitting her job, that she made a reasonable effort to preserve her employment, and that she had no other real choice than to leave her employment. PECO Energy Company v. Unemployment Compensation Board of Review, 682 A.2d 58 (Pa. Cmwlth. 1996). If a claimant does not take all necessary and reasonable steps to preserve her employment, she has failed to meet the burden of demonstrating necessitous and compelling cause. Id.

As noted above, in this case, the Board adopted the following relevant findings of fact: (1) Claimant e-mailed Employer and requested time off but did not notify Employer that the time off would be temporary; (2) Employer told Claimant that she was approved for a 12-week leave under the FMLA; (3) Claimant told Employer that she was not sure that she could continue to work her regular schedule after the 12 weeks of leave and that she was, therefore, going to resign her employment; and (4) Claimant did not ask Employer whether she could take less time off under FMLA or whether she could take intermittent FMLA.

The Board is the ultimate fact-finding body in unemployment matters and is empowered to resolve conflicts in evidence, to determine what weight is to be accorded the evidence, and to determine the credibility of witnesses. Peak v.

Unemployment Compensation Board of Review, 509 Pa. 267, 501 A.2d 1383 (1985); Wright v. Unemployment Compensation Board of Review, 347 A.2d 328 (Pa. Cmwlth. 1975). The Board's findings of fact are conclusive on appeal so long as the record, taken as a whole, contains substantial evidence to support those findings. Penflex, Inc. v. Bryson, 506 Pa. 274, 485 A.2d 359 (1984). Our duty as an appellate court is to examine the testimony in a light most favorable to the party in whose favor the Board has found, giving that party the benefit of all inferences that can logically and reasonably be drawn from the testimony, to see if substantial evidence for the Board's conclusions exists. Id.

Thus, in this case, the Board was free to weigh the evidence, and to credit the evidence supporting the conclusion that Claimant voluntarily quit her employment. Peak; Wright. In addition, when viewed in a light most favorable to Employer, there is ample substantial evidence supporting the Board's findings in this regard. See N.T. 1/25/11 at 8-9, 10, 12-14; Service Center Exhibit 12. As a result, these findings are conclusive in the instant appeal. Penflex, Inc.[7]

Moreover, these findings support the Board's determination that Claimant is not eligible for benefits pursuant to Section 402(b) of the Law as she was not fired by Employer, and she voluntarily terminated her employment with Employer for a cause that was neither necessitous nor compelling.[8] As a result, Claimant's allegation of error in this appeal is patently without merit.

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[7] Claimant's evidence that she did not voluntarily abandon her employment does not compel the conclusion that the Board's determination in this regard should be reversed. See, e.g., Tapco, Inc. v. Unemployment Compensation Board of Review, 650 A.2d 1106, 1108-1109 (Pa. Cmwlth. 1994) ("[T]he fact that Employer may have produced witnesses who gave a different version of events, or that Employer might view the testimony differently than the Board, is not grounds for reversal if substantial evidence supports the Board's Findings.").

[8] See, e.g., Shaffer v. Unemployment Compensation Board of Review, 928 A.2d 391, 394

(Continued....)

Accordingly, the order of the Board is affirmed.

JAMES R. KELLEY, Senior Judge

(Pa. Cmwlth. 2007) ("The record here reveals that Claimant investigated only *one* daycare facility for her daughter, which she determined was not a cost effective alternative, but Claimant did not offer evidence that she looked into any *other* childcare arrangements. Moreover, Claimant offered no evidence that she explored alternative arrangements for her son's before and after school care. Under these circumstances, we conclude that Claimant did not establish that she made a concerted effort to find alternative childcare arrangements. Therefore, the UCBR did not err in holding that Claimant failed to meet her burden of proving that she had cause of a necessitous and compelling reason to voluntarily terminate her employment.") (citation omitted and emphasis in original).

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O R D E R

AND NOW, this 25th day of October, 2011, the order of the Unemployment Compensation Board of Review, dated March 30, 2011 at No. B-515447, is AFFIRMED.

JAMES R. KELLEY, Senior Judge