

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Martin F. Redanauer,	:	
Petitioner	:	
	:	
v.	:	No. 829 C.D. 2009
	:	Submitted: November 20, 2009
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE JOHNNY J. BUTLER, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FLAHERTY

FILED: February 24, 2010

Martin F. Redanauer (Claimant) petitions *pro se* for review from an order of the Unemployment Compensation Board of Review (Board), which affirmed the decision of a referee denying Claimant’s application for unemployment compensation benefits pursuant to Section 402(b) of the Unemployment Compensation Law (Law), due to his voluntarily leaving work without cause of a necessitous and compelling nature.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 that an employee shall be ineligible for compensation for any week:

Claimant's last day of employment with Sure Fold Company, Inc. (Employer) was December 8, 2008. Claimant thereafter applied for benefits, which application was denied by the service center. Claimant appealed and a hearing was then conducted before a referee. Only Claimant was present at the referee's hearing, after which the referee made the following findings of fact:

1. The claimant was last employed by Sure Fold Company Inc, as a cutter earning \$18.35 per hour. He was employed for 23 years, and his last date of work was December 8, 2008.
2. On the above date, the claimant discovered that a less senior employee worked overtime on Sunday, December 7, 2008.
3. The claimant became upset, and walked off the job.
4. The claimant did not contact the employer further or return to work after that date.

(Referee's decision at p.1.)

Based on the above, the referee determined that Claimant voluntarily left his employment because a less senior employee had been given overtime. The referee concluded that Claimant's dissatisfaction with the situation did not rise to the level of necessity or compulsion as required by the Law. As such, the referee denied benefits.

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

Claimant appealed to the Board which affirmed the decision of the referee and also adopted the referee's findings and conclusions. This appeal followed.²

On appeal, Claimant, in essence, argues that he quit his employment, not for the reason found by the Board, but because Employer had quit paying its insurance premiums, thus leaving Claimant without insurance coverage.³ Here, the Board's determination that Claimant quit because he was dissatisfied that another employee had been given overtime is supported by Claimant's own testimony.

Specifically, when questioned by the referee as to what happened that caused Claimant to leave his employment, Claimant responded:

C That's right. I come in and here, they had him [co-worker] work Sunday. Double ...

R So you found out that he worked overtime.

C Overtime. Double time, and then he's [sic] ends up standing around Monday for me to give

² Where, as here, the burdened party is the only party to present evidence and does not prevail, our review is limited to determining whether an error of law was committed and whether there was a capricious disregard of competent evidence. Mauro v. Unemployment Compensation Board of Review, 751 A.2d 276 (Pa. Cmwlth. 2000). The Board capriciously disregards evidence when it willfully and deliberately disregards competent evidence which a person of ordinary intelligence could not possibly avoid in reaching the result. Fitzgerald v. Unemployment Compensation Board of Review, 714 A.2d 1126 (Pa. Cmwlth. 1998), petition for allowance of appeal denied, 568 Pa. 650, 794 A.2d 364 (1999).

³ The Board states that Claimant's brief does not comply with Pa. R.A.P. 2119(a) which requires that the argument section of the brief be divided into as many parts as there are questions. However, in this case, such does not preclude this court from conducting meaningful appellate review.

him work. And I didn't think that, you know, I thought that was unfair

R So what did you do?

C ... I said well that ain't right, and I ain't going to stand around when there's other stuff to do and wait for me. Or you could give me a hand and he didn't want to do it.

R You got upset?

C Yes. I take medication for blood pressure. I got upset and I walked, but that wasn't the main thing. That was just (inaudible).

R Well, what was the main thing?

C Well ...

R Didn't you walk off the job?

C Yes, yes.

R Is this a union shop?

C No, no.

R Well did you try to contact

C No.

R Your Employer once you cooled down and calmed down?

C No. I didn't call nobody.

(Transcript of testimony at p. 5-7.)

By Claimant's own admission, he was unhappy that a co-worker had been given overtime and walked off the job. Such testimony by Claimant supports the Board's findings.

When a claimant voluntarily terminates employment, the claimant has the burden of proving that his cause for doing so was of a necessitous and compelling nature. Taylor v. Unemployment Compensation Board of Review, 474 Pa. 351, 355, 378 A.2d 829, 831 (1977). Mere dissatisfaction with work assignments is not cause of a necessitous and compelling nature for an employee's voluntary quit. Snyder v. Unemployment Compensation Board of Review, 421 A.2d 530 (Pa. Cmwlth. 1980). A claimant must also prove that he acted with ordinary common sense in quitting and made a reasonable effort to preserve the employment relationship. Stiffler v. Unemployment Compensation Board of Review, 438 A.2d 1058 (Pa. Cmwlth. 1982). Here, Claimant never alerted Employer he was dissatisfied that his co-worker received overtime, and made no attempt to preserve his employment, but merely walked off the job.

Moreover, we also note that Claimant never testified that he left work because of problems with Employer's insurance coverage. In fact, Claimant testified that prior to walking off the job because of the over-time issue, he spoke with Employer about the insurance coverage, Employer assured him that it would be resolved and that Employer, in fact, had resolved it at around the same time that Claimant quit his job. (Transcript of testimony at p. 8.)

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

JIM FLAHERTY, Senior Judge

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	:	
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ORDER

Now, February 24, 2010, the order of the Unemployment Compensation Board of Review, in the above-captioned matter, is affirmed.

JIM FLAHERTY, Senior Judge