

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Emily Jean Oldaker,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 831 C.D. 2009
	:	
Unemployment Compensation	:	Submitted: September 11, 2009
Board of Review,	:	
	:	
Respondent	:	

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE SIMPSON**

FILED: December 24, 2009

Representing herself, Emily Jean Oldaker (Claimant) petitions for review of an order of the Unemployment Compensation Board of Review (Board) that denied benefits under Section 402(b) of the Unemployment Compensation Law (Law) (regarding necessitous and compelling cause for voluntarily terminating employment).¹ Because substantial evidence supports the Board's determination and it is in accordance with the Law, we affirm.

The Board found the following facts. Claimant worked for Apria Healthcare, Inc. (Employer) as a full-time billing representative. Claimant commuted approximately 49 miles one way to her workplace each day. Claimant knew of the distance when she accepted the position.

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. §802(b).

Claimant has a medical condition that existed prior to the start of her employment. As a result of the condition, Claimant had some hearing loss and would get ear infections that affected her equilibrium. Claimant missed one day of work with Employer because she had an ear infection. Claimant's medical condition, however, did not bother her every day.

In addition, Claimant had difficulty learning her new position as a billing representative and she did not believe she understood the job. As a result of her concerns, Employer provided Claimant with training for the position.

Claimant also inquired about a customer service job with Employer closer to her home. However, Claimant did not inform Employer her health issues required her to work closer to home. Ultimately, Employer did not hire Claimant for the customer service position.

In November, 2008, Claimant neither reported to work nor called off for two days. When questioned about her status, Claimant told her supervisor she believed the billing representative position was not suitable. Thus, although continuing work was available, Claimant voluntarily quit her employment. Shortly thereafter, Claimant filed a petition for unemployment compensation benefits, which was denied.

Claimant appealed and a referee held a hearing.² Ultimately, the referee found Claimant ineligible for benefits under the Law.

On Claimant's further appeal, the Board made its own findings of fact in determining Claimant lacked necessitous and compelling cause to quit. The Board explained:

[C]laimant failed to inform [Employer] that these health conditions impacted on her ability to perform the job or her ability to drive the commute. Claimant's failure to inform [Employer] of her medical condition precludes her from meeting her burden of proof in this proceeding as she has failed to establish that she informed [Employer] of a medical condition and remained available for work within her restrictions.

....

[C]laimant quit her employment because of her difficulty in learning the position and the stress she felt in this position [C]laimant simply did not make reasonable efforts to maintain her employment

Certified Record (C.R.), Item 16 at 3. Thus, the Board denied benefits. Claimant now appeals to this Court.³

² We note the referee conducted a second hearing prior to entering an order denying Claimant benefits for the limited purpose of allowing Claimant the opportunity to offer medical evidence. Certified Record (C.R.), Item 13 at 2. The Board scheduled the second hearing after Claimant e-mailed the Governor of Pennsylvania alleging the referee was rude and refused to let her submit evidence of her medical condition in the first hearing. C.R., Items 11 & 12.

³ Our review is limited to determining whether substantial evidence supports the necessary findings of fact, whether the Board committed errors of law, or whether the Board violated constitutional rights. Ductmate Indus., Inc. v. Unemployment Comp. Bd. of Review, 949 A.2d 338 (Pa. Cmwlth. 2008).

There is no dispute Claimant voluntarily quit her job. In her petition for review, Claimant contends Employer knew about her ear infections from the start of her employment. In addition, Claimant argues she specifically requested Employer transfer her to a more suitable position because she was having difficulty learning the billing representative position. Thus, Claimant asserts that since Employer did not hire her for a more suitable position she is now entitled to unemployment compensation benefits.

Furthermore, in her brief, Claimant asserts the Board erred in determining she lacked “necessitous and compelling” cause to terminate her position. Relying on Collier Stone Co. v. Unemployment Compensation Board of Review, 876 A.2d 481 (Pa. Cmwlth. 2005), Claimant argues there was real and substantial pressure to terminate her employment because her health condition made it unsafe for her to commute to work. Furthermore, Claimant contends her health condition would compel a reasonable person to terminate her employment and request a different position with Employer closer to home. In addition, Claimant argues she acted with ordinary common sense because her health and welfare is the most important thing. Finally, Claimant submits she made a reasonable effort to preserve her employment because she requested a different position with Employer closer to home.

The issue of what constitutes a “necessitous and compelling” reason or “good cause” for a voluntary quit is a legal question subject to appellate review. Craighead-Jenkins v. Unemployment Comp. Bd. of Review, 796 A.2d 1031 (Pa. Cmwlth. 2002). The employee bears the burden of proving necessitous and

compelling reasons for quitting. Id. An employee who claims necessitous and compelling reasons for quitting must show “1) circumstances existed which produced real and substantial pressure to terminate employment; 2) such circumstances would compel a reasonable person to act in the same manner; 3) the claimant acted with ordinary common sense; and, 4) the claimant made a reasonable effort to preserve her employment.” Brunswick Hotel & Conference Ctr., LLC v. Unemployment Comp. Bd. of Review, 906 A.2d 657, 660 (Pa. Cmwlth. 2006).

It is well established medical problems can create “necessitous and compelling” cause to leave employment. Deiss v. Unemployment Comp. Bd. of Review, 475 Pa. 547, 381 A.2d 132 (1977). To establish health as a compelling reason for quitting a job, a claimant must show: (1) adequate health reasons existed at the time of the termination to justify the termination, (2) the claimant informed the employer of the health problem, and (3) the claimant specifically requested employer transfer her to a more suitable position. See Van Duser v. Unemployment Comp. Bd. of Review, 642 A.2d 544 (Pa. Cmwlth. 1994); see also Dornblum v. Unemployment Comp. Bd. of Review, 466 A.2d 747 (Pa. Cmwlth. 1983). A claimant’s failure to meet any one of these conditions will bar a claim for unemployment compensation benefits. Van Duser.

Here, Claimant testified Employer knew she had severe ear infections which affected her ability to work. Notes of Testimony (N.T.), 2/6/09, at 6; Supplemental Notes of Testimony (S.N.T.), 2/24/09, at 2. However, Claimant admitted she did not share any documentation regarding her medical condition

with Employer. N.T. at 6; see also Unclaimed Freight Co. v. Unemployment Comp. Bd. of Review, 677 A.2d 377 (Pa. Cmwlth. 1996) (where claimant does not provide employer with notice of any medical limitations imposed by a physician, employer was unaware that claimant's health was the true reason she terminated her employment; claimant deprived employer of an opportunity to take any action to retain claimant in its employ).

In addition, at the time of her termination from employment, Claimant did not inform Employer that she quit due to health reasons. Rather, Claimant simply stopped reporting to work. N.T. at 7. When Employer asked her why she did not show up for work, Claimant explained she quit her job because it “just wasn't suitable for [her]” and she “had a very difficult time trying to learn the position.” N.T. at 5.

Rejecting Claimant's testimony, the Board determined Claimant failed to prove she informed Employer that her ear infections impacted her ability to perform her job or commute to work. C.R., Item 17 at 3. Furthermore, the Board determined Claimant simply stopped going to work and, thus, she failed to make herself available for alternative work. Id.

In unemployment compensation proceedings, the Board is the ultimate fact-finder and is empowered to resolve conflicts in the evidence and to determine the credibility of witnesses. McCarthy v. Unemployment Comp. Bd. of Review, 829 A.2d 1266 (Pa. Cmwlth. 2003). “In making those determinations, the Board may accept or reject the testimony of any witness, in whole or in part.” Id.

at 1270. The Board's findings are conclusive and binding on appeal if the record, when viewed as a whole, contains substantial evidence to support those findings. Id.

Here, the record supports the Board's determination Claimant simply stopped reporting to work and, thus, she did not act with reasonable effort to preserve her employment. N.T. at 7; Brunswick Hotel & Conference Ctr., LLC.

“[T]his Court has held on numerous occasions that an employee who accepts a position admits the initial suitability of the work with respect to ... conditions of employment and that, in order to be eligible for unemployment benefits after a subsequent resignation, the employee must show that the job conditions had changed” Hasley v. Unemployment Comp. Bd. of Review, 553 A.2d 482, 486 (Pa. Cmwlth. 1989). Here, neither the length of Claimant's commute, nor the conditions of her employment changed while working for Employer. Pet. for Review at 3; see also McKeown v. Unemployment Comp. Bd. of Review, 442 A.2d 1257, 1258 (Pa. Cmwlth. 1982) (mere dissatisfaction with one's working conditions is not compelling and necessitous cause for terminating one's employment). Furthermore, there is no evidence in the record that Claimant's medical conditions changed from the start of her employment until the time she quit her job. As such, Claimant cannot allege the job was no longer suitable when it appears neither her health nor the position changed since the start of her employment. Hasley; McKeown.

Accordingly, we conclude there is substantial evidence in the record to support the Board's findings Claimant failed to establish her health created "necessitous and compelling" cause to leave her employment. Van Duser; Deiss; Dornblum.

For these reasons, we affirm.

ROBERT SIMPSON, Judge

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ORDER

AND NOW, this 24th day of December, 2009, the order of the Unemployment Compensation Board is **AFFIRMED**.

ROBERT SIMPSON, Judge