

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Chan T. Hua, :
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 Petitioner :
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 v. :
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 Unemployment Compensation Board :
 of Review, : No. 838 C.D. 2011
 Respondent : Submitted: October 7, 2011

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE PELLEGRINI

FILED: October 26, 2011

Chan T. Hua (Claimant) petitions for review of the order of the Unemployment Compensation Board of Review (Board) affirming the decision of the Unemployment Compensation Referee (Referee) finding her ineligible for benefits under Section 402(b) of the Unemployment Compensation Law¹ because

¹ Act of December 5, 1936, Second Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §802(b). That section provides:

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 in “employment” as defined in this act.

she voluntarily left her employment and failed to demonstrate cause of a necessitous and compelling nature. Finding no error in the Board's decision, we affirm.

Claimant was initially employed full-time as an assembler with Innovative Solutions & Support (Employer) beginning on May 17, 2007. Claimant's native language is Vietnamese and while she speaks English as a second language she is unable to read English. Claimant has been in the United States for seventeen years and her language barrier was not a problem while she worked as an assembler. However, in January of 2010, Employer's business slowed down and Claimant was re-assigned to a painting job. Claimant began experiencing issues in this new position and on June 18, 2010, she was called into a meeting with Employer to discuss these issues. On June 23, 2010, Claimant quit her job.

Six months later, Claimant filed an unemployment compensation claim. The Office of Unemployment Compensation (UC) Benefits determined that Claimant failed to show a necessitous and compelling reason for quitting and, therefore, issued a Notice of Determination finding her ineligible for benefits under Section 402(b) of the Law. Claimant appealed this decision.

Before the Referee,² Claimant testified that her new position with Employer required her to work with computers and complete a good deal of administrative paperwork; however, she is "computer illiterate" and cannot read English. According to Claimant, she spoke with her supervisor and manager about

² The Referee's office provided Claimant with a Vietnamese interpreter for the hearing.

her work issues and was told someone would be available to train her in the new position, but instead she was simply given training manuals and told to read them in order to learn the job. Claimant testified that whenever she asked her co-workers questions the supervisor scolded and yelled at her and said she could not ask for help. Claimant stated that she wanted to do her job and she approached Anita Broady (HR Director Broady), Employer's Human Resources Director, twice about these issues, but the problem was not resolved. According to Claimant, she told HR Director Broady she was quitting on June 23, 2010, because she could no longer handle the situation and felt harassed and intimidated. Claimant admitted that Employer told her in both January and June of 2010 that she needed to improve her English skills, but she denied that Employer ever offered to pay for her to take English classes. She also admitted that Employer never told her she would be fired for not being able to perform her job.

HR Director Broady testified on behalf of Employer that when Claimant was first employed she worked in the "bubble room." There were other individuals in the "bubble room" who spoke Vietnamese and who assisted Claimant with her training. Claimant's initial job as an assembler was very repetitive, so once she was trained she did not experience any problems. However, Employer's business slowed and it was forced to move several employees, including Claimant, from the "bubble room" to other areas of the facility otherwise they would have to be let go. Claimant was reassigned to work as a painter because the job was repetitive and again there were other employees in that department who spoke Vietnamese and could help translate and train Claimant. HR Director Broady testified that Claimant never told her she was not being properly trained. Claimant was often found wandering into other areas of the facility and doing other work without being instructed to do so. At a meeting on

June 18, 2010, for which Claimant was provided an interpreter, Claimant stated her new painting position was a difficult job and she could not read some of the processes and procedures. According to HR Director Broady, Claimant never said she could not perform the job but that she was simply having difficulty and wanted to return to her position as an assembler, which was not possible. HR Director Broady testified that Employer was not satisfied with Claimant's performance in her new position but the intent was not to terminate Claimant; Employer was committed to continuing to work with her. HR Director Broady told Claimant during this meeting that her English skills needed to improve and Employer would find and pay for her to take English classes, but Claimant was not receptive to this idea. Claimant did not mention during this meeting or at any other time that she felt harassed or intimidated. HR Director Broady testified that Claimant walked into her office on June 23, 2010, and simply quit stating "she just didn't feel she could do this anymore." (Reproduced Record (R.R.) at 37a). HR Director Broady believed this meant that Claimant could not adjust to the changing needs of her new position. HR Director Broady asked if Claimant wanted to take a few days to think about this decision, but she refused.

The Referee found that Claimant's decision to quit her job because she was dissatisfied with her new position and because she did not feel she was getting adequate help with translation was not a necessitous and compelling reason for leaving her employment. The Referee determined that Employer informed Claimant it was willing to work with her with respect to her new position but she needed to improve her English skills in order to better understand the job duties. However, Claimant never made an attempt to improve her English. In addition, while Claimant testified that she felt harassed or intimidated by her supervisor she never brought this issue to the attention of HR Director Broady.

Claimant appealed to the Board which affirmed,³ finding Employer's witnesses to be credible and resolving all conflicts in testimony in favor of the Employer. Specifically, the Board found that Employer tried to accommodate Claimant's limited English by offering several times to find and pay for English classes so she could more easily understand and communicate about her job. However, Claimant refused to attend the classes. In addition, Employer reassigned Claimant to a painting job because the work was repetitive and could be performed despite her limited English and she would be working with two other team members who could interpret and answer Claimant's questions. However, Claimant began wandering into other areas of the facility instead of performing her duties and she became frustrated with her job. Therefore, Employer set up a meeting with Claimant on June 18, 2010, at which time she was again told she needed to improve her English skills. Claimant did not indicate during this meeting that she felt harassed or intimidated or that she could not perform her job. Instead, Claimant simply quit her job for undetermined reasons without providing any notice. The Board found Claimant did not have cause of a necessitous and compelling nature to quit her job and, therefore, denied her benefits under Section 402(b) of the Law. This appeal followed.⁴

³ Claimant also requested that the Board remand the matter to the Referee for an additional hearing. The Board denied this request, stating that the record demonstrated the parties were provided with the opportunity for a full and fair hearing and the record was sufficiently complete for it to render a decision. Claimant did not appeal the denial of her remand request to this Court.

⁴ This Court's scope of review is limited to determining whether there was a constitutional violation or error of law, and whether the necessary findings of fact were supported by substantial evidence. *Essick v. Unemployment Compensation Board of Review*, 655 A.2d 669 (Pa. Cmwlth. 1995).

On appeal, Claimant argues that the Board's determination that she did not have cause of a necessitous and compelling nature to quit her job⁵ is not supported by substantial evidence.⁶ According to Claimant, she experienced a material change in the terms of her employment because her duties changed and her new position required her to have a better understanding of the English language. Employer either failed to provide Claimant with the opportunity to take English classes or Claimant did not understand the offer. In addition, Employer failed to provide Claimant with an adequate interpreter to assist her during the June 18, 2010 meeting because the individual who was present spoke Chinese, not Claimant's native language of Vietnamese. Finally, Employer began harassing and scolding Claimant when she attempted to ask questions about her new position and Claimant resigned because she could no longer tolerate this harassment.

⁵ In unemployment compensation cases, a claimant bears the burden of proving the precise nature of the separation, meaning whether she voluntarily quit or was discharged. *Pennsylvania Liquor Control Board v. Unemployment Compensation Board of Review*, 648 A.2d 124 (Pa. Cmwlth. 1994). Once it is determined that a claimant voluntarily quit her employment, the burden is on the claimant to prove necessitous and compelling reasons for doing so. *Petrill v. Unemployment Compensation Board of Review*, 883 A.2d 714 (Pa. Cmwlth. 2005). In order to establish cause of a necessitous and compelling nature, a claimant must demonstrate that "circumstances existed which produced real and substantial pressure to terminate the claimant's employment; like circumstances would compel a reasonable person to act in the same manner; the claimant acted with ordinary common sense; and the claimant made a reasonable effort to preserve his or her employment." *Procito v. Unemployment Compensation Board of Review*, 945 A.2d 261, 264 (Pa. Cmwlth. 2008) (citing *Beachem v. Unemployment Compensation Board of Review*, 760 A.2d 68 (Pa. Cmwlth. 2000)).

⁶ Substantial evidence is that evidence upon which a reasonable mind could base a conclusion. *Johnson v. Unemployment Compensation Board of Review*, 502 A.2d 738, 740 (Pa. Cmwlth. 1986). "In determining whether substantial evidence exists to support the Board's findings, we must examine the testimony in the light most favorable to the prevailing party below, giving that party the benefit of any inference which can be drawn logically and reasonably from the evidence." *Id.* (citing *Dickey v. Unemployment Compensation Board of Review*, 466 A.2d 1106 (Pa. Cmwlth. 1983)).

However, Claimant's arguments are based solely on the version of events provided in her own testimony, testimony which the Board found not to be credible.⁷ Based on HR Director Broady's testimony, the Board found Employer attempted to accommodate Claimant's limited English by offering to pay for English classes, assigning her to a repetitive job and teaming her with other individuals who spoke Vietnamese and who could help translate for her. However, Claimant became frustrated with her job and quit. Because this testimony is substantial evidence upon which the Board could find that Claimant did not have a substantial reason to quit her employment, the Board did not err in finding that Claimant failed to make out a necessitous and compelling reason for leaving her employment.

Accordingly, the decision of the Board is affirmed.

DAN PELLEGRINI, Judge

⁷ We have repeatedly stated that the Board is the ultimate finder of fact in unemployment compensation proceedings, empowered to resolve all conflicts in the evidence and determine the credibility of witnesses. *Maher v. Unemployment Compensation Board of Review*, 983 A.2d 1264, 1268 n.3 (Pa. Cmwlth. 2009), *appeal denied*, 606 Pa. 674, 996 A.2d 493 (2010); *Brannigan v. Unemployment Compensation Board of Review*, 887 A.2d 841 (Pa. Cmwlth. 2005).

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ORDER

AND NOW, this 26th day of October, 2011, the order of the
Unemployment Compensation Board of Review, dated April 6, 2011, is affirmed.

DAN PELLEGRINI, Judge