

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Valerie Singletary,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
Unemployment Compensation	:	
Board of Review,	:	No. 845 C.D. 2010
	:	
Respondent	:	Submitted: November 19, 2010

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY

FILED: December 27, 2010

Valerie Singletary (Claimant), appearing *pro se*, petitions for review from the order of the Unemployment Compensation Board of Review (Board) which affirmed the referee’s denial of benefits under Section 402(b) of the Unemployment Compensation Law (Law)¹ and Section 401(d)(1) of the Law, 43 P.S. §801(d)(1).

The facts, as initially found by the referee and confirmed by the Board, are as follows:

1. The claimant was employed full time as a help desk analyst from December 26, 1995 until her last day worked on or about October 12, 2009.

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

2. On October 13, 14, 15, and 16, 2009, the claimant was absent from work.
3. Effective October 19, 2009, the claimant was required to call the leave of absence specialist to request a medical leave of absence since the claimant had been absent for three consecutive days.
4. On or about October 19, 2009, the employer placed the claimant on an approved medical leave of absence which was scheduled to end on December 7, 2009.
5. The employer received information the claimant could not return to work because of her medical condition until January 7, 2010. As a result, the claimant's medical leave of absence was extended to that date.
6. On January 5, 2010, the employer requested additional information from the claimant's physician regarding whether the claimant could return to her position.
7. On January 13, 2010, the employer was informed the claimant could not perform the essential functions of her position and as a result her medical leave of absence was again extended.
8. The claimant voluntarily terminated her employment because of a medical condition.

Referee's Decision, January 27, 2010, (Decision), Findings of Fact Nos. 1-8 at 1.

The referee determined:

Although duly notified of the date, time, and place of the scheduled hearing, the claimant did not appear to offer testimony in behalf of this appeal.^[2] The Referee therefore based her decision on the sworn testimony of

² Claimant requested a telephone hearing. The referee's call to Claimant was blocked. The Board denied her request for remand.

the employer witness and documents submitted by the Office of Employment Security.

In the present case, the claimant terminated her employment because of a medical condition. Based on the testimony presented by the employer witness at hearing, there is insufficient evidence to satisfy all of the requisite elements set forth above. The testimony provided at hearing does not establish that the claimant had a necessitous and compelling reason to voluntarily leave her work and, therefore, she is disqualified from receiving benefits under Section 402(b) of the Law.

Section 401(d)(1) of the Law provides that compensation shall be payable to any employee who is or becomes unemployed, and who is able to work and available for suitable work. The basic purpose of the statutory requirements of availability is to establish that a claimant is genuinely and realistically attached to the labor force.

Based on the testimony presented by the employer at the hearing, the claimant was not able and available for work during the weeks at issue. The claimant is, therefore, ineligible to receive benefits under Section 401(d)(1) of the Law.

Decision at 2.

The Board affirmed:

The claimant has failed to credibly establish that she made herself available for work with the employer within her medical restrictions. The Board agrees that claimant's availability under Section 401(d)(1) has been rebutted. Claimant acknowledges that she is unable to drive and has limited access to transportation. The claimant has failed to credibly establish that she is able and available or realistically attached to the job market. Unemployment compensation is not health insurance and it does not cover the physically ill during the periods they are unemployable. . . .

Board Opinion, April 7, 2010, at 1.

Claimant contends that she established that she had a necessitous and compelling medical reason for voluntarily terminating her employment, that she was able and available for work within her medical restrictions during the weeks at issue, and that Total Renal Care's (Employer) unilateral change which required Claimant to work in the office rather than at home was so substantial as to warrant necessitous cause to voluntarily terminate her employment.³

Claimant initially contends that she met her burden of proving that her medical condition was a necessitous and compelling reason for her voluntary quit.

Whether a termination of employment is voluntary is a question of law subject to this Court's review. The failure of an employee to take all reasonable steps to preserve employment results in a voluntary termination. Westwood v. Unemployment Compensation Board of Review, 532 A.2d 1281 (Pa. Cmwlth. 1987). An employee voluntarily terminating employment has the burden of proving that such termination was necessitous and compelling. The question of whether a claimant has a necessitous and compelling reason to terminate employment is a question of law reviewable by this Court. Willet v. Unemployment Compensation Board of Review, 429 A.2d 1282 (Pa. Cmwlth. 1981). Good cause for voluntarily leaving one's employment results from

³ This Court's review in an unemployment case is limited to a determination of whether constitutional rights were violated, errors of law were committed, or essential findings of fact were not supported by substantial evidence. Lee Hospital v. Unemployment Compensation Board of Review, 637 A.2d 695 (Pa. Cmwlth. 1994).

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. Philadelphia Parking Authority v. Unemployment Compensation Board of Review, 654 A.2d 280 (Pa. Cmwlth. 1995). Mere dissatisfaction with one's working conditions is not a necessitous and compelling reason for terminating one's employment. McKeown v. Unemployment Compensation Board of Review, 442 A.2d 1257 (Pa. Cmwlth. 1982).

To establish health reasons as a necessitous and compelling reason to quit employment, a claimant must (1) provide competent testimony that adequate health reasons exist to justify the voluntary quit, (2) have informed the employer of the health problems, and (3) be available to work if reasonable accommodations can be made. A claimant who quits for health reasons must communicate the health problems to the employer so that the employer may attempt to accommodate the problem. Lee Hospital, 637 A.2d at 698-699.

Where an employee because of a physical condition, can no longer perform his regular duties, he must be available for suitable work, consistent with the medical condition, to remain eligible for benefits. However, once he has communicated his medical problem to the employer and explained his inability to perform the regularly assigned duties, an employee can do no more. The availability of an employment position, the duties expected to be performed by one serving in that capacity are managerial judgments over which the employee has no control. As long as the employee is available where a reasonable accommodation is made by the employer, that is not inimicable to the health of the employee, the employee

has demonstrated the good faith effort to maintain the employment relationship required under the Act [Law].

Genetin v. Unemployment Compensation Board of Review, 499 Pa. 125, 130-131, 451 A.2d 1353, 1356 (1982).

Claimant asserts that the documents and testimony of record established that Claimant suffered from scoliosis and arthritis in her neck. She also asserts that she communicated this to Employer who refused to let her continue to work from home.

The documents Claimant relies on were her signed Claimant questionnaire and her signed Employment Separation questionnaire. These documents were unobjected to hearsay documentation.⁴ In administrative proceedings, “[h]earsay evidence, admitted without objection, will be given its natural probative effect and may support a finding of the Board, if it is corroborated by competent evidence in the record, but a finding based solely on hearsay will not stand.” Walker v. Unemployment Compensation Board of Review, 367 A.2d 366, 370 (Pa. Cmwlth. 1976). Here, there was no competent evidence in the record to corroborate the hearsay testimony. No competent evidence of record supported a determination that Claimant met the three requirements of Lee Hospital.⁵

⁴ Although Claimant filled out the questionnaires and signed them, she was not present at the hearing to corroborate the statements contained in the questionnaires.

⁵ Claimant asserts that Employer previously allowed her to work from home. No evidence in the record supports this assertion.

Claimant next contends that there was no support in the record for the Board's findings that she was unable and unavailable for work. Claimant asserts that she was able and available to work within her medical restrictions because she was working at home at all times prior to her medical leave and would have been able to continue to do so.

Section 401(d)(1) of the Law provides that “[c]ompensation shall be payable to any employe who is or becomes unemployed, and who . . . [i]s able to work and available for suitable work . . .” (emphasis added).

Claimant's initial filing of a claim for unemployment compensation created a presumption of availability. Hamot Medical Center v. Unemployment Compensation Board of Review, 645 A.2d 466 (Pa. Cmwlth. 1994). The presumption is rebuttable by evidence that a claimant's physical condition limits the work that she is available to perform. Molnar v. Unemployment Compensation Board of Review, 397 A.2d 869 (Pa. Cmwlth. 1979). The presumption can also be rebutted by evidence of a claimant's illness, refusal to work, disability, or other facts which indicate that a claimant is not attached to the labor market. Scardina v. Unemployment Compensation Board of Review, 537 A.2d 388 (Pa. Cmwlth. 1988).

Here, the Board found that Claimant admitted that she was unable to drive and had difficulty securing transportation when she could not attend the hearing. Claimant emailed the referee to request a telephone hearing because “I am unable to drive to malvern [sic] office or catch transportation due to

limitations.” Email from Claimant, December 24, 2009, at 2. The email from Claimant constitutes an admission and is an exception against hearsay which may be used against Claimant. Evans v. Unemployment Compensation Board of Review, 484 A.2d 822 (Pa. Cmwlth. 1984). Lynn Schlegel (Schlegel), Employer’s human resources representative, corroborated the admission that Claimant was unable and unavailable to work due to a medical condition. Notes of Testimony, January 22, 2010, at 6. The email and the testimony of Schlegel support the Board’s finding.

Finally, Claimant contends that Employer’s unilateral change requiring Claimant to work in the office rather than at home was a necessitous and compelling reason for her to quit her job. Once again, the only evidence that Employer made such a change is the unobjected to hearsay evidence in the questionnaires. This Court notes that there is no support in the record for Claimant’s assertion that she was permitted to work at home and that Employer changed this policy.

Accordingly, this Court affirms.

BERNARD L. McGINLEY, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Valerie Singletary, :
 :
 Petitioner :
 :
 :
 v. :
 :
 :
 Unemployment Compensation :
 Board of Review, : No. 845 C.D. 2010
 Respondent :

ORDER

AND NOW, this 27th day of December, 2010, the order of the Unemployment Compensation Board of Review in the above-captioned matter is affirmed.

BERNARD L. MCGINLEY, Judge