

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Lori Reid, :  
 :  
 Petitioner :  
 :  
 v. : No. 858 C.D. 2011  
 : Submitted: September 2, 2011  
 Unemployment Compensation Board :  
 of Review, :  
 Respondent :

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge  
HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY SENIOR JUDGE FRIEDMAN

FILED: October 7, 2011

Lori Reid (Claimant) petitions for review of the April 8, 2011, order of the Unemployment Compensation Board of Review (UCBR), which affirmed the decision of the referee to deny Claimant unemployment compensation (UC) benefits under section 402(b) of the Unemployment Compensation Law (Law).<sup>1</sup> We affirm.

Claimant worked for Brujus, Inc. (Employer) as an administrative assistant from October 12, 2010, to October 21, 2010. Claimant was to be trained on the job for this position. However, Employer assigned her to work with a person who provided

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<sup>1</sup> Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §802(b). Under section 402(b) of the Law, a claimant is ineligible for benefits for any week in which the claimant's unemployment is due to leaving work without a necessitous and compelling cause.

minimal instruction and who asked not to be disturbed because the person was busy. (Referee's Findings of Fact, Nos. 1-3.)<sup>2</sup>

Claimant attempted to perform the job alone, with little or no success. She told one of Employer's managers that she needed training and that the person Employer assigned to do the training had no time to do so. The manager told Claimant that Employer would assign another person to train Claimant. (Referee's Findings of Fact, Nos. 4-6.)

Claimant worked with the new person for approximately one day, at which time Employer re-assigned Claimant to the original trainer. However, the original trainer did not provide any additional assistance to Claimant. Thus, Claimant continued to experience challenges in doing her job and informed Employer of that fact. Employer told Claimant that it did not have a lot of time to train Claimant and that perhaps the job was not for her. Claimant then voluntarily quit due to a lack of training and an inability to do the work. (Referee's Findings of Fact, Nos. 7-10.)

Claimant applied for UC benefits, and the application was granted. She received \$2,870 in state benefits and \$175 in federal compensation. (Referee's Findings of Fact, No. 11.) Employer appealed Claimant's receipt of benefits, and a hearing was held before a referee.

At the hearing, Claimant testified that she did not quit; rather, Employer fired her.

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<sup>2</sup> We note that the UCBR adopted the findings of the referee.

In the second time of telling them that I . . . still don't understand this, I'm still not getting my questions answered, I'm still not comprehending the job and what I have to do, they said to me, well, we don't have a lot of time to be training you. So, you need to catch on. And I said well, I do apologize. Is there any other way that . . . this could be done – that I could try to work on it? And they said, no, we don't have enough time. Or we don't have . . . single one on one time to help you. And they said well, maybe this is not working out for you. And I said okay. I said – you know, what can I do? And he's like well, you can leave today if you would like to. And I said, well, do you want me to spend the rest of the . . . week at least? And they said, no. You can leave today and right now.

(N.T., 2/15/11, at 4.) Employer's witness, one of Employer's managers, testified that Employer did not fire Claimant.

It kind of became apparent to us that she was trying to get fired – not necessarily doing anything wrong but she said she couldn't handle the job. And that she really just wanted us to let her go for whatever reason. We purposely did not want to let her go only because we did not have someone else lined up to take the position. And we're not ready to go through trying to hire and all that again. So . . . she was never fired. It was very purposeful on our behalf to not do so because we were not looking to replace the position immediately. So – you know, while she may not have been catching on as fast as . . . everyone would've like to, we were not intending to fire her. We did not do so.

*Id.* After considering the evidence, the referee concluded that Claimant quit her job without a necessitous and compelling reason. The referee also concluded that Claimant

had received a non-fraud overpayment of UC benefits. Claimant filed an appeal, and the UCBR affirmed. Claimant now petitions this court for review.<sup>3</sup>

Claimant argues that the UCBR erred in concluding that she quit her job with Employer. We disagree.

It was Claimant's burden to prove that her separation from employment was involuntary. *Bell v. Unemployment Compensation Board of Review*, 921 A.2d 23, 26 (Pa. Cmwlth. 2007). To prove that Employer's actions constituted a discharge, Claimant had to demonstrate that Employer's actions had the immediacy and finality of a firing.<sup>4</sup> *Id.* Here, the UCBR found that Employer informed Claimant that "perhaps the job was not for her." (Referee's Findings of Fact, No. 9.) This statement does not contain the sense of immediacy and finality necessary to constitute a firing.<sup>5</sup>

Claimant also argues that the UCBR erred in concluding that she quit because Employer's only witness at the hearing was not present when she was fired.

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<sup>3</sup> Our scope of review is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with the law or whether the necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

<sup>4</sup> Whether Claimant's separation from employment was voluntary or a discharge is a question of law for this court to determine from the totality of the record. *Bell*, 921 A.2d at 26. In making this determination, we must examine the testimony in the light most favorable to Employer, the party in whose favor the UCBR rendered its decision. *Id.* at 26 n.6.

<sup>5</sup> The UCBR obviously did not accept Claimant's testimony that Employer told her to leave "today and right now." (N.T., 2/15/11, at 4.) Questions of credibility and the resolution of evidentiary conflicts are within the discretion of the UCBR and are not subject to re-evaluation on judicial review. *Bell*, 921 A.2d at 26 n.4.

Claimant suggests that, absent the appropriate witness, Employer could not prevail. However, Claimant had the burden of proving that Employer fired her. Moreover, the Notice of Hearing advised Claimant to bring witnesses who directly observed, heard or participated in the matters about which they are to testify; to notify those witnesses; and, if a witness refuses to appear, request a subpoena to assure the requested presence at the hearing. (O.R., Item No. 7, Preparing for the Hearing.) Claimant failed to follow those instructions.

Accordingly, we affirm.

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ROCHELLE S. FRIEDMAN, Senior Judge

Judge Cohn Jubelirer concurs in the result.

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v.		:	No. 858 C.D. 2011
		:	
Unemployment Compensation Board		:	
of Review,		:	
	Respondent	:	

ORDER

AND NOW, this 7<sup>th</sup> day of October, 2011, the order of the Unemployment Compensation Board of Review, dated April 8, 2011, is hereby affirmed.

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ROCHELLE S. FRIEDMAN, Senior Judge