

because 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 initially worked for Highmark Benefits from approximately August of 2006 until she was transferred to its subsidiary Pennsylvania Blue Shield (Employer). Claimant was then employed full-time as a customer representative with Employer from February 8, 2008, until her employment was terminated on September 2, 2010. During this time period, Claimant experienced health problems and had to have her gall bladder removed. She was off work from approximately April 8, 2010 through June 30, 2010, under the Family and Medical Leave Act (FMLA), 29 U.S.C. §§2601 – 2654, for this surgery. Claimant left work again on August 23, 2010, under a different FMLA condition. On September 2, 2010, Employer left Claimant a voice message stating she had exhausted her FMLA leave and she must return to work or face discharge. Claimant did not return to work as instructed. Employer terminated Claimant's employment due to job abandonment because she failed to report to work on August 30 and 31, 2010 and September 1 and 2, 2010, without calling off or contacting Employer.

Claimant filed an unemployment compensation claim alleging that she left her employment because her supervisor was harassing her and because Employer told her she was going to be terminated due to poor performance. The Office of Unemployment Compensation (UC) Benefits determined that Claimant voluntarily quit her employment and found her ineligible for benefits under Section

402(b) of the Law because she failed to meet her burden of proving a necessitous and compelling reason for quitting. Claimant appealed this decision.²

Employer did not appear at the hearing but submitted a copy of the termination letter sent to Claimant on September 2, 2010, which states that Claimant did not report to work on August 30, 31 and September 1 and 2, 2010, and she did not report off on those days. According to the letter, numerous attempts were made to contact Claimant to determine her intentions regarding her job; however, all of these attempts were unsuccessful. Therefore, the letter stated that Employer was terminating Claimant's employment due to job abandonment. Claimant admitted to receiving this letter and did not state any objection to it or any of the other exhibits becoming part of the record.

Claimant, who was not represented by counsel at the time, testified that after she transitioned over to Employer in February 2008, she did not receive adequate training, constantly had problems with her computer, and her supervisor started harassing her and treating her differently. Claimant stated she was out on FMLA leave for her surgery from April 8, 2010, until the end of June, 2010. She was out again on FMLA leave from August 23 through September 2, 2010, and claims she called off every day during that time period. According to Claimant, she did not voluntarily leave her employment. Rather, Employer discharged her because she was told not to come back to work on September 2, 2010. However,

² Claimant also appealed the Office of UC Benefits decision in a companion case which held that she was not entitled to predated of her claim pursuant to Section 401(b) of the Law. The Referee and Board both affirmed this decision. Claimant's brief to this Court fails to raise this predated issue; therefore, it is waived.

Claimant admitted that her new supervisor called her on September 2, 2010, and left a message stating that she had exhausted her FMLA time, she did not have any more FMLA days left to use and, therefore, she had to return to work. The supervisor also stated that if he did not hear from her by 2:00 p.m. that day, her employment would be terminated for job abandonment. According to Claimant, she called her supervisor twice that same day and left a message stating she did not know she was out of FMLA time and that she would have her doctor fill out the proper FMLA forms. Claimant alleged that she asked her supervisor to call her back, but she did not hear from him. However, when questioned further on this point, Claimant admitted that she did not return to work because she did not want her supervisor to embarrass or harass her. She later claimed, even after she was told otherwise, that she did not have to return to work because she still qualified for FMLA leave. Claimant argued that when you are approved for FMLA you are eligible to take an unlimited amount of FMLA leave time throughout that year, not just a limited number of hours or weeks. However, Claimant admitted documents into evidence at the hearing that specifically stated she was only eligible for up to twelve weeks of unpaid leave in the twelve month period at issue.

The Referee found that Claimant voluntarily quit her employment and failed to meet her burden of showing cause of a necessitous and compelling nature for doing so. The Referee noted that during the hearing Claimant produced documentation which put her on notice that her FMLA was specifically limited to twelve weeks. Claimant also admitted that she received notice that her leave time had expired through her supervisor's voicemail message. Claimant testified that she was unhappy with Employer's criticisms of her and the discipline she was allegedly subjected to after returning from her initial FMLA leave. The Referee specifically found that Claimant refused to report back to work "because she felt

she was not going to submit herself to the Employer's harassment," (Finding of Fact 9) and that Claimant's assertion of harassment was pure speculation. Given these facts, the Referee found that Claimant's failure to return to work constituted job abandonment and she did not establish a necessitous and compelling reason for leaving; therefore, she was ineligible for benefits under Section 402(b). Claimant appealed to the Board, which affirmed the Referee's decision and Claimant's request for reconsideration was denied. This appeal followed.³

On appeal, Claimant first argues that the Board erred in admitting Employer's termination letter into evidence over her "objection" because the letter was hearsay. However, Claimant failed to raise this issue in her petition for appeal, which was filed *pro se*; therefore, the issue is waived. Even if we were to consider this issue, it is without merit because not only did Claimant not specifically object to the letter being admitted into evidence, she admitted that she had in fact received the very same termination letter from Employer. Claimant's real argument is that she disputes the *facts* as stated in the letter. However, she was given ample time and opportunity by the Referee to present her version of the facts, which were not found to be credible.

Claimant also argues the record lacks substantial evidence to support the Board's findings that she voluntarily quit her employment and failed to

³ 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).

demonstrate a necessitous and compelling reason for not returning to work.⁴ Claimant insists that she called her supervisor twice in an effort to preserve the employment relationship and that she followed the proper protocol in requesting off by calling Employer every day she was absent. Claimant also argues there was no proof of an intention to abandon her employment. According to Claimant, the record demonstrates that she believed she still had FMLA time remaining and she made efforts to secure additional time off by contacting her physician.

However, Claimant's reliance upon her testimony that she called her supervisor as instructed is misplaced. The Board did not make a finding of fact regarding whether or not Claimant actually called her supervisor back on September 2, 2010, but seems to assume that she did make the call. The reasoning

⁴ 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). While the employer does not have to actually use terms such as "fired" or "discharged," *Wise v. Unemployment Compensation Board of Review*, 700 A.2d 1071 (Pa. Cmwlth. 1997), its language must contain both the immediacy and finality of a firing in order for a claimant to be considered discharged. *Keast v. Unemployment Compensation Board of Review*, 503 A.2d 507 (Pa. Cmwlth. 1986). Our Supreme Court has previously stated that "a finding of voluntary termination is essentially precluded unless the claimant had a conscious intention to leave his employment." *Monaco v. Unemployment Compensation Board of Review*, 525 Pa. 41, 565 A.2d 127 (1989). In discerning the claimant's intention, courts must consider the totality of the circumstances surrounding the incident. *Id.*

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)).

behind the Board's finding that Claimant abandoned her employment was that she admitted that she did not return to work because she did not want to be subject to harassment, a claim not supported by any evidence whatsoever. As the Referee aptly stated, it was pure speculation. In addition, the paperwork Claimant submitted into evidence clearly indicated that she was only entitled to 12 weeks of FMLA leave, and she admits that her supervisor told her in the voicemail message that she had exhausted her FMLA leave time. A reasonable person would not continue to believe, in the face of all this evidence to the contrary, that they were entitled to additional leave time and simply not report to work.⁵ Because there is ample reason to find that she left work without a necessitous and compelling reason, the Board did not err in finding that Claimant abandoned her employment.

Accordingly, the order of the Board is affirmed.

DAN PELLEGRINI, Judge

⁵ Claimant also argues that the Board capriciously disregarded evidence surrounding the events leading up to and including September 2, 2010. However, it is clear that the Board considered all of Claimant's testimony regarding these events in making its decision and simply found Claimant's testimony to not be credible.

