

series of confrontations with a coworker (Coworker) who was responsible for training Claimant.²

Claimant filed for unemployment compensation benefits with the Duquesne UC Service Center, which found that while

Claimant had a necessitous and compelling reason for quitting, there were alternatives to resolve the situation. Since the Claimant did not exhaust all alternatives prior to quitting, she ha[d] not sustained her burden of proof.

Notice of Determination, 11/20/08, at 1; Certified Record, Item No. 4 (C.R. ____). Accordingly, the UC Service Center found her ineligible for benefits under Section 402(b) of the Law.³ The UC Service Center also assessed a \$1,140 fault overpayment against Claimant under Section 804(a) of the Law⁴ and 12 penalty weeks under Section 801(b) of the Law.⁵ *Id.*

Claimant appealed, and a hearing was conducted by a Referee. No one appeared at the hearing on Employer's behalf. Claimant testified that Coworker did not provide sufficient training and reprimanded her for failing to perform duties for

² The name of Claimant's coworker is not of record.

³ Section 402(b) states: "An employe shall be ineligible for compensation for any week ... [i]n which his unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature." 43 P.S. §802(b).

⁴ Section 804(a) states: "Any person who by reason of his fault has received any sum as compensation ... to which he was not entitled, shall be liable to repay ... a sum equal to the amount so received by him and interest." 43 P.S. §874(a).

⁵ Section 801(b) states:

Whoever makes a false statement knowing it to be false, or knowingly fails to disclose a material fact to obtain or increase any compensation ... may be disqualified in addition to such week or weeks of improper payments for a penalty period of two weeks and for not more than one additional week for each such week of improper payment.

43 P.S. §871(b).

which Claimant was not even responsible. Claimant asserted that Coworker spoke to her in a condescending manner, and compared training Claimant to “babysitting” her. Notes of Testimony at 7; C.R. 9. Additionally, Coworker’s mother and sister, who also worked for Employer, treated Claimant with disrespect. Claimant advised Employer of her concerns regarding Coworker’s deficient training. According to Claimant, Employer admitted to having similar problems with Coworker and her mother and sister in the past. Employer attempted to alleviate the problem by moving Claimant’s work area away from Coworker’s. However, Claimant stated that this did not rectify the problem.

Claimant also testified that Employer advised her that Coworker’s employment was scheduled to end in late July or early August 2008. However, before Coworker left Employer’s employ, Claimant voluntarily terminated her employment on July 26, 2008. Claimant claimed that she quit because she believed she would be fired in the future, as a result of her insufficient training.

The Referee affirmed the denial of benefits, modified the \$1,140 fault overpayment to a nonfault overpayment, and reversed the imposition of penalty weeks. The Referee found that Claimant established that her working conditions were difficult, but she did not establish a necessitous and compelling reason for quitting her job. Noting that Claimant “cited no reason that it would not have been possible for her to remain employed until she secured more suitable employment,” the Referee held Claimant ineligible for benefits under Section 402(b). Referee’s Decision at 2; C.R. 10.

Claimant appealed to the Board. The Board affirmed, stating that “[C]laimant did not act in good faith to preserve the employer-employee relationship” by not “maintain[ing] her employment approximately one additional week until”

Coworker was scheduled to cease working for Employer. Board's Decision; C.R. 12. Claimant now petitions for this Court's review.⁶

Claimant raises one issue for our consideration.⁷ Claimant contends that the Board erred as a matter of law in holding her to be ineligible for benefits under Section 402(b) of the Law, 43 P.S. §802(b). Claimant disagrees with the Board's conclusion, but she has failed to persuade us that the Board erred in any way.⁸

If a claimant voluntarily quits her job and seeks unemployment benefits, she bears the burden of proving that she left her employment for a necessitous and compelling reason. Section 402(b) of the Law, 43 P.S. §802(b); *Collier Stone Co. v. Unemployment Compensation Board of Review*, 876 A.2d 481, 484 (Pa. Cmwlth. 2005) (citing *Taylor v. Unemployment Compensation Board of Review*, 474 Pa. 351, 354, 378 A.2d 829, 830 (1977)). In order to demonstrate a necessitous and compelling reason for quitting her job, a claimant must show that

- (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.

⁶ Our review is limited to determining whether constitutional rights were violated, an error of law was committed, or necessary findings of fact are not supported by substantial evidence. *Craighead-Jenkins v. Unemployment Compensation Board of Review*, 796 A.2d 1031, 1033 n.2 (Pa. Cmwlth. 2002).

⁷ Claimant's two issues presented have been consolidated into one for purposes of our review.

⁸ We decline the Board's request to dismiss Claimant's petition for review on grounds of waiver. Claimant, who is *pro se*, has sufficiently preserved and raised the legal issue summarized above for purposes of our appellate review.

Collier Stone Co., 876 A.2d at 484 (citing *Comitalo v. Unemployment Compensation Board of Review*, 737 A.2d 342, 344 (Pa. Cmwlth. 1999)).

We agree with the Board that Claimant did not establish a necessitous and compelling reason to quit her job. Central to the Board's determination was the fact that Claimant resigned from her position knowing that Coworker, with whom she had a conflict, would soon be leaving Employer's employ. Any real and substantial pressure Claimant felt by her working environment would be eliminated once Coworker left. A reasonable person in Claimant's situation would have waited to see if Coworker's departure improved her working environment. Instead, Claimant resigned, speculating that she had been inadequately trained.

With regard to the fourth factor recited above, Claimant argues that she made a reasonable effort to preserve employment because she "made requests on a daily basis to management" to rectify the situation. Claimant's Brief at 10. A claimant must establish that she took "common sense action to obviate the problem so that ... she does not have to terminate employment," such as by advising her superiors of adverse working conditions. *First Federal Savings Bank v. Unemployment Compensation Board of Review*, 957 A.2d 811, 817 (Pa. Cmwlth. 2008) (quoting *Porco v. Unemployment Compensation Board of Review*, 828 A.2d 426, 428 (Pa. Cmwlth. 2003)). For example, in *First Federal Savings Bank*, this Court found that claimant attempted to preserve her employment by discussing her situation with senior management officials in hopes of resolving the issues. *Id.*

Here, Claimant advised Employer of her issues with Coworker, but she never alerted Employer that the problem was so acute that she was considering resigning from her position. Claimant stated only that she had a conflict with Coworker and that she felt her training was deficient. Moreover, as discussed above,

Claimant was aware that Coworker would be leaving her employment by early August 2008. A “reasonable” effort to preserve her employment would have been to wait one to two additional weeks until Coworker resigned.

In sum, we affirm the Board’s decision that Claimant is ineligible for unemployment compensation benefits under Section 402(b) of the Law because Claimant did not have a necessitous and compelling reason for voluntarily terminating her employment.

MARY HANNAH LEAVITT, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Sheryl Ann Kardos,	:	
Petitioner	:	
	:	
v.	:	No. 966 C.D. 2009
	:	
Unemployment Compensation	:	
Board of Review,	:	
Respondent	:	

ORDER

AND NOW, this 15th day of December, 2009, the order of the Unemployment Compensation Board of Review, dated March 25, 2009, in the above-captioned matter is hereby AFFIRMED.

MARY HANNAH LEAVITT, Judge