IN THE COMMONWEALTH COURT OF PENNSYLVANIA

John J. Karsnak, Petitioner	:	
v.	:	No. 975 C.D. 2009
	:	Submitted: December 11, 2009
Unemployment Compensation Board of Review, Respondent	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE SIMPSON **FILED: February 5, 2010**

John J. Karsnak (Claimant) petitions for review of an order of the Unemployment Compensation Board of Review (Board) denying him unemployment compensation benefits under Section 402(b) of the Unemployment Compensation Law (Law) on the basis he voluntarily terminated his employment.[1] Claimant, representing himself, asserts the Board erred in finding he voluntarily terminated his employment. Claimant further contends the Board erred in finding him ineligible for benefits under Section 402(b) because he had a compelling reason for leaving his job. For the reasons that follow, we affirm.

[1] Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. §802(b). Section 402(b) of the Law provides "[a]n 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).

I. Background

The Board ultimately found the following relevant facts. Claimant worked on a full-time basis as a custodian for the North Pocono School District (Employer) from January, 2002, until his last day of work in November, 2008. When hired, Claimant received an appointment letter from Employer's school board indicating the school board hired him. Employer's school board possesses the sole authority to hire and fire Employer's employees. Claimant belonged to a union.

Employer's Assistant Director of Buildings and Grounds, Richard Brazen (Assistant Director), served as Claimant's immediate supervisor. In May, 2008, Employer's Director of Buildings and Grounds, Walter Bell (Director), suspended Claimant for 10 days and warned him the next time anything occurred he would be discharged. Claimant felt that Assistant Director harassed him about his work.

On November 7, 2008, Assistant Director telephoned Claimant to discuss a recent complaint from a school principal regarding Claimant's job performance. During their conversation, Claimant said, "I don't have time for your bullshit," and he abruptly hung up. Assistant Director became angry and called Claimant back. Assistant Director got the answering machine where Claimant worked and left a message stating in part, "I'm advising you to look for a new job." Upon receiving this message, Claimant handed his keys to a co-worker, said "that's it," and left.

Assistant Director did not have the authority to discharge Claimant. Claimant had a right to a hearing before the school board, which would vote on

whether to discharge him. Claimant spoke with his union president, but did not file a grievance regarding the November 7 incident. In addition, Claimant did not complain to Director or Employer's Human Resources Department.

Rather, Claimant, upon his union president's advice, sent a letter by certified mail to Employer's Human Resources Supervisor, Catherine May (HR Supervisor). Claimant's letter detailed Claimant's problems with Assistant Director. Claimant also referenced the November 7 incident and explained that he had no choice but to leave.[2] The school board treated Claimant's letter as a resignation and accepted it.

Following his separation from employment, Claimant applied for unemployment compensation benefits. The Scranton unemployment compensation service center (service center) ruled Claimant eligible for benefits under Section

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[2] Claimant's letter to HR Supervisor stated:

> Working under [Assistant Director] was an emotional roller coaster, a hostile environment. When he needed me he was nice to me, then I'd be doing, what I've been doing for 6½ years, but today its [sic] wrong, according to [Assistant Director].
>
> I was always getting phone calls at my home, on my time, sometimes several times a week, or even visits to my home, to tell me to do this, or don't do that. I requested, but never received, union representation. My nerves, my health, my well being, all at risk.
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> Then there was a message on the phone at work from [Assistant Director] "John you better look for another job[.]" I had no choice – I had to leave.

Employer's Ex. 1.

402(e) of the Law, 43 P.S. §802(e) (willful misconduct).[3] The service center found Employer discharged Claimant for unsatisfactory job performance. However, it further found Claimant worked to the best of his ability. Thus, the service center concluded Employer failed to prove willful misconduct.[4]

Employer appealed, alleging Claimant voluntarily resigned and therefore was ineligible for benefits under Section 402(b). At a referee hearing, Employer presented testimony from HR Supervisor and Assistant Director. Clamant also testified. HR Supervisor considered Claimant's termination a voluntary quit rather than a discharge. Notes of Testimony (N.T.), 01/13/09, at 5. Before discharging Claimant, Employer must advise him of the right to a hearing. Id. at 7-8. The school board must also vote to discharge Claimant at a public meeting. Id.

Assistant Director testified that on November 7, 2008, he called Claimant at the building where he worked to talk to him about some areas that were not cleaned, but Claimant would not come to the phone. Id. at 11. Claimant

[3] Section 402(e) of the Law provides an employee shall be ineligible for compensation for any week in which his unemployment is due to willful misconduct connected to his work. 43 P.S. §802(e).

[4] An employer bears the burden of proving a claimant engaged in willful misconduct. Burger v. Unemployment Comp. Bd. of Review, 569 Pa. 139, 801 A.2d 487 (2002). Willful misconduct within the meaning of Section 402(e) is defined by the courts as: 1) wanton and willful disregard of an employer's interests; 2) deliberate violation of rules; 3) disregard of the standards of behavior which an employer can rightfully expect from an employee; or 4) negligence showing an intentional disregard of the employer's interests or the employee's duties and obligations. Id. Where an employee works to the best of his ability, unsatisfactory job performance does not amount to willful misconduct. Geslao v. Unemployment Comp. Bd. of Review, 519 A.2d 1096 (Pa. Cmwlth. 1987)

eventually answered the phone, and Assistant Director told him about the areas he missed. Id. Claimant then replied, "I don't have time for your bullshit" and hung up. Id. Assistant Director then became disturbed, called Director and told him, "I'm not taking this from anybody." Id. Assistant Director then called Claimant back and left a message including the statement, "I'm advising you to look for a new job." Id. Assistant Director further testified that if Claimant had not walked off the job on November 7, he could have continued working in that position until the matter was discussed with the school board. Id. at 21.

Claimant testified that on a prior occasion in early 2008 when he used inappropriate language, Director suspended him for 10 days without pay and warned him the next time anything occurred he would be terminated. Id. at 12-13. Claimant further testified that on November 7, when he received Assistant Director's message advising him to look for new job, he felt Employer fired him. Id. at 16-18. Claimant then gave his keys to a co-worker, said "that's it" and left the building. Id. Claimant never returned to work after that. Id.

Claimant further testified that upon advice of his union president, he submitted a letter to Employer explaining what happened on November 7. Id. at 18. Claimant considered this a letter of explanation, not resignation. Id. at 19. Claimant planned on working for Employer until age 62. Id.

Following the hearing, the referee issued a decision affirming the service center and ruling Claimant eligible for benefits under Section 402(e). The referee found Employer discharged Claimant by accepting his letter in defense of his position as a letter of resignation. The referee found Claimant did not wish to leave his job, but felt Employer discharged him.

Employer appealed to the Board, which reversed the referee's decision and determined Claimant voluntarily quit his job. In particular, the Board found the school board accepted Claimant's November 10, 2008 letter to HR Supervisor as a letter of resignation. Claimant's letter

> detailed [Claimant's] problems with [Assistant Director], indicated that his health and well being were at risk, and then referenced [the] November 7th incident and that he had no choice but to leave.

Bd. Dec. at 2, Finding of Fact (F.F.) No. 20.

In denying Claimant benefits, the Board reasoned that the case was a voluntary quit case, not a discharge case, stating (with emphasis added):

> [Claimant's] separation was the result of a voluntary quit. Regardless of the language used by [Assistant Director] in his telephone message, he did not have the authority to discharge [Claimant]. Only the school board did. [Claimant] knew or should have known this. Therefore, the Board will address this case under Section 402(b) of the Law.
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> * * *
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> Based upon the above Findings, the Board concludes that [Claimant] did not have necessitous and compelling cause for quitting his position. The Board finds insufficient credible evidence that any medical reason necessitated [Claimant] taking such action. Furthermore, the Board does not find that [Claimant] was subjected to a hostile work environment or abusive treatment. [Assistant Director] appears to have been acting in good faith. Therefore, [Claimant] is ineligible for benefits under Section 402(b) of the Law.

Id. at 3. Claimant petitions for review.[5]

II. Issues

Claimant states two issues for review. He asserts the Board erred in finding he voluntarily terminated his employment and that the Board erred in finding him ineligible for benefits under Section 402(b) because he did have a compelling reason for leaving his job.

III. Discussion

A. Voluntary Quit

Essentially, Claimant argues Employer discharged him and that he did not voluntarily resign. As indicated by his brief, Claimant asserts Employer, through Assistant Director, discharged him by telephone on November 7, 2008, his last day of work. In his responses to the Board's findings, attached to his petition for review and his brief, Claimant again emphasizes he thought Assistant Director fired him by leaving the message advising him to look for another job. Claimant also asserts Employer never informed him that only the school board, and not Assistant Director, could fire him. He notes his past warnings and suspensions without pay were not brought before the school board. See Claimant's Responses to Board Findings at 3.

[5] Our review is limited to determining whether the necessary findings of fact were supported by substantial evidence, whether errors of law were committed, or whether constitutional rights were violated. Ductmate Indus., Inc. v. Unemployment Comp. Bd. of Review, 949 A.2d 338 (Pa. Cmwlth. 2008).

The Board counters substantial evidence supports the findings Claimant challenges, and it did not err in concluding that Claimant voluntarily quit his position.[6] The central legal question here, the Board asserts, is whether Employer discharged Claimant or whether he voluntarily quit.

In a voluntary quit case, a claimant bears the burden of proving his separation from employment constituted a discharge. Bell v. Unemployment Comp. Bd. of Review, 921 A.2d 23 (Pa. Cmwlth. 2007). Whether a claimant's termination was voluntary or a discharge is a question of law for the court to determine from the totality of the record. Id.

"A finding of voluntary termination is essentially precluded unless the claimant has a conscious intention to leave his employment." Fekos Enters. v. Unemployment Comp. Bd. of Review, 776 A.2d 1018, 1021 (Pa. Cmwlth. 2001), citing Monaco v. Unemployment Comp. Bd. of Review, 523 Pa. 41, 565 A.2d 127 (1989). "In determining the intent of the employee, the totality of the circumstances surrounding the incident must be considered." Id.

Here, the Board found:

> 15. [Claimant] alleges that he believed he had been discharged.

[6] The Board is the final fact-finder in unemployment compensation cases and is empowered to resolve all issues of witness credibility, conflicting evidence and evidentiary weight. Ductmate. Also, it is irrelevant whether the record includes evidence that would support findings other than those made by the Board; the proper inquiry is whether the evidence supports the findings actually made. Id. Further, the party prevailing below is entitled to the benefit of all reasonable inferences drawn from the evidence. Id.

> 16. [Assistant Director] does not have the authority to discharge anyone, only the school board does.
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> 17. [Claimant] would have a right to a hearing before the school board, and the school board would vote on whether or not [Claimant] would be discharged.
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> * * *
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> 23. [Employer] never discharged [Claimant].
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> 24. [Claimant] quit his position because he felt he was being harassed by [Assistant Director].

Bd. Dec. at 2-3. The Board further reasoned Claimant "knew or should have known" only the school board had the authority to discharge him. Id.

The Board urges us to consider the totality of the circumstances, and to give Employer, as the prevailing party, the benefit of all logical and reasonable inferences. The Board thus asserts all its findings are supported by the record, and that they support a legal conclusion that Claimant voluntarily quit.

We agree. First, HR Supervisor testified if Employer wanted to terminate Claimant, it would explain his rights to him, which include the right to a hearing and a public vote by the school board on his termination. N.T. at 7-8. None of these things happened here. Id. Further, Assistant Director testified if Claimant had not walked off the job in November, 2008, he could have continued working until the school board addressed the matter. Id. at 21.

Moreover, Claimant testified when he got Assistant Director's message, he got upset and said, "that's it." Id. at 16. Claimant then gave his keys

to a co-worker and left before the end of his shift. Id. "An employee who leaves [his] employment without informing [his] employer when or if [he] is planning to return, may be held to have voluntarily quit." Iaconelli v. Unemployment Comp. Bd. of Review, 892 A.2d 897 (Pa. Cmwlth. 2006). Claimant's actions support a finding that he had the conscious intention to terminate his employment. Id.

Claimant further testified the school board notified him by letter that it hired him. N.T. at 20. Following the November 7 incident, Claimant attempted to call HR Supervisor, "to explain what happened." Id. at 18. However, HR Supervisor was on medical leave. Id. Claimant then contacted his union president, who told him to submit a letter to Employer, which he did. Id. From this evidence, the Board could reasonably infer that Claimant "knew or should have known," from the school board's hiring letter, and his conversation with his union representative, that only the school board could terminate him.

In addition, Claimant's letter to Employer, which the school board accepted as a resignation, supports a reasonable inference by the Board that Claimant quit because he felt Assistant Director constantly harassed him. See Employer's Ex 1. Claimant stated that working with Assistant Director was "an emotional roller coaster" and a "hostile environment." Id. Claimant "was always getting phone calls at my home, on my time, sometimes several times a week …." Id. Assistant Director also visited Claimant's home "to tell me to do this, or don't do that." Id. Claimant stated, "[m]y nerves, my health, my well being, all at risk." Claimant's letter then noted the November 7 phone message and ended with, "I have no choice – I have to leave." Id.

For these reasons, we conclude the record, viewed in its entirety, provides substantial evidence for the Board's determination that Employer did not discharge Claimant. Rather, Claimant voluntarily quit. Therefore, we conclude the Board did not err in treating this case as a voluntary quit under Section 402(b). Iaconelli.

B. Necessitous and Compelling Cause

Claimant also contends he had a necessitous and compelling reason for leaving his employment. "An employee who claims to have left employment for a necessitous and compelling reason must prove 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 every reasonable effort to preserve [his] employment." Brunswick v. Unemployment Comp. Bd. of Review, 906 A.2d 657, 660 (Pa. Cmwlth. 2006).

Here, however, Claimant contends his purported discharge itself constituted a necessitous and compelling reason requiring him to leave his job. Claimant does not argue Assistant Director's alleged harassment caused his voluntary quit. Because Claimant asserts his discharge as his compelling reason for leaving, the Board maintains Claimant waived the argument that he had a necessitous and compelling reason for a voluntary quit. McDonough v. Unemployment Comp. Bd. of Review, 670 A.2d 749 (Pa. Cmwlth. 1996) (issues not addressed in appellant's brief are waived).

Upon review of Claimant's brief, we must agree with the Board. Nowhere in Claimant's brief does he assert he voluntarily quit, either because of

harassment by Assistant Director, or for any other reason. Accordingly, we conclude Claimant waived the issue of whether he had necessitous and compelling reasons for a voluntary quit.[7] McDonough.

Discerning no error in the Board's decision, we affirm.

ROBERT SIMPSON, Judge

[7] Even assuming Claimant argued that his treatment by Assistant Director constituted necessitous and compelling cause for a voluntary quit, we would disagree. Mere dissatisfaction with working conditions, resentment of supervisory criticism, or a mere personality conflict without abnormal working conditions does not constitute necessitous and compelling reasons for a voluntary quit. Gioia v. Unemployment Comp. Bd. of Review, 661 A.2d 34 (Pa. Cmwlth. 1995).

Here, the Board determined Assistant Director acted in good faith and did not subject Claimant to a hostile work environment. Bd. Dec. at 3. This is supported by Assistant Director's testimony that he received complaints about Claimant's cleaning and contacted him at work about areas of buildings that were not cleaned. N.T. at 10-11. Even Claimant testified that at the time of the April, 2008 incident involving Claimant's use of inappropriate language, Assistant Director helped him keep his job by instructing him to tell Director he would not use such language again. N.T. at 12-13. Upon review of the record, we agree with the Board that Assistant Director's treatment of Claimant did not provide him with necessitous and compelling reasons to voluntarily quit. Gioia. Also, we agree with the Board that Claimant failed to present sufficient evidence of any medical reason related to Assistant Director's treatment of him that necessitated or compelled a voluntary quit for health reasons.

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v.	:	No. 975 C.D. 2009
Unemployment Compensation Board of Review, Respondent	:	

O R D E R

AND NOW, this 5th day of February, 2010, the order of the Unemployment Compensation Board of Review is **AFFIRMED**.

ROBERT SIMPSON, Judge