



Allegany Optical

2003 | Cited 0 times | Supreme Court of Pennsylvania | August 5, 2003

Submitted: June 27, 2003

OPINION NOT REPORTED

MEMORANDUM OPINION

Allegany Optical, LLC (Employer) petitions for review of the order of the Unemployment Compensation Board of Review (Board) that affirmed the decision of a Referee granting Floyd D. Coffman's (Claimant) application for unemployment compensation benefits, based on the determination that he was not precluded from receiving benefits under Section 402(b) of the Unemployment Compensation Law (Law). ¹ We affirm.

On July 21, 2002, Claimant filed for unemployment compensation benefits with the Lancaster Service Center upon the termination of his employment with Employer. On August 14, 2002, the Service Center issued a determination denying him benefits pursuant to Section 402(b) of the Law on the basis that he had not separated from his employment for cause of a necessitous and compelling nature. The Service Center also determined that Claimant was able and available for suitable work as required by Section 401(d)(1) of the Law. ²

On August 22, 2002, Claimant filed an appeal of the Service Center's determination and a hearing was conducted before a Referee. On November 13, 2002, the Referee issued a decision disposing of the appeal in which he made the following findings of fact:

1. The claimant was last employed by [Employer] as an office manager, at a final hourly rate of \$13.57 plus commission and his last day of work was July 15, 2002.
2. The claimant was out on medical leave from approximately June 18, 2002 until he returned to work on July 15, 2002.
3. While the claimant was on leave, the employer made a decision to move the claimant from the manager's position at the Fredericktown Mall where he had worked as a manager since 1993, to a salesman's position at both the Shippensburg office and Chambersburg Mall locations.
4. The claimant would no longer be a manager supervising two opticians and be responsible for all the duties that go along with running a store.



Allegany Optical

2003 | Cited 0 times | Supreme Court of Pennsylvania | August 5, 2003

5. As a salesman, the claimant would not have been entitled to the commissions based on store sales that he generally received and [that] averaged between \$400 and \$500 per month.
6. As a salesman, the claimant would have been eligible for commissions on his own sales, which generally average \$60 - \$150 per month.
7. The claimant was not entitled to reimbursement [for] mileage as a salesman assigned to both the Shippensburg and Chambersburg Mall locations.
8. The claimant was told that this change was being made because they needed a more dependable manager.
9. The claimant declined the demotion and notified the employer on July 15, 2002.
10. The claimant voluntarily quit this employment.
11. The claimant was available for suitable work and had no restrictions during the week at issue.

Referee's Decision at 1.

Based on the foregoing, the Referee affirmed the Service Center's determination that Claimant was eligible for benefits pursuant to Section 401(d)(1) of the Law. Id. at 2. However, the Referee reversed the Service Center's determination that Claimant was ineligible for benefits pursuant to Section 402(b) of the Law. Id. In reversing the Service Center's determination, the Referee stated:

3.

The claimant was being demoted after serving as a store manager since 1993 at the Fredericktown Mall location. The demotion entailed not only a substantial change in job responsibilities, but also a reduction in pay due to lesser commissions.

The employer's decision to demote the claimant was based on what amounts to unsatisfactory work; at least according to the employer's assessment. The referee does not question the employer's decision to demote the claimant, but a reasonable basis for that decision has not been established and the claimant's decision not to accept the unilateral change in the terms and conditions of his employment was necessitous and compelling under Section 402(b) of the Law.

Id. As a result, the Referee issued an order awarding benefits under the Law. Id.

On November 27, 2002, Employer filed an appeal of the Referee's decision to the Board. On January 29, 2003, the Board issued an order affirming the Referee's decision by adopting the Referee's



findings of fact and conclusions of law. Employer then filed the instant petition for review.³

The sole claim raised by Employer in this appeal is that the Board erred in affirming the Referee's determination that Claimant was not precluded from receiving benefits pursuant to Section 402(b) of the Law. In particular, Employer contends that "necessitous and compelling cause" cannot be found in a case such as this where Claimant was transferred to the new position based on his inability to perform the duties of his former position.

We initially note that, in general, a claimant has the burden of proving entitlement to unemployment compensation benefits. *Jennings v. Unemployment Compensation Board of Review*, 675 A.2d 810 (Pa. Cmwlth. 1996); *T.B. Wood's Sons Company v. Unemployment Compensation Board of Review*, 615 A.2d 883 (Pa. Cmwlth. 1992), petition for allowance of appeal denied, 534 Pa. 651, 627 A.2d 181 (1993). A claimant who voluntarily quits his employment also bears the burden of proving that the termination was caused by reasons of a necessitous and compelling nature. *Du-Co Ceramics Company v. Unemployment Compensation Board of Review*, 546 Pa. 504, 686 A.2d 821 (1996); *Taylor v. Unemployment Compensation Board of Review*, 474 Pa. 351, 378 A.2d 829 (1977); *Carter v. Unemployment Compensation Board of Review*, 629 A.2d 212 (Pa. Cmwlth. 1993). In order to establish a necessitous and compelling reason for resigning, a claimant must demonstrate that his conduct was consistent with ordinary common sense and prudence, and that the circumstances promoting the resignation were for reasons which were real, substantial and reasonable, and not for reasons imaginary, trifling or whimsical. *Creason v. Unemployment Compensation Board of Review*, 554 A.2d 177 (Pa. Cmwlth. 1989).

Thus, a claimant must show that the necessitous and compelling reason resulted from circumstances which produced real and substantial pressure to terminate his employment and which would compel a reasonable person under like circumstances to act in the same manner. *Taylor*; *Carter*. Further, a claimant must establish that he acted with ordinary common sense in quitting, made a reasonable effort to preserve his employment, and had no real choice other than to leave that employment. *Id.*

As noted above, Employer claims that the Board erred in affirming the grant of benefits pursuant to Section 402(b) of the Law because Claimant failed to establish that he had necessitous and compelling cause to terminate his employment. Specifically, Employer alleges that Claimant was properly demoted due to his excessive absenteeism and that he was no longer able to perform the duties of the store manager position. See Appellant's Brief at 6, 10-11.

It is true that mere dissatisfaction with wages or working conditions is not sufficient to establish necessary and compelling reasons for voluntarily leaving employment. *Monaco v. Unemployment Compensation Board of Review*, 523 Pa. 41, 565 A.2d 127 (1989); *A-Positive Electric v. Unemployment Compensation Board of Review*, 654 A.2d 299 (Pa. Cmwlth. 1995). However, a substantial unilateral change in the terms and conditions of a claimant's employment may furnish cause of a necessitous and compelling nature to justify voluntarily leaving employment. *Brown v. Unemployment*

Allegany Optical

2003 | Cited 0 times | Supreme Court of Pennsylvania | August 5, 2003

Compensation Board of Review, 780 A.2d 885 (Pa. Cmwlth. 2001); Mauro v. Unemployment Compensation Board of Review, 751 A.2d 276 (Pa. Cmwlth. 2000); A-Positive Electric.

In addition, in cases involving a demotion, if a claimant refuses to accept a justified demotion and voluntarily quits, he is ineligible for benefits pursuant to Section 402(b) of the Law. Allegheny Valley School v. Unemployment Compensation Board of Review, 548 Pa. 355, 697 A.2d 243 (1997). However, a claimant is not ineligible for benefits under Section 402(b) of the Law if the demotion was not justified. Id.

In the instant case, the Referee did "[n]ot question the employer's decision to demote the claimant...", but found that "[a] reasonable basis for that decision ha[d] not been established..." Referee's Decision at 2. Specifically, the Referee found that Claimant "[w]as available for suitable work and had no restrictions during the week at issue." Id. at 1. Based on the foregoing, the Referee concluded that "[c]laimant's decision not to accept the unilateral change in the terms and conditions of his employment was necessitous and compelling under Section 402(b) of the Law." Id. at 2. The Board adopted all of the foregoing in affirming the Referee's decision. As Employer had failed to establish that the demotion was justified, the Board properly determined that Claimant was not ineligible for benefits pursuant to Section 402(b) of the Law. Allegheny Valley School; Brown; Mauro; A-Positive Electric.

Accordingly, the order of the Board is affirmed.

JAMES R. KELLEY, Senior Judge

ORDER

AND NOW, this 5th day of August, 2003, the order of the Unemployment Compensation Board of Review, dated January 29, 2003 at No. B-407838, is affirmed.

JAMES R. KELLEY, Senior Judge

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, in pertinent part: An employe shall be ineligible for compensation for any week--*** (b) In which his unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature, irrespective of whether or not such work is "employment" as defined in this act.

2. 43 P.S. § 801(d)(1). Section 401(d)(1) of the Law provides, in pertinent part: Compensation shall be payable to any employe who is or becomes unemployed, and who--*** (d)(1) Is able to work and available for suitable work...

3. This Court's scope of review in an unemployment compensation appeal is limited to determining whether an error of law was committed, whether constitutional rights were violated, or whether necessary findings of fact are supported by



Allegany Optical

2003 | Cited 0 times | Supreme Court of Pennsylvania | August 5, 2003

substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa.C.S. § 704; *Hercules, Inc. v. Unemployment Compensation Board of Review*, 604 A.2d 1159 (Pa. Cmwlth. 1992). Substantial evidence is relevant evidence that a reasonable mind might consider adequate to support a conclusion. *Id.* In addition, it must also be noted that the Board is the ultimate fact-finding body in unemployment matters and is empowered to resolve conflicts in evidence, to determine what weight is to be accorded the evidence, and to determine the credibility of witnesses. *Peak v. Unemployment Compensation Board of Review*, 509 Pa. 267, 501 A.2d 1383 (1985); *Wright v. Unemployment Compensation Board of Review*, 347 A.2d 328 (Pa. Cmwlth. 1975). The Board's findings of fact are conclusive on appeal so long as the record, taken as a whole, contains substantial evidence to support those findings. *Penflex, Inc. v. Bryson*, 506 Pa. 274, 485 A.2d 359 (1984).

