

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Theresa M. Keim,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1393 C.D. 2013
	:	Submitted: January 3, 2014
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

BEFORE: HONORABLE DAN PELLEGRINI, President Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JAMES GARDNER COLINS, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
SENIOR JUDGE COLINS**

FILED: February 26, 2014

Theresa M. Keim (Claimant), proceeding *pro se*, petitions for review of the July 8, 2013 order of the Unemployment Compensation Board of Review (Board), affirming the decision of a referee and holding that she is ineligible for unemployment compensation benefits under Section 402(b) of the Unemployment Compensation Law (Law)¹ because she voluntarily quit her job without a necessitous and compelling reason. We affirm.

Claimant left her employment as a teacher’s assistant at Montgomery Early Learning Center (Employer) and applied for benefits, which the Lancaster

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, §402(b), *as amended*, 43 P.S. §802(b). Section 402(b) provides, in relevant part, that “[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” *Id.*

UC Service Center denied. Claimant appealed, and the matter was assigned to a referee for a hearing. A hearing was held on April 24, 2013, during which Claimant, Employer's Director of Human Resources, and Employer's tax consultant testified. After the hearing, the referee made the following findings of fact:

1. The Claimant worked full time as assistant teacher with Montgomery Early Learning Center from August 25, 1998 through February 12, 2013 at the final rate of \$11.48 per hour.
2. On February 12, 2013, the Employer transferred the Claimant to its Narberth, PA location.
3. The Employer transferred the Claimant to work at the new location for the same amount, the same position, with more hours.
4. The Claimant declined the Employer's offer because the new location is 35 miles away and because it would result in more wear and tear on the Claimant's vehicle, and because of traffic concerns.
5. The Claimant quit the employment.

(Record Item (R. Item) 12, Referee's Decision and Order, Findings of Fact (F.F.) ¶¶1-5.) The referee reasoned that although an unreasonable distance to work and/or an increase in work-related travel expenses due to a transfer may constitute good cause for quitting employment, our Courts have ruled that a claimant must take reasonable steps to overcome a transportation problem in order to establish a necessitous or compelling reason for doing so. (R. Item 12, Referee's Decision and Order, Reasoning.) The referee found that the 35-mile traveling distance to the new work location was not an unreasonable distance, and Claimant did not take

any steps to overcome the stated transportation problems prior to quitting her employment. (*Id.*) The referee concluded that Claimant failed to prove that she quit her employment because of a necessitous or compelling reason, and therefore denied her benefits under Section 402(b) of the Law. (*Id.*)

Claimant appealed to the Board. In an order affirming the referee's decision, the Board adopted and incorporated the findings of the referee, *except* that it modified Finding of Fact No. 5 "to reflect the fact that [C]laimant quit her employment because she was dissatisfied with the transfer of location." (R. Item 16, Board's Order.) The Board stated that an employer has the right to make reasonable modifications to an employee's job, including the location, and stated further that:

The Board does not find that a 35 mile commute is unreasonable. The Board rejects [C]laimant's testimony that she quit due to "bad eyes" as she never mentioned this reason to [E]mployer and, moreover, [C]laimant admitted at the hearing that, even if her eyes were better, she still would not have accepted the transfer. [E]mployer's witness credibly testified that it offered [C]laimant six days to think about the offer, that it informed her that it would be flexible with regard to hours, and that it would work with her on her schedule. [C]laimant declined the offer the very next day without trying to commute or seeking alternatives.

(*Id.*)

Claimant filed the instant petition for review appealing the Board's order to this Court.² Before this Court, Claimant argues simply that the Board

² Our scope of review is limited to determining whether necessary findings of fact are supported by substantial evidence, whether an error of law was committed or whether constitutional rights were violated. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704; *Pennsylvania* **(Footnote continued on next page...)**

erred in determining that she failed to present reasons of a necessitous and compelling nature for leaving her job; Claimant states that she refused the transfer because it entailed a commute that was “a bit too long of a drive,” and that “she is not a long distance driver.” (Claimant’s Brief at 5.)

A claimant seeking benefits after voluntarily quitting her job has the burden to demonstrate that she had a necessitous and compelling reason for doing so. *Pennsylvania Gaming Control Board v. Unemployment Compensation Board of Review*, 47 A.3d 1262, 1265 (Pa. Cmwlth. 2012); *Nolan v. Unemployment Compensation Board of Review*, 797 A.2d 1042, 1046 (Pa. Cmwlth. 2002). To prove a necessitous and compelling reason for leaving employment, the claimant must show circumstances that produced real and substantial pressure to terminate employment and would compel a reasonable person to act in the same manner, and must also show that she acted with ordinary common sense and made a reasonable effort to preserve her employment. *Pennsylvania Gaming Control Board*, 47 A.3d at 1265; *Unangst v. Unemployment Compensation Board of Review*, 690 A.2d 1305, 1307 (Pa. Cmwlth. 1997). Whether or not a claimant had a necessitous and compelling reason for leaving employment is a question of law subject to this Court’s plenary review. *Pennsylvania Gaming Control Board*, 47 A.3d at 1265; *Nolan*, 797 A.2d at 1046.

“It is well settled that insurmountable commuting problems can constitute the required just cause to justify a voluntary quit.” *Kawa v. Unemployment Compensation Board of Review*, 573 A.2d 252, 254 (Pa. Cmwlth.

(continued...)

Gaming Control Board v. Unemployment Compensation Board of Review, 47 A.3d 1262, 1264 n.4 (Pa. Cmwlth. 2012).

1990). For transportation problems to constitute a necessitous and compelling reason for leaving employment, however, the claimant must demonstrate that she took all reasonable steps to overcome the transportation problems prior to severing the employment relationship. *Latzy v. Unemployment Compensation Board of Review*, 487 A.2d 121, 123 (Pa. Cmwlth. 1985); *Yurack v. Unemployment Compensation Board of Review*, 435 A.2d 663, 664 (Pa. Cmwlth. 1981). This Court has held that a commute to work in the range of 50-60 miles, without more, does not rise to the level of a necessitous and compelling reason to terminate employment. *Kieley v. Unemployment Compensation Board of Review*, 471 A.2d 1345 (Pa. Cmwlth. 1984) (50-mile commute); *Musquire v. Unemployment Compensation Board of Review*, 415 A.2d 708 (Pa. Cmwlth. 1980) (60-mile commute). Here, the record establishes that the distance from Claimant's home to the new location was 35 miles, a substantially shorter commute than the commutes at issue in *Kieley* and *Musquire*. Moreover, Claimant did not try commuting to the new location, for even a single day. Nor did Claimant show the absence of alternative commuting means, such as public transportation or carpooling.

Accordingly, Claimant did not establish that her commuting difficulties were insurmountable, nor did she take any steps to overcome the stated difficulties. Claimant failed to establish that the commute to the new location constituted a necessitous and compelling reason to quit her employment, and we therefore affirm.

JAMES GARDNER COLINS, Senior Judge

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	:
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ORDER

AND NOW, this 26th day of February, 2014, the order of the Unemployment Compensation Board of Review in the above-captioned matter is hereby AFFIRMED.

JAMES GARDNER COLINS, Senior Judge