

that the Board erred in concluding that Claimant met his burden of proving that he had cause of a necessitous and compelling nature to quit his position. We affirm.

Claimant, who considers himself a resident of Florida, worked for Employer as a full-time truck driver delivering products in Pennsylvania and seven other states. (Board Findings of Fact (FOF) ¶¶ 1-2, 4.) Claimant voluntarily quit his position on March 5, 2014 because he believed Employer was not paying him all of his wages and because Employer continued to withhold Pennsylvania state income tax from those wages despite Claimant advising Employer of his status as a non-resident of Pennsylvania. (FOF ¶¶ 1, 6, 14.) Claimant filed a claim for UC benefits, which the Local UC Service Center granted. (Notice of Determination, R. Item 4.)

Employer appealed and hearings were held before a UC Referee (Referee), at which Claimant and Employer presented testimony and documentary evidence.² The Referee concluded that Claimant did not meet his burden of proving that he had cause of a necessitous and compelling nature to quit his position, and reversed the grant of benefits. Claimant appealed to the Board.

Upon review, the Board credited Claimant's testimony and resolved any conflicts in the testimony in Claimant's favor. (Board Decision at 2.) The Board issued the following findings of fact.

² Two hearings were held before the Referee. Claimant testified via telephone at the first hearing, which was then continued so that Claimant could travel from Florida, where he resides, to Pennsylvania to testify and present his documentary evidence in person.

1. The claimant was employed full-time as a driver with [Employer] from January 1, 2013 through March 5, 2014, at a final rate of pay of \$19.50 per hour.
2. The claimant considers his home in Florida to be his residence, and the claimant maintains a Florida driver's license and receives mail at his home in Florida.
3. While working for [Employer], the claimant rented a home in Canonsburg from his girlfriend's father at a rate of \$600.00 per month and the claimant lived in the home in Canonsburg while working for [Employer].
4. The claimant delivered product in Pennsylvania, Ohio, West Virginia, Indiana, Illinois, Michigan, Iowa, and Nebraska.
5. Because the claimant's home in Florida was his residence, the claimant was a non-resident of Pennsylvania engaged in interstate transportation activities and he was exempt from Pennsylvania income tax.
6. The claimant informed the employer that they should not be withholding Pennsylvania income tax from his wages.
7. The employer allegedly referred the matter to [its] payroll personnel and allegedly decided that they [sic] were properly withholding Pennsylvania income tax from the claimant's wages.
8. The claimant was entitled to \$19.50 per hour with time and a half for overtime and double time on Sundays.
9. The employer did not pay the claimant time and a half for overtime and double time on Sundays.
10. During the claimant's employment, there were many occasions when the claimant was not paid the appropriate wages for a particular payroll period, and the claimant brought these issues to the attention of the employer.
11. The employer responded to the claimant's inquiry by issuing additional checks to cover underpayments.

12. The claimant reviewed his payroll statements from January 2013 through February 25, 2014, and concluded that the employer owed him a significant amount of money in unpaid wages.
13. The employer scheduled a meeting for March 5, 2014, to address the claimant's concerns.
14. The claimant appeared for the meeting on March 5, 2014, at which time he informed the employer that he was voluntarily quitting his employment due to the employer's failure to pay all of his wages after repeated requests.
15. The claimant did provide the employer with his calculations on what he believed to be the underpayment.
16. The employer subsequently conducted an audit of the claimant's payroll and issued the claimant additional supplemental paychecks totaling approximately \$4,300.00.
17. The employer acknowledged that they owed the claimant additional monies.
18. The claimant voluntarily quit his employment because the employer did not pay the claimant all of his wages after the claimant repeatedly complained.

(FOF ¶¶ 1-18.) The Board found that Claimant met his burden of proof under Section 402(b) stating:

In the present case, the claimant resigned his employment with [Employer] because the employer did not properly pay his wages. Additionally, the employer should not have withheld Pennsylvania income tax. The employer acknowledges that [it] repeatedly owed the claimant additional monies.

The employer has presented no good cause for repeatedly owing the claimant additional monies. Therefore, the Board concludes that the claimant had good cause to voluntarily quit his employment.

(Board Decision at 3.) Employer now petitions this Court for review.³

On appeal Employer raises a number of arguments, but the essential question before this Court is whether the Board erred in finding that Claimant met his burden of proving that he had a necessitous and compelling reason to voluntarily quit his employment.

Under Section 402(b), “[w]here a claimant has voluntarily quit employment, in order to obtain benefits, [he] must show that [he] left [his] employment for necessitous and compelling reasons.” Collier Stone Company v. Unemployment Compensation Board of Review, 876 A.2d 481, 484 (Pa. Cmwlth. 2005). Thus, Employer is correct that, because Claimant quit, he had the burden of proof. It is well established that:

[a]n 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 a reasonable effort to preserve h[is] employment.

Brunswick Hotel & Conference Center, LLC v. Unemployment Compensation Board of Review, 906 A.2d 657, 660 (Pa. Cmwlth. 2006). “Whether a claimant had cause of a necessitous and compelling nature to quit a job is a conclusion of

³ “The Court’s review is limited to determining whether constitutional rights were violated, whether an error of law was committed, whether a practice or procedure of the Board was not followed or whether the findings of fact are supported by substantial evidence in the record.” Western and Southern Life Insurance Company v. Unemployment Compensation Board of Review, 913 A.2d 331, 334 n.2 (Pa. Cmwlth. 2006).

law subject to review by this Court.” Warwick v. Unemployment Compensation Board of Review, 700 A.2d 594, 596 (Pa. Cmwlth. 1997).

We have held that the “failure to make timely payment for services rendered creates a real and substantial pressure upon an employee to terminate employment” and “repeat occurrences [of such failures] would cause a reasonable person to terminate employment.” Shupp v. Unemployment Compensation Board of Review, 18 A.3d 462, 465 (Pa. Cmwlth. 2011). The “underpayment of wages over a period of time [is] also sufficient cause to quit.” LaTruffe v. Unemployment Compensation Board of Review, 453 A.2d 47, 47 (Pa. Cmwlth. 1982) (citing Frey v. Unemployment Compensation Board of Review, 383 A.2d 1326, 1327 (Pa. Cmwlth. 1978)). A claimant will not be ineligible for UC benefits as long as the claimant “take[s] ‘common sense’ action that would have given the employer an opportunity to understand the nature of [his] objections and to take prudent steps to resolve the problem.” Unclaimed Freight Company v. Unemployment Compensation Board of Review, 677 A.2d 377, 379 (Pa. Cmwlth. 1996) (citing Tedesco Manufacturing Company, Inc. v. Unemployment Compensation Board of Review, 552 A.2d 754, 756 (Pa. Cmwlth. 1989)); Homan v. Unemployment Compensation Board of Review, 527 A.2d 1109, 1110 (Pa. Cmwlth. 1987).

Pursuant to Section 3(a) of the Wage Payment and Collection Law (Wage Law),⁴ which is implicated whenever a claimant asserts that he quit due to an employer’s failure to properly pay wages,

⁴ Act of July 14, 1961, P.L. 637, as amended, 43 P.S. § 260.3(a).

[e]very employer *shall pay all wages . . . due to his employes on regular paydays designated in advance by the employer.* Overtime wages may be considered as wages earned and payable in the next succeeding pay period. *All wages . . . earned in any pay period shall be due and payable* within the number of days after the expiration of said pay period as provided in a written contract of employment

43 P.S. § 260.3(a) (emphasis added); Shupp, 18 A.3d at 464. Applying Section 3(a) of the Wage Law, this Court has held that “employees are well within their rights to demand timely payment for work performed” and that “payment as agreed for services rendered is the very essence of an employment relationship, such that no employee can be compelled to work without payment.” Shupp, 18 A.3d at 464 (emphasis omitted).

Employer challenges the Board’s factual findings relating to Claimant’s reasons for quitting. Employer characterizes the Board’s findings to be that “there was only one reason for Jones to have quit – not being paid all the wages he was due after complaining about it multiple times.” (Employer’s Br. at 12.) Employer believes that there is not substantial evidence to support the Board’s findings because Claimant testified that he quit for not being paid all of his wages *and* because Employer continued to withhold Pennsylvania income taxes from those wages. Employer contends that, in order for this finding of fact to be supported by the record, *both* reasons Claimant asserted for quitting have to constitute cause of a necessitous and compelling nature, and the Board erred when it concluded that Employer should not have withheld Pennsylvania income taxes from Claimant’s pay.

The Board’s findings of fact are conclusive on appeal if they are supported by substantial evidence, Chapman v. Unemployment Compensation Board of Review, 20 A.3d 603, 607 (Pa. Cmwlth. 2011), which is defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion,” Peak v. Unemployment Compensation Board of Review, 501 A.2d 1383, 1387 (Pa. 1985) (quoting Murphy v. Department of Public Welfare, 480 A.2d 382, 386 (Pa. Cmwlth. 1984)). “[T]he Board is the ultimate fact finder and is empowered to make credibility determinations,” and, in doing so, “may accept or reject the testimony of any witness in whole or in part.” Collier Stone Company, 876 A.2d at 483. This Court “examine[s] the testimony in the light most favorable to the party in whose favor the Board has found, giving that party the benefit of all inferences that can logically and reasonably be drawn from the testimony” to determine whether there is substantial evidence to support the Board’s findings. Taylor v. Unemployment Compensation Board of Review, 378 A.2d 829, 831 (Pa. 1977).

Our review of the record, including Claimant’s credited testimony, reveals that the Board’s findings are supported by substantial evidence. Claimant testified about resigning due to ongoing problems with Employer not paying him what he was owed, i.e., that Employer was “shorting” him his pay, including, *inter alia*, overtime and time and a half. (Hr’g Tr. at 9-11, April 30, 2014, R.R. at 11-13.) The following exchange occurred between Claimant and the Referee:

R: And did you tell [Employer] why you were leaving or resigning?

C: Yeah, theft.

....

C: I have documentation in support of theft. . . . That's the reason I left Your Honor, plain and simple, because [Employer was] stealing from me.

R: Okay. And so how did you determine that the Employer was stealing from you? Are you . . . you believe you were not compensated properly, is that . . .

C: Yes sir. They were taking money from me.

R: Okay. Well, what does that mean, you weren't receiving the compensation you were entitled to?

C: Yes, they were shorting my pay Your Honor.

R: All Right. Now prior to March 5, did you ever bring this to the Employer's attention?

C: Yes sir.

....

R: Do you recall approximately when you first took . . . issue [with] not being compensated correctly from the Employer?

C: Maybe within the first two months of employment.

....

R: How did you discover that you were being shorted?

C: The paychecks weren't matching up They weren't matching up with hours worked. The amounts [were not] matching up with hours worked on like 28 occasions.

(Hr'g Tr. at 8-10, R.R. at 10-12.)

When his supervisor asked him why he was resigning, Claimant indicated that Employer had "taken the last dime from me. I no longer work for you." (Hr'g Tr. at 29, R.R. at 31.) Claimant testified that, after reviewing all of his paystubs and timesheets, he believed Employer had shorted him a little more than

\$13,000.00 in pay in the one year that he had worked for Employer. (Hr’g Tr. at 12-13, R.R. at 14-15.) Claimant indicated that he spoke or texted with various representatives of Employer, including its owner, about shortages in his pay. (Hr’g Tr. at 9, 13, 16, 22, R.R. at 11, 15, 18, 24; Hr’g Tr. at 56, 58, May 19, 2014, R.R. at 104, 106; Employer’s Ex. 2, R.R. at 41-43.) Claimant testified that Employer said it would be corrected and, when he reviewed his checks again, the problem was not corrected. (Hr’g Tr. at 15-16, April 30, 2014, R.R. at 17-18.) Furthermore, Employer’s Senior Accountant testified that Claimant spoke with him in January 2014 about the issue and that Employer issued five supplemental paychecks during Claimant’s employment. (Hr’g Tr. at 65-67, 70-71, May 19, 2014, R.R. at 113-15, 118-19.) Claimant explained that “if you’re going to short someone’s pay, why should they work for you continuously.” (Hr’g Tr. at 30-31, April 30, 2014, R.R. at 32-33.) In addition to his testimony, Claimant submitted a significant amount of documentary evidence, including his paystubs and timesheets, to establish how Employer was shorting his pay. (Hr’g Tr. at 30-31, R.R. at 32-33; Hr’g Tr. at 34-44, May 19, 2014, R.R. at 82-92; Claimant’s Exs. 5-6, R.R. at 218-29.⁵)

Claimant also testified about Employer’s practice of withholding Pennsylvania income taxes from his wages, which he believed was improper, as a reason to quit. (Hr’g Tr. at 20, May 19, 2014, R.R. at 68.) However, whether this practice of withholding was improper or not does not alter the fact that Employer admittedly did not consistently pay Claimant amounts owed, but had to repeatedly

⁵ Claimant submitted all of his paystubs to the Referee as evidence, but only several weeks were expressly discussed at the Referee’s hearing.

issue supplemental paychecks. We conclude that the record, when viewed in the light most favorable to Claimant, supports the Board's findings that Claimant quit because of Employer's failure to pay him all the wages he was owed.

Employer next contends that Claimant did not act with ordinary common sense or make reasonable efforts to preserve his employment because he did not bring his wage issues to Employer's attention until after he quit, thereby not giving Employer a reasonable opportunity to address the issue. It further asserts that, unlike other failure to pay wages cases, Claimant was aware that if he had problems with his paycheck he could go to Employer and it would be addressed. Thus, Employer argues, it never refused to pay Claimant the proper wages and Claimant is ineligible for UC benefits.

This Court previously has addressed situations similar to the present matter in Warwick and Shupp. The claimant, in Warwick, received paychecks for an incorrect amount for eight weeks, he complained after the fourth week, was told that the problem was corrected, but it was not. Warwick, 700 A.2d at 595-96. The claimant informed the employer that he would not take any other assignments until the payroll issues were resolved, and he applied for UC benefits. Id. at 596. The employer admitted that there were ongoing problems with the claimant's checks and that it had, on multiple occasions, issued supplemental checks to cover the shortages. Id. The claimant's application for UC benefits was denied and the Referee and Board affirmed because, "although there were problems with [the c]laimant's paychecks, the local office made responsible efforts to correct the errors," the "[e]mployer ultimately paid [the c]laimant all money owed to him and .

. . . he had no reason to believe that [the e]mployer would not do so.” Id. The claimant appealed to this Court, and we reversed. We held that the “[e]mployer’s continued failure to assure that [the c]laimant was paid in a correct amount on his regular pay day constituted cause of a necessitous and compelling nature for him to voluntarily terminate his employment.” Id. at 597.

Similarly, in Shupp, we held that the claimant, who had been routinely paid untimely throughout her nine years of employment, was not ineligible for benefits because, despite her complaints, the employer continued the untimely payments. Shupp, 18 A.3d at 463, 465-66. We observed that “it is clear that under the . . . Wage . . . Law, erratic and intermittently late payments are unacceptable as a matter of law.” Id. at 465. This Court held that, although other decisions appeared to require claimants to “request a guarantee of adherence to a rigid payment schedule after protesting tardy payments in order to retain eligibility for unemployment compensation,” “[g]iven that the Wage . . . Law already requires adherence to a rigid payment schedule, . . . it is sufficient for employees to complain of late payments, so long as the employer is afforded a reasonable opportunity to address the employee’s complaints.” Id. at 465 (citing Warwick, 700 A.2d at 597; Koman v. Unemployment Compensation Board of Review, 435 A.2d 277, 279 (Pa. Cmwlth. 1981)). Because the claimant had complained to the employer about the tardy payments several times before she quit and “gave [the e]mployer several opportunities to become current in her wage payments before actually leaving her job,” we held that she acted with ordinary common sense and attempted to preserve her employment before quitting, thereby rendering her not ineligible for UC benefits under Section 402(b). Id. at 465-66.

We find Warwick and Shupp to be on point. Here, Claimant, like the claimants in Warwick and Shupp, had: ongoing problems with his paychecks and he advised Employer of these problems; although the problems were “fixed” with supplemental payments, the problems nonetheless continued; and Claimant quit as a result. Employer’s argument that Claimant did not complain about his paychecks before he quit is inconsistent with Claimant’s credited testimony, the testimony of Employer’s Senior Accountant, and Employer’s own actions. Claimant testified that he advised Employer of the problems with his paychecks as early as the Spring of 2013 and that he received several supplemental paychecks as a result. (Hr’g Tr. at 9-11, April 30, 2014, R.R. at 11-13; Hr’g Tr. at 56-58, May 19, 2014, R.R. at 104-06.) Employer’s Senior Accountant testified that: Claimant advised him in January 2014 of problems with his paycheck; during Claimant’s employment, Employer issued Claimant five supplemental paychecks plus two checks after Claimant resigned to remedy pay shortages; and, after reviewing the documentation Claimant submitted after he resigned, there were errors in “[a]ll but two” paychecks. (Hr’g Tr. at 65-67, 70-71, May 19, 2014, R.R. at 113-15, 118-19.)

Employer appears to rely on the testimony of several of its witnesses that Claimant did not complain prior to quitting, but “[t]he fact that Employer may have produced witnesses who gave a different version of the events, or that Employer might view the testimony differently than the Board, is not grounds for reversal if substantial evidence supports the Board’s findings.” Tapco, Inc. v. Unemployment Compensation Board of Review, 650 A.2d 1106, 1108-09 (Pa. Cmwlth. 1994). Because substantial evidence supports the Board’s findings,

Employer's reliance on evidence different than that relied upon by the Board is not a basis for reversing the Board's Order.

Employer also argues that the Board improperly placed the burden of proof on Employer, rather than Claimant, when it found that Employer did not have good cause for why it repeatedly owed Claimant money. However, the Board's Decision cites the correct standard for reviewing UC claims under Section 402(b) and applies that standard to the facts in this case. (Board Decision at 3.) It found that Claimant repeatedly requested that Employer properly pay his wages and that Claimant resigned because, notwithstanding these requests, Employer continued to pay him improperly. (FOF ¶¶ 10, 14; Board Decision at 3.) Evaluating whether an employer had good cause for nonpayment of wages, after a claimant has met his burden of showing the non-payment is not improper, and the Board's statement that Employer did not have good cause for repeatedly owing Claimant additional monies did not shift the burden to Employer. The Board merely followed precedent, which reviews the reasons for improper or late payments to determine whether a claimant had cause of a necessitous and compelling nature to voluntarily quit. *See, e.g., Koman*, 435 A.2d at 279-80 (holding that the claimant did not establish that she had a necessitous and compelling reason to quit based on the employer's failure to pay her the correct amount on two occasions where she did not establish that the payments were anything other than isolated, unrelated incidents); *Emgee Engineering Company v. Unemployment Compensation Board of Review*, 373 A.2d 779, 782 (Pa. Cmwlth. 1977) (stating that an employer's reason for not paying its employees on time, problems with its cash flow, was not a

sufficient reason to require the claimants to acquiesce to late payments rather than voluntarily quit their employment).

Employer, finally, contends that Claimant is ineligible for UC benefits because he knew that Employer would correct his paychecks and because Employer never actually *refused* to pay Claimant the wages owed. We have previously held that claimants, whose employers issued supplemental or untimely paychecks, were not ineligible for UC benefits under Section 402(b) of the UC Law. Shupp, 18 A.3d at 463, 465-66; Warwick, 700 A.2d at 596-97. Moreover, Employer's Senior Accountant admitted that there were errors in "[a]ll but two" of Claimant's paychecks and that Employer had problems with "[p]ayroll discrepancies" with other employees' paychecks. (Hr'g Tr. at 69-71, May 19, 2014, R.R. at 117-19.) Thus, while Employer issued supplemental checks to resolve some of the alleged payroll discrepancies and, therefore, did not technically refuse to pay Claimant, it is undisputed that Employer repeatedly failed to pay Claimant the proper amount owed to him when it was due.⁶

Moreover, to hold that Claimant is ineligible for UC benefits because he would not accept being repeatedly, untimely paid the full amount for his work efforts would be contrary to this Court's precedent and Section 3(a) of the Wage Law, which requires that "employer shall pay *all wages . . . due* to his employes *on regular paydays* designated in advance by the employer." 43 P.S. § 260.3(a)

⁶ We acknowledge, and Claimant admits, that a few of these incorrect payments were overpayments; however, this does not alter the fact that Employer repeatedly underpaid Claimant throughout Claimant's employment.

(emphasis added). This Court has previously stated that “[a] contrary view would permit an employer to require a worker to submit to denial of a [timely] day’s pay under pain of loss of unemployment benefits. As the scriptural admonition states, the laborer is worthy of his hire.” LaTruffe, 453 A.2d at 48 (holding that a claimant had a necessitous and compelling reason to quit his employment where the employer wrongfully refused to pay him for one day’s work).

For the foregoing reasons, we conclude that Claimant established that he had cause of a necessitous and compelling nature to voluntarily quit his employment based on Employer’s repeated failure to pay him the proper amount of wages, in a timely fashion, despite his advising Employer of the issue on multiple occasions.⁷ Accordingly, we affirm the Board’s Order.

RENÉE COHN JUBELIRER, Judge

⁷ Because we conclude that this reason was an independent basis for Claimant’s resignation and supports the Board’s conclusion that Claimant was not ineligible for benefits under Section 402(b), we will not address Employer’s argument that its practice of withholding Pennsylvania state income taxes from Claimant’s pay did not, as a matter of law or fact, give Claimant sufficient cause to quit his employment.

