

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

David W. Ringlaben,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 247 C.D. 2013
	:	
Unemployment Compensation	:	Submitted: July 19, 2013
Board of Review,	:	
	:	
Respondent	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE MARY HANNAH LEAVITT, Judge  
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION  
BY JUDGE COHN JUBELIRER**

**FILED: August 23, 2013**

David W. Ringlaben (Claimant), pro se,<sup>1</sup> petitions for review of the Order of the Unemployment Compensation Board of Review (Board) finding Claimant ineligible for unemployment compensation (UC) benefits pursuant to Section 402(b) of the Unemployment Compensation Law<sup>2</sup> (Law). The Board concluded

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<sup>1</sup> Claimant, a licensed attorney, is representing himself.

<sup>2</sup> Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. § 802(b). Section 402(b) provides that an employee is 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.

that Claimant did not establish that he had cause of a necessitous and compelling nature for voluntarily quitting his position with Alevistar Group, LLC (Employer) in order to volunteer at the Philadelphia District Attorney's Office (DA's Office). On appeal, Claimant argues that the Board's Order should be reversed because: (1) Employer has not participated in any of the UC proceedings; (2) his temporary work for Employer, a legal staffing agency, is not suitable employment; (3) leaving Employer to volunteer with the DA's Office in an attempt to obtain suitable, full-time legal work constitutes cause of a necessitous and compelling nature for voluntarily quitting his job; and (4) it is the public policy of the Commonwealth of Pennsylvania (Commonwealth) to provide UC benefits to those in Claimant's position.<sup>3</sup> Discerning no error, we affirm.

Claimant applied for and received UC benefits after being laid off by a law firm in December 2011. (Claim Record at 3, R.R. at 3.) Claimant accepted a position with Employer as a temporary attorney from April 11, 2012 through May 15, 2012, when he voluntarily left that position. Claimant applied to reopen his claim for UC benefits, which was denied by the Allentown UC Service Center (Service Center) pursuant to Section 402(b), and Claimant appealed. The matter was assigned to a UC Referee (Referee) for a hearing, at which only Claimant appeared.<sup>4</sup> The Referee affirmed the Service Center's determination, and Claimant appealed to the Board. After reviewing the record made before the Referee and the

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<sup>3</sup> We have rearranged Claimant's arguments for ease of resolution.

<sup>4</sup> Employer requested and received a continuance of the Referee's initial hearing, but did not attend the rescheduled hearing.

documents in Claimant's claim record, the Board made the following Findings of Fact.

1. The claimant was last employed as a temporary attorney for [Employer] from April 11, 2012, through May 15, 2012, at a rate of \$30.00 an hour.
2. The claimant was assigned to a law firm [(Law Firm)], where he worked forty hours a week, during a project.
3. The project was still ongoing when the claimant decided to voluntarily terminate his employment.
4. The claimant voluntarily terminated his employment with [E]mployer on May 15, 2012, in order to take a volunteer position with the [DA's Office].
5. The claimant did not have a start date, and his duties were not specified.
6. The claimant's position with the [DA's Office] is unpaid, and the claimant has not yet received a firm offer of employment.
7. Continuing work was available to the claimant on the project for [Employer's] client.

(Board Op., Findings of Fact (FOF) ¶¶ 1-7.) Claimant raised the same issues before the Board that he does before this Court. The Board held that Claimant bears the burden of proof under Section 402(b) of the Law to establish that he had cause of a necessitous and compelling nature for quitting his employment. (Board Op. at 2.) The Board noted that Claimant: acknowledged that volunteer work is not considered employment under the Law; chose to quit his paying position in order to volunteer at the DA's Office with the hope that it will lead to a full-time position; and was aware when he accepted the temporary attorney position with Employer that he would not receive benefits and that a permanent position with the

Law Firm was not promised. Thus, the Board rejected Claimant's arguments that Employer's non-participation in the UC proceedings supported the award of benefits and Employer did not provide him with suitable work. (Board Op. at 2.) Additionally, the Board concluded that, although a firm offer of employment can be good cause for quitting one's employment, Claimant did not establish that he had a firm offer of employment with the DA's Office, but merely hoped that his volunteering would result in such an offer. (Board Op. at 2-3.) Accordingly, the Board held that Claimant had not met his burden of proof under Section 402(b) of the Law and was ineligible for UC benefits. Claimant now petitions this Court for review.<sup>5</sup>

Claimant first argues that the Board's Order should be reversed because Employer has not participated in any of the UC proceedings, including his appeal to this Court.<sup>6</sup> According to Claimant, Employer's non-participation should be treated as a concession that Claimant should receive UC benefits. Claimant further asserts that the Referee was not fair and impartial during the hearing, but

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<sup>5</sup> "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 Co. v. Unemployment Compensation Board of Review, 913 A.2d 331, 334 n.2 (Pa. Cmwlth. 2006).

<sup>6</sup> Claimant also argues that he should receive UC benefits because he was not given an opportunity to object to Employer's request for a continuance. However, the grant or refusal of a request for a continuance will not be overturned absent an abuse of discretion, Cowfer v. Unemployment Compensation Board of Review, 534 A.2d 560, 562 (Pa. Cmwlth. 1987), and, although Claimant asserts that he did not receive notice of Employer's request and the grant of the continuance until the day before the now postponed hearing, which we do not condone, Claimant has offered no reason why the Referee's granting of a continuance was an abuse of discretion.

substituted himself as Employer's representative by asking Claimant questions about the project he was working on for Employer/Law Firm. Based on those questions, the Board found that "[c]ontinuing work was available to the claimant on the project for [Employer's] client," (FOF ¶ 7), which Claimant asserts is not supported by the record evidence.

Because Claimant voluntarily quit his position with Employer, he bore the burden of proving that he had a necessitous and compelling reason for doing so. Petrill v. Unemployment Compensation Board of Review, 883 A.2d 714, 716 (Pa. Cmwlth. 2005). Employer did not have a burden of proof in this matter, and its decision not to participate is of no consequence because UC "benefits are available *only* when the [L]aw allows." Unangst v. Unemployment Compensation Board of Review, 690 A.2d 1305, 1306 (Pa. Cmwlth. 1997) (emphasis added). Indeed, even if Employer had expressly supported Claimant's application for UC benefits, Claimant still would be "required to prove [he] was entitled to benefits under the [L]aw." Id. at 1307. In addition, pursuant to 34 Pa. Code § 101.21(a),<sup>7</sup> "[i]t is proper for the referee to ask questions of a claimant during an unemployment appeal hearing in order to develop the facts when, as here, the questions asked were pertinent and relevant to claimant's case." Unangst, 690 A.2d at 1308. Our review of the hearing transcript does not reveal, as Claimant avers, bias by the Referee, but rather that the Referee was asking questions relevant to whether Claimant was eligible for UC benefits under the Law.

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<sup>7</sup> Section 101.21(a) provides, in relevant part, that "the tribunal may examine the parties and their witnesses." 34 Pa. Code § 101.21(a).

With regard to Claimant's challenge to Finding of Fact 7, the Board's findings of fact "are conclusive on appeal as long as they are supported by substantial evidence" in the record. Philadelphia Gas Works v. Unemployment Compensation Board of Review, 654 A.2d 153, 157 (Pa. Cmwlth. 1995). "Substantial evidence is defined as such relevant evidence which a reasonable mind might accept as adequate to support a conclusion." Id. In making this determination, we "must view the record in a light most favorable to the party which prevailed before the Board, giving that party the benefit of all logical and reasonable inferences deducible from the evidence." Stringent v. Unemployment Compensation Board of Review, 703 A.2d 1084, 1087 (Pa. Cmwlth. 1997). Here, Claimant testified that he "left [his position with Employer] to pursue employment at the [DA's] Office," he "was not discharged," and that "nobody at [Employer] or [Law Firm] told me to quit." (Hr'g Tr. at 5, 7, R.R. at 46, 48.) Reviewing Claimant's testimony in the light most favorable to Employer, as the party that prevailed before the Board, a reasonable and logical inference from that testimony is that there was continuing work available with Employer had Claimant not quit his position and, therefore, supports the Board's finding.

Claimant next asserts that his temporary work for Employer was not suitable work, as defined by Section 4(t) of the Law, 43 P.S. § 753(t), for an attorney because it did not offer retirement, medical, and vacation benefits, an opportunity for advancement, and was "substantially less favorable than those prevailing for similar work." (Claimant's Br. at 24.) Claimant points out that his previous position as an attorney and a potential position with the DA's Office offered such benefits.

Section 4(t) defines “suitable work” as:

all work which the employe is capable of performing. In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to his health, safety and morals, his physical fitness, prior training and experience, and the distance of the available work from his residence. The department shall also consider among other factors the length of time he has been unemployed and the reasons therefor, the prospect of obtaining local work in his customary occupation, his previous earnings, the prevailing condition of the labor market generally and particularly in his usual trade or occupation, prevailing wage rates in his usual trade or occupation, and the permanency of his residence. However, notwithstanding any other provisions of this subsection no work shall be deemed suitable in which (1) the position offered is vacant, due directly to a strike, lockout, or other labor dispute, or (2) the remuneration, hours or other conditions of the work offered are substantially less favorable to the employe than those prevailing for similar work in the locality, or (3) as a condition of being employed, the employe would be required to join a company union, or to resign from, or refrain from joining, any bona fide labor organization.

43 P.S. § 753(t). Claimant relies on cases involving claimants whose eligibility for UC benefits was determined under Section 402(a), 43 P.S. § 802(a) (providing that a claimant will be ineligible for any week in which he fails to accept suitable work when offered by an employer), because they rejected offers of employment on the basis that the proffered employment was not suitable work. See Unemployment Compensation Board of Review v. Franklin & Lindsey, Inc., 497 Pa. 2, 438 A.2d 590 (1981) (holding that an employer’s offer to recall the claimant to perform secretarial work, when she previously worked for the employer as a draftsman-surveyor, was not an offer of suitable employment under Section 4(t) because it disregarded the claimant’s training and experience and the claimant only had five days to look for work in her chosen profession); Commonwealth v. Unemployment Compensation Board of Review, 890 A.2d 1232 (Pa. Cmwlth. 2006) (concluding

that the claimant was not ineligible for benefits under Section 402(a) because the employer's offer to place her in a temporary clerk-typist position that provided no benefits and a substantially lower wage was not an offer for suitable work because she was eligible for a permanent position that paid higher wages and benefits, had only been unemployed for a short period of time, and had good prospects of obtaining a permanent position). However, these cases offer little guidance in the present situation because Claimant's eligibility for UC benefits is based on Section 402(b), not Section 402(a), because Claimant voluntarily quit an already accepted position. In these situations there is a different line of "suitable work" precedent that applies which, as discussed below, does not support Claimant's position.

"A claimant's initial acceptance of a proffered job raises a presumption of the suitability of the job." Spinelli v. Unemployment Compensation Board of Review, 437 A.2d 1320, 1321 (Pa. Cmwlth. 1981). The claimant may rebut this presumption if he proves either that a substantial, unilateral change occurred in his employment, that he was deceived, or that he was unaware of the conditions of his employment when he accepted the job. Id. at 1321-22. "[A]n employee's subsequent mere dissatisfaction with [his] wages or working conditions neither rebuts the presumption of job suitability nor justifies the employee's voluntary resignation of employment." Id. at 1321.

Here, Claimant knew when he accepted the position with Employer that he was not going to receive benefits and have the opportunity for advancement. Claimant neither presented evidence that these changes occurred unilaterally after he accepted the position with Employer, nor that he was deceived or unaware that



he would not be receiving such benefits from Employer when he accepted this position. Therefore, Claimant's dissatisfaction with the lack of benefits and opportunity for advancement does not justify his voluntary resignation from employment.

Claimant also argues that the opportunity to volunteer with the DA's Office in an attempt to obtain full-time employment with the DA's Office, with all of its potential benefits, constituted cause of a necessitous and compelling nature for voluntarily quitting his position with Employer given, *inter alia*, his prior training and experience, the condition of the attorney job market, the length of his unemployment, and the less than favorable benefits Employer provided. Section 402(b) provides that a claimant is ineligible for UC benefits if his unemployment is due to his voluntarily leaving employment without cause of a necessitous and compelling nature. 43 P.S. § 802(b). Claimant bears the burden of showing that he had cause of a necessitous and compelling nature to quit his employment and must demonstrate 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 [his] employment." Brunswick Hotel and Conference Center 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 law subject to review by this Court." Warwick v. Unemployment Compensation Board of Review, 700 A.2d 594, 596 (Pa. Cmwlth. 1997).

Receiving and accepting a firm offer of employment may be a necessitous and compelling reason for quitting one's employment where the offer is definite and the claimant acts prudently towards his employer. Solar Innovations, Inc. v. Unemployment Compensation Board of Review, 38 A.3d 1051, 1056 (Pa. Cmwlth. 2012). However, "the mere possibility of obtaining another job is insufficient to establish that employment was terminated for good cause." Township of North Huntingdon v. Unemployment Compensation Board of Review, 450 A.2d 768, 769 (Pa. Cmwlth. 1982). "[A]lthough 'the claimant may have personal, economic, or career reasons for making [his] decision to leave the employer . . . that does not constitute a necessitous and compelling cause for voluntarily quitting.'" Solar Innovations, Inc., 38 A.3d at 1057 (quoting Empire Intimates v. Unemployment Compensation Board of Review, 655 A.2d 662, 665 (Pa. Cmwlth. 1995)).

Claimant acknowledges that his volunteer position with the DA's Office is not defined as "work" for the purposes of the Law, (Claimant's Br. at 20), but asserts that, because this volunteer position would be better for his career, it provided him with a necessitous and compelling reason for quitting his position with Employer and he should receive UC benefits. Although we recognize Claimant's desire to obtain work that may be more in line with his skills, when he quit his employment with Employer he did not have a firm offer of employment with the DA's Office, but only a possibility of being hired sometime in the future. Claimant testified that, other than knowing that he would not be paid, he did not have an official start date with the DA's Office, a description of what his duties would be as a volunteer attorney, or know exactly what his hours would be prior to quitting his position with Employer. (Hr'g Tr. at 6-7, R.R. at 47-48.) Absent a

firm offer, Claimant did not establish that he terminated his employment for good cause and is ineligible for UC benefits under Section 402(b). Solar Innovations, Inc., 38 A.3d at 1056; Township of North Huntingdon, 450 A.2d at 769. Additionally, the fact that the volunteer position with the DA's Office could be better for his career, likewise, did not provide him with cause of a necessitous and compelling nature for voluntarily quitting his position with Employer. Solar Innovations, Inc., 38 A.3d at 1057; Empire Intimates, 655 A.2d at 665. Accordingly, the Board did not err in finding Claimant ineligible for benefits under Section 402(b).

Finally, Claimant contends that the Board's Order should be reversed because it is the public policy of the Commonwealth to provide UC benefits to those, like him, who actively search for employment while unemployed, volunteer their time to charitable organizations, and volunteer their services in an effort to make the Commonwealth a better place. Relying on Section 3 of the Law, 43 P.S. § 752, Claimant asserts that he "is not receiving a salary through no fault of his own [and] should not be punished for dedicating his time, energy, and legal knowledge to . . . the [DA's] Office in a volunteer capacity [while] pursuing full time employment in that office." (Claimant's Br. at 20.)

Section 3 provides, in relevant part:

Security against unemployment and the spread of indigency can best be provided by the systematic setting aside of financial reserves to be used as compensation for loss of wages by employes during periods *when they become unemployed through no fault of their own . . . .* The Legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this Commonwealth require the exercise of the police powers of the

Commonwealth in the enactment of this act for the compulsory setting aside of unemployment reserves to be used *for the benefit of persons unemployed through no fault of their own.*

43 P.S. § 752 (emphasis added). The key theme running through this policy declaration is that the monies that are set aside for UC benefits should go to individuals whose unemployment occurred “*through no fault of their own.*” *Id.* (emphasis added). Although Claimant’s initial period of unemployment and lack of salary was through no fault of his own because he was laid off from his prior attorney position, Claimant’s present lack of salary is based on his choice to leave a paying job with Employer in order to better position himself to possibly obtain a future full-time position with the DA’s Office. Having concluded that this reason did not provide Claimant with cause of a necessitous and compelling nature to quit his job with Employer, we cannot say that Claimant’s present lack of salary is “through no fault of [his] own,” *id.*, but is the result of Claimant’s “personal, economic, or career reasons for” leaving his employer. Solar Innovations, Inc., 38 A.3d at 1057 (citation omitted).

Like the Board, we, too, commend Claimant for his volunteer work, (Board’s Br. at 11), and also empathize with his desire to find a job that he feels is more in line with his experience. Claimant argues that “a citizen who is not receiving a salary through no fault of his own, should not be punished for dedicating his time, energy, and legal knowledge to help the Commonwealth of Pennsylvania while he is working full time at the [DA’s] Office.” (Claimant’s Br. at 15-16.) However, Claimant is not correct in his statement because he *was* receiving a salary from Employer, and working as an attorney. In fact, as Claimant states, he “performed his duties with alacrity” and was not discharged or

suspended. (Claimant's Br. at 12.) He is not being "punished" for dedicating his time and volunteering; however, he voluntarily quit a job for which he was being paid to perform these volunteer services. Therefore, that Claimant is not now receiving a salary is not considered to have been "through no fault of his own." 43 P.S. § 752. Unfortunately, pursuant to Section 402(b), Claimant has not established his eligibility for the UC benefits he now seeks.

For the foregoing reasons, we affirm the Board's Order.

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**RENÉE COHN JUBELIRER, Judge**

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

David W. Ringlaben,	:	
	:	
Petitioner	:	
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v.	:	No. 247 C.D. 2013
	:	
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

**ORDER**

**NOW**, August 23, 2013, the Order of the Unemployment Compensation Board of Review in the above-captioned matter is hereby **AFFIRMED**.

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**RENÉE COHN JUBELIRER, Judge**