IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Monroeville Music Center,	:	
Petitioner	:	
	:	
v.	:	No. 49 C.D. 2014
	:	Submitted: July 11, 2014
Unemployment Compensation	:	
Board of Review,	:	
Respondent	:	

BEFORE: HONORABLE DAN PELLEGRINI, President Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
PRESIDENT JUDGE PELLEGRINI[1] FILED: September 29, 2014

Monroeville Music Center (Employer) petitions for review of an order of the Unemployment Compensation Board of Review (Board) reversing the decision of a Referee and finding that Theresa M. Leszczynski (Claimant) is not ineligible for unemployment compensation benefits under Section 402(b) of the Unemployment Compensation Law (Law).[2] For the reasons that follow, we affirm the Board.

[1] This opinion was reassigned to the authoring judge on September 9, 2014.

[2] Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §802(b). That section 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 ..." 43 P.S. §802(b).

Claimant was employed by Employer as a repair technician from March 1, 1997, until June 17, 2013. Claimant was paid a salary of $625 per week, regardless of how many hours she worked. In January 2012, Employer instructed Claimant that she had to work a minimum of 24 hours per week, and Claimant began to do so. In May 2013, Employer informed Claimant that in order to remain a full-time employee and keep her benefits such as paid vacation and sick days, she would have to work a minimum of 32 hours per week. However, Claimant was unable to sufficiently increase her hours, and, as a result, Employer changed Claimant to an hourly employee and began deducting from her paycheck when she worked less than 32 hours per week.

Employer had a policy requiring employees to request vacation time off in writing two weeks in advance. In June 2013, Claimant made a verbal request to take vacation time beginning on June 18, 2013, but Employer informed her by email dated June 14, 2013, that she did not have any vacation days because she was no longer a full-time employee. The email stated that Claimant could take the time off, but would not be paid, and that "[t]his is the end of discussion" regarding Claimant's status. (Board's December 13, 2013 Order at 2, Finding of Fact No. 13). Claimant did not return to work after June 17, 2013. By letter dated June 26, 2013, Employer informed Claimant that if she did not return to work by July 1, 2013, it would presume that she quit. Claimant did not return to work on July 1, 2013, and Employer informed her on that date that it had accepted her resignation.

Claimant applied for benefits with the UC Service Center, which granted benefits, and Employer appealed. Before the Referee, Claimant testified that after Employer notified her that she needed to work 32 hours per week, she began working an additional two to five hours per week but was unable to work more hours because she had another job where she worked up to 18 hours per week. She testified that she took off from work on June 17, 2013, and planned to return on July 10, 2013. She confirmed that she was aware of Employer's vacation policy, which required employees to give two weeks' written notice in order to get a vacation day approved. Claimant explained that she believed she had vacation days available, and gave three weeks' notice verbally to Employer prior to taking her vacation. She further explained that she attempted to get these days approved, but was unable to do so because Employer refused to discuss the issue with her. She testified that she received Employer's June 26, 2013 letter instructing her to return to work on July, 1, 2013, but that she was unable to meet that demand due to the lack of notice. She stated that she sent an email to Employer in response to that letter, but Employer did not respond.

Mark Despotakis, Employer's Office Manager, testified that Claimant was required by Employer to work at least 32 hours per week in order to remain a salaried employee. He explained that employees receive two weeks of vacation based on the number of days they work per week, so an employee working five days per week receives ten vacation days and an employee working three days per week receives six vacation days. He testified that Employer requires its employees to provide two weeks written notice prior to taking vacation time, and that Claimant had provided him with written notice when requesting vacation days in

the past but failed to do so in June 2013. He testified that Employer did not terminate Claimant's employment and that Claimant quit her position.

Lorry Yednak, Employer's Owner and Manager, testified that he told Claimant that she needed to increase her hours to a minimum of 32 hours per week if she wanted to be considered a full time employee because instrument repairs were not being completed in a timely manner.[3] He further stated that he told Claimant that she would lose her vacation days, sick days and other benefits if she did not work at least 32 hours per week. He testified that Claimant never worked 32 hours per week and was converted to an hourly employee approximately two weeks after their meeting.

The Referee found that Claimant left on an unauthorized vacation due to personal dissatisfaction with established job conditions, and then refused to return to work as directed by Employer in order to maintain her employment. Concluding that Claimant's dissatisfaction was not a necessitous and compelling reason for her to quit, and that she made no attempt to resolve this issue and save her employment, the Referee reversed the UC Service Center and held that Claimant was ineligible for benefits under Section 402(b) of the Law.

Claimant then appealed to the Board, which made additional findings of fact and explained:

[3] Jeffrey Giuliana, a repair technician for Employer, confirmed that this discussion took place sometime in May 2013.

> The claimant testified to a number of issues that she had with the employer over ten years of her employment. However, the issue which immediately led to the claimant's resignation from employment was the employer requiring the claimant to work 32 hours per week for the same salary of $625 per week. Prior to May 2013, the claimant was working 24 hours per week, which averages to $26.04 per hour; after May 2013, the employer required the claimant to work 32 hours per week, which averages to $19.53 per hour. This is a decrease of $6.50 per hour or a 25% decrease in salary. If the claimant did not accept this change, she would lose accrued benefits. The Board finds that the employer instituted a substantial unilateral change in the employment agreement. The claimant attempted to speak to the owner about the issue, but he would not speak to her. His June 14, 2013 email made it clear that he would not discuss the issue further. While the Board does not condone the manner in which the claimant handled the situation, it concludes that she nonetheless had a necessitous and compelling reason to quit her employment.

(Board's December 13, 2013 Order at 3). Accordingly, the Board reversed the Referee's decision and determined that Claimant is not ineligible for benefits under Section 402(b) of the Law. This appeal by Employer followed, in which it essentially argues that the Board's findings were not supported by substantial evidence.[4]

[4] While Employer's brief is deficient in that its argument consists primarily of a recitation of the facts, with almost no discussion of the specific issues raised or citation to legal authority, these defects do not preclude us from conducting a meaningful appellate review.

Whether an employee has a necessitous and compelling reason to voluntarily quit employment is a question of law fully reviewable by this Court. *Philadelphia Housing Authority v. Unemployment Compensation Board of Review*, 29 A.3d 99, 101 (Pa. Cmwlth. 2011). A claimant who voluntarily terminates his or her employment has the burden of proving that a necessitous and compelling cause existed. *Id*. It is well-settled that an employee who claims to have left work 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 his or her employment. *Id*.

An employer's imposition of a substantial, unilateral change in the terms of employment, including changes that impact an employee's salary, benefits and other terms of employment, may constitute a necessitous and compelling cause for an employee to terminate his or her employment. *Whitlach v. Unemployment Compensation Board of Review*, 61 A.3d 397, 401 (Pa. Cmwlth. 2013). Although this Court recognizes no talismanic percentage figure governing reductions in pay, the percentage by which a claimant's pay is unilaterally reduced is a significant factor in determining whether the claimant had necessitous and compelling cause to quit employment. *Elliott Co., Inc. v. Unemployment Compensation Board of Review*, 29 A.3d 881, 888 (Pa. Cmwlth. 2011).[5]

[5] In *Griffith Chevrolet-Olds, Inc. v. Unemployment Compensation Board of Review*, 597 A.2d 215, 218 n.3 (Pa. Cmwlth. 1991), this Court, in holding that a 12% reduction in monthly income did not constitute a necessitous and compelling reason for a claimant to terminate her
(Footnote continued on next page…)

Here, given the increase in Claimant's required hours, which was unilaterally imposed by Employer, with no resultant increase in pay, Claimant was subject to the equivalent of a 25% reduction in salary. We agree with the Board that this constituted a substantial reduction in Claimant's salary such that she had a necessitous and compelling reason to quit her employment. While Employer argues that the Board disregarded testimony in reaching that conclusion, "even if evidence exists in the record that could support a contrary conclusion, it does not follow that the findings of fact are not supported by substantial evidence." *Middletown Township v. Unemployment Compensation Board of Review*, 40 A.3d 217, 223 (Pa. Cmwlth. 2012).

Accordingly, the order of the Board is affirmed.

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DAN PELLEGRINI, President Judge

(continued…)

employment, noted that "no cases have been found awarding unemployment compensation benefits unless there was at least a 20% reduction in wages."

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O R D E R

AND NOW, this 29th day of September, 2014, the order of the Unemployment Compensation Board of Review, dated December 13, 2013, at No. B-559179, is affirmed.

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DAN PELLEGRINI, President Judge