

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Albert Lane Jr., :
Petitioner :
 :
v. :
 :
Unemployment Compensation :
Board of Review, : No. 576 C.D. 2014
Respondent : Submitted: September 19, 2014

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE P. KEVIN BROBSON, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY

FILED: October 21, 2014

Albert Lane, Jr. (Claimant) challenges the order of the Unemployment Compensation Board of Review (Board) that affirmed the referee's denial of benefits under Section 402(b) of the Unemployment Compensation Law (Law).¹

The facts, as initially found by the referee and confirmed by the Board, are as follows:

1. For the purposes of this appeal, the claimant was last employed by Catholic Charities as a full-time Family Services Director from 2000 until his last day worked of September 20, 2013 at a final annual salary of about \$45,000.00.
2. The claimant had interviewed for a job with another employer on September 6, 2013.

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §802(b).

3. The claimant thought that the interview went really well.
4. The claimant believed that he was given an offer contingent on a criminal background check and references.
5. The claimant asked for the weekend to think about the offer.
6. The claimant called that employer on September 9, 2013.
7. The claimant was not given a starting date.
8. On September 16, 2013, the claimant gave written notice to Catholic Charities that September 20, 2013 would be the claimant's last day of work.
9. At about 4:30 p.m. on September 20, 2013, the claimant learned that he would not be getting employment with that other employer.
10. The claimant did not try to rescind his notice of resignation with Catholic Charities.

Referee's Decision, December 12, 2013, (Decision), Findings of Fact Nos. 1-10 at 1.

The referee determined “[h]ere, the record of evidence is that the claimant did not have a firm offer of employment to begin with another employer.” Decision at 2.

Claimant appealed to the Board which affirmed and incorporated the referee's findings and conclusions. The Board found that “claimant has not credibly established that he had a firm offer of other employment at the time he

quit. The claimant admits that he tendered his resignation notice without having a start date for the other employment.” Board Opinion, March 17, 2014, at 1.

Claimant contends that the Board erred when it determined that Claimant did not have a necessitous and compelling reason to quit his job with Catholic Charities (Employer). Claimant argues that he had another job offer.²

An employee voluntarily terminating employment has the burden of proving that such termination was necessitous and compelling. The question of whether a claimant has a necessitous and compelling reason to terminate employment is a question of law reviewable by this Court. Willet v. Unemployment Compensation Board of Review, 429 A.2d 1282 (Pa. Cmwlth. 1981). Where an employee resigns, leaves, or quits without action by the employer, the action amounts to a voluntary termination. Sweigart v. Unemployment Compensation Board of Review, 408 A.2d 561 (Pa. Cmwlth. 1979). The receipt and acceptance of a firm offer of employment constitutes a necessitous and compelling reason for the termination of employment. The offer must be definite. The claimant must also act prudently with respect to his employer. Township of North Huntingdon v. Unemployment Compensation Board of Review, 450 A.2d 768 (Pa. Cmwlth. 1982). A firm offer of employment includes terms and conditions of employment including wages and hours, Baron v. Unemployment Compensation Board of Review, 384 A.2d 271 (Pa. Cmwlth.

² This Court’s review in an unemployment compensation case is limited to a determination of whether constitutional rights were violated, errors of law were committed, or findings of fact were not supported by substantial evidence. Lee Hospital v. Unemployment Compensation Board of Review, 617 A.2d 693 (Pa. Cmwlth. 1994).

1978), and a definite starting date. Eckenrod v. Unemployment Compensation Board of Review, 325 A.2d 320 (Pa. Cmwlth. 1974).

Claimant argues that he had a firm offer of employment from Peer Support Advocacy Network (PSAN) which subsequently fell through. This offer led him to quit his job with Employer. He points to e-mails between PSAN personnel and himself that are in the record for support.

A review of these e-mails, however, reveals that while there was a discussion concerning Claimant coming to work for PSAN, there was no firm offer made, no offer that specified salary or wages, and no establishment of a starting date. Further, the Board specifically did not find credible Claimant's assertion that he had a firm offer of employment. In unemployment compensation proceedings, the Board is the ultimate fact-finding body empowered to resolve conflicts in evidence, to determine the credibility of witnesses, and to determine the weight to be accorded evidence. Unemployment Compensation Board of Review v. Wright, 347 A.2d 328 (Pa. Cmwlth. 1975).

The Board did not err when it affirmed the referee's determination that Claimant failed to establish a necessitous and compelling reason for terminating his employment with Employer.

Accordingly, this Court affirms.

BERNARD L. McGINLEY, Judge

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ORDER

AND NOW, this 21st day of October, 2014, the order of the Unemployment Compensation Board of Review in the above-captioned matter is affirmed.

BERNARD L. MCGINLEY, Judge