

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Noel L. McDonald,	:
	: No. 685 C.D. 2014
Petitioner	: Submitted: September 12, 2014
	:
v.	:
	:
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 SENIOR JUDGE FRIEDMAN

FILED: October 23, 2014

Noel L. McDonald (Claimant) petitions for review of the March 31, 2014, order of the Unemployment Compensation Board of Review (UCBR) affirming a referee's decision to deny Claimant unemployment compensation (UC) benefits under sections 402(b) and 401(d)(1) of the Unemployment Compensation Law (Law).<sup>1</sup> We affirm.

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<sup>1</sup> Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §802(b) and §801(d)(1). Section 402(b) of the Law provides that an employee shall be ineligible for benefits during any week “[i]n which his unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature.” Section 401(d)(1) of the Law provides that “[c]ompensation shall be payable to any employee who is or becomes unemployed, and . . . [i]s able to work and available for suitable work.”

Claimant worked for Telerx (Employer) as a full-time data processing specialist from October 22, 2003, until January 8, 2013. After January 8, 2013, Claimant started an approved leave under the Family and Medical Leave Act (FMLA), 29 U.S.C. §§2601-2654. Claimant was diagnosed with depression, panic disorder, and physical and mental exhaustion. Claimant did not inform Employer of her specific health conditions, nor did she inform Employer that her absence resulted from health conditions caused by her working environment. (UCBR's Findings of Fact, Nos. 1-4.)

On March 6, 2013, Claimant saw her doctor. The doctor authored a note excusing Claimant from work until May 5, 2013. Claimant gave the doctor's note to Employer. On March 29, 2013, Claimant had exhausted her FMLA leave. (*Id.* Nos. 6-7.) On April 1, 2013, Employer sent Claimant a letter informing her that she exhausted her FMLA leave but that she might be entitled to a reasonable accommodation under the Americans with Disabilities Act (ADA), 42 U.S.C. §§12101-12213. Employer provided Claimant with a questionnaire for her doctor to complete by April 22, 2013. Claimant did not respond to Employer's request for further documentation. (*Id.* Nos. 7-8.)

On June 14, 2013, Employer sent Claimant another letter stating that it needed further documentation from Claimant's doctor by June 21, 2013, to support Claimant's continued absence from work. Claimant did not submit the requested documentation to Employer. (*Id.* Nos. 9-10.) Claimant quit her employment because of health concerns. Claimant's doctor has not released her to return to work. (*Id.* Nos. 11-12.)

After her separation from work with Employer, Claimant filed an application for UC benefits. The local service center determined that Claimant was not ineligible for benefits under section 402(b) of the Law, but ineligible under section 401(d)(1) of the Law. Claimant appealed to a referee, who conducted a hearing. The referee concluded that Claimant was ineligible for benefits under sections 402(b) and 401(d)(1) of the Law. Claimant appealed to the UCBR, which affirmed the referee's decision. The UCBR determined that Claimant was ineligible for benefits under section 402(b) of the Law because she voluntarily quit her employment without cause of a necessitous and compelling nature. The UCBR also concluded that Claimant was ineligible for benefits under section 401(d)(1) of the Law, because she is not able and available for work. Claimant petitioned this court for review.<sup>2</sup>

Claimant initially argues that the UCBR erred in concluding that she had an obligation to preserve her employment relationship. Specifically, Claimant argues for the first time on appeal that she did not quit her employment but was fired by Employer and, therefore, did not have to preserve the employment relationship.

Neither at the hearing, nor before the UCBR, did Claimant raise the issue of whether she was discharged. In fact, Claimant admitted at the referee's hearing that she voluntarily left her employment. (N.T., 10/18/13, at 7.) Further, in her appeal to the UCBR, Claimant repeatedly stated that she quit her employment

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<sup>2</sup> Our scope of review is limited to determining whether constitutional rights were violated, whether an error of law was committed, or whether the findings of facts are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

with Employer. (Claimant's Letter, 1/21/14, at 2, 5.) Because Claimant did not raise the issue of her discharge before the administrative tribunal, the issue is waived. *Wing v. Unemployment Compensation Board of Review*, 436 A.2d 179, 181 (Pa. 1981).<sup>3</sup>

Claimant next argues that even if she did quit, she had a necessitous and compelling reason to do so because of her poor health.

To establish that a health problem is a compelling reason to quit, a "claimant must (1) offer competent testimony that adequate health reasons existed to justify the voluntary termination, (2) have informed the employer of the health problems and (3) be available to work if reasonable accommodations can be made." *Lee Hospital v. Unemployment Compensation Board of Review*, 637 A.2d 695, 698 (Pa. Cmwlth. 1994). The UCBR found that after her FMLA leave expired, Claimant did not inform Employer of any specific health conditions that prevented her from working. Additionally, the UCBR found that Claimant did not inform Employer that her absence was the result of health conditions caused by Employer's work environment. Therefore, Claimant failed to meet her burden.<sup>4</sup>

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<sup>3</sup> We also note that substantial evidence supports the UCBR's determination that Claimant voluntarily quit her employment. Specifically, Claimant exhausted her FMLA leave on March 29, 2013, and did not return to work thereafter. Employer sent Claimant letters on April 1, 2013, and June 14, 2013, requesting medical documentation to support her continued absence from work, which Claimant failed to provide. Claimant's failure to return to work or provide Employer with the requested medical information after her leave constitutes a voluntary quit. See *Unemployment Compensation Board of Review v. Metzger*, 368 A.2d 1384, 1386 (Pa. Cmwlth. 1977).

<sup>4</sup> Because we have determined that the UCBR correctly concluded that Claimant is ineligible for UC benefits under section 402(b) of the Law, we need not address Claimant's eligibility under section 401(d)(1) of the Law.

Accordingly, we affirm.

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ROCHELLE S. FRIEDMAN, Senior Judge

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	:	
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ORDER

AND NOW, this 23<sup>rd</sup> day of October, 2014, we hereby affirm the March 31, 2014, order of the Unemployment Compensation Board of Review.

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ROCHELLE S. FRIEDMAN, Senior Judge