

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Sherri R. Bauer,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 805 C.D. 2014
	:	Submitted: November 14, 2014
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

BEFORE: HONORABLE BERNARD L. MCGINLEY, Judge  
HONORABLE ROBERT SIMPSON, Judge  
HONORABLE ANNE E. COVEY, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION  
BY JUDGE SIMPSON**

**FILED: February 5, 2015**

Sherri R. Bauer (Claimant), representing herself, petitions for review from an order of the Unemployment Compensation Board of Review (Board) that found her ineligible for unemployment compensation (UC) benefits under Section 402(b) of the Unemployment Compensation Law (Law)<sup>1</sup> (relating to voluntary quit). Claimant contends the Board erred in determining she did not have necessitous and compelling reason for leaving employment when domestic violence required her to find alternate housing on short notice. Claimant also challenges the Board's findings that she did not exert reasonable efforts to preserve her employment under the circumstances. She maintains the Board erred in finding she had open-ended leave to find alternate housing. Based on the facts and arguments presented here, we are constrained to affirm.

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

## **I. Background**

Claimant worked as a Patient Accounting Clerk for Brookville Hospital (Employer) for 10 months, until she left the area of her employment because of concerns for her personal safety following an incident of domestic violence at home. See Certified Record (C.R.), Item No. 3 (Claimant Questionnaire). Following her separation from employment, Claimant applied for UC benefits, which the service center granted. Employer appealed, representing that Claimant voluntarily quit.

A referee held a hearing, for which Claimant could not be reached by telephone. The referee proceeded with the hearing where Employer, unrepresented, presented the testimony of Amanda Kear (Kear), a human resources specialist. In her testimony, Kear confirmed that Claimant left employment “due to domestic violence in the home.” Referee’s Hr’g, Notes of Testimony (N.T.), 12/5/13, at 3. When Claimant reported the incident to human resources the next day, she stated she needed to leave employment. Id. At that time, Employer offered Claimant a leave of absence to gather her belongings and attempt to find other living arrangements. Id. Kear testified that Employer was willing to work with Claimant. Id.

The referee concluded Claimant did not meet her burden of proving a necessitous and compelling reason to leave her position. Specifically, the referee found Employer offered Claimant an open-ended leave of absence to find alternate housing. Referee’s Decision, 12/12/13, Finding of Fact (F.F.) No. 4. The referee also found that two weeks after reporting the domestic abuse to human resources, Claimant advised Employer she was moving home to live with her father. F.F. No. 5.

Claimant appealed, explaining she missed the referee's call for the hearing based on a malfunction with the telephone service. The Board remanded to the same referee to hold a hearing on behalf of the Board regarding Claimant's reason for missing the first hearing and the merits.

At the remand hearing, Claimant, unrepresented by counsel, testified. At the start of the hearing, the referee reminded Employer not to offer any testimony duplicative of that submitted at the first hearing, where Claimant did not appear. Referee Remand Hr'g, N.T., 2/27/2014, at 3. Employer offered no new evidence. Id. at 7. The referee offered Claimant the opportunity to question Kear. At no time during her examination did Claimant object to Kear's testimony as secondhand or incompetent; Claimant only challenged the accuracy of the testimony regarding Employer's offer of open-ended leave to find alternate housing.

Claimant spoke with Cortnee Reynolds (Reynolds) in human resources regarding the domestic abuse and its impact on her housing situation. N.T., 2/27/14, at 6, 7; see C.R., Item No. 12 (Claimant's Appeal from Referee's Decision, dated 12/16/13). *Immediately* following the incident, Claimant moved in with her father in Shady Grove on a "temporary basis," C.R., Item No. 3 (Claimant Questionnaire).<sup>2</sup> Claimant testified that Reynolds asked her to contact human resources two weeks after the incident regarding her progress in finding another place to live in the area.

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<sup>2</sup> Claimant asserts Shady Grove is located 230 miles from Employer. The Board acknowledges that Shady Grove is located in York County, far removed from Employer. See Resp't's Br. at 11 n.4.

Claimant emphasized there was no mention of open-ended leave during either conversation with Reynolds. N.T., 2/27/14, at 8. Nevertheless, Claimant acknowledged that she did not request additional leave “because [she] was under the impression that [she] had a two-week emergency window.” Id. She further admitted that having additional leave “probably wouldn’t have” made any difference as to her decision to quit employment. Id.

In addition, Claimant testified that she was unable to find affordable housing within a 50-mile radius of Employer’s location in Brookville in the two weeks allotted to do so. As a result, she stayed in Shady Grove with her parents.

Ultimately, the Board concluded Claimant did not meet her burden of proving a necessitous and compelling reason to leave work. The Board issued its own findings based on the testimony of both hearings. The Board credited Kear’s testimony that Employer was willing to work with Claimant while she looked for safe housing.

The Board found Employer offered Claimant “an open-ended leave of absence to allow [Claimant] to gather her belongings and attempt to find other living arrangements which would have allowed [Claimant] to continue her employment.” Bd. Op., 4/8/2014, F.F. No. 5. The Board also found Claimant could have remained on the open-ended leave. F.F. No. 9. In addition, the Board found Claimant did not attempt to find alternate living arrangements with a roommate or with a family member in Grove City. F.F. Nos. 11-12. Therefore, the Board determined Claimant

did not sufficiently attempt to preserve her employment, and was ineligible for UC benefits under Section 402(b) of the Law.

Claimant now petitions for review.<sup>3</sup>

## **II. Discussion**

Claimant argues the Board erred as a matter of law in concluding that she did not establish a necessitous and compelling reason for leaving employment. She also asserts the Board erred in concluding she did not attempt to preserve her employment, alleging that conclusion disregarded her concerns for her personal safety and the limited timeframe to find alternate housing. In addition, Claimant challenges the Board's findings as to her conversations with Reynolds.

Section 402(b) of the Law provides that an employee 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). An employee who claims to have left employment for a necessitous and compelling reason bears the burden of proof. Middletown Twp. v. Unemployment Comp. Bd. of Review, 40 A.3d 217 (Pa. Cmwlth. 2012).

To meet her burden of proof, an employee must show that: (1) circumstances existed that produced real and substantial pressure to terminate

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<sup>3</sup> Our review “is limited to determining whether the necessary findings of fact were supported by substantial evidence, whether errors of law were committed, or whether constitutional rights were violated.” Johns v. Unemployment Comp. Bd. of Review, 87 A.3d 1006, 1009 n.2 (Pa. Cmwlth. 2014).

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 her employment. Solar Innovations, Inc. v. Unemployment Comp. Bd. of Review, 38 A.3d 1051 (Pa. Cmwlth. 2012). An “employer has no burden of proof” in a voluntary quit case. Earnest v. Unemployment Comp. Bd. of Review, 30 A.3d 1249, 1256 (Pa. Cmwlth. 2011). Whether a claimant has a necessitous and compelling reason to terminate employment is reviewable by this Court as a question of law. Middletown Twp.

Our Supreme Court reasoned that when applying the standard a claimant must meet to be eligible for benefits when she voluntarily left employment for a domestic cause, “[a] worker’s physical and mental condition, [her] personal and family problems, the authoritative demand of legal duties- these are circumstances that exert pressure upon him and imperiously call for decision and action.” Taylor v. Unemployment Comp. Bd. of Review, 378 A.2d 829, 833 (Pa. 1977). In certain circumstances, courts thus acknowledge that decisions a claimant makes, which are wrought with emotion and involve obligations to family or oneself, while a claimant’s choice, are not truly voluntary. Beachem v. Unemployment Comp. Bd. of Review, 760 A.2d 68 (Pa. Cmwlth. 2000) (holding that claimant who quit to return to another state to care for his emotionally disturbed child was eligible for benefits); Miksic v. Unemployment Comp. Bd. of Review (Pa. Cmwlth., No. 2399 C.D. 2013, filed Oct. 15, 2014) (unreported) (holding that claimant who resigned to care for dying mother proved compelling reason to quit).

This Court recognizes that domestic circumstances may constitute a necessitous and compelling cause for leaving employment. See Fiedler v. Unemployment Comp. Bd. of Review, 18 A.3d 459 (Pa. Cmwlth. 2011) (reasoning that claimant’s emotional distress over the loss of his son constituted compelling reasons to return home to be reunited with his family); Beachem. “When therefore the pressure of real not imaginary, substantial not trifling, reasonable not whimsical, circumstances compel the decision to leave employment, the decision is voluntary in the sense that the worker has willed it, but involuntary because outward pressures have compelled it.” Beachem, 760 A.2d at 71. Under such circumstances, we held a claimant is entitled to benefits.

Claimant argues the Board erred in holding that she did not establish a necessitous and compelling reason for leaving employment, citing domestic violence reasons. On the surface, this argument is compelling and elicits the sympathy of this Court. However, in view of the arguments presented, which are framed in terms of economic infeasibility as opposed to personal safety, we are not persuaded that Claimant established the four factors required to justify quitting employment.

#### **A. Necessity for Leaving Employment**

In light of the undisputed facts, and the supported findings, we consider the first three factors. That Claimant was a victim of domestic violence in her home the night before she alerted Employer to her need to leave work is not disputed. The testimony is also uncontroverted that the domestic violence incident forced Claimant to leave her residence on short notice. See N.T., 12/5/13, at 3.

Domestic violence constitutes a substantial pressure that would compel a reasonable person to respond to the threat by abandoning a residence, especially a residence owned by another person. Claimant acted with ordinary common sense in leaving the residence immediately following the incident. Moreover, it is reasonable for a victim of domestic violence to put some distance between herself and her assailant.

This Court recognizes the imperative domestic violence victims face in locating safe housing on short notice and under unfavorable conditions. Therefore, it is important to distinguish between the act of leaving employment because a claimant cannot find alternate affordable housing, and leaving the vicinity of employment to avoid a threat to personal safety.

We thus distinguish Claimant's reason for leaving her residence from her reason for leaving her employment. Stated differently, removal from a domestic situation may be necessary, whereas removal from employment may not be necessary. See, e.g., Lee Hosp. v. Unemployment Comp. Bd. of Review, 637 A.2d 695, 698 (Pa. Cmwlth. 1994) (reversing Board's award of benefits when claimant removed herself from harassment of husband during divorce because testimony that she "just needed to get away" was insufficient to show necessity of leaving the area of employment); see also Draper v. Unemployment Comp. Bd. of Review, 718 A.2d 383 (Pa. Cmwlth. 1998) (moving to Virginia to care for ill mother was not necessary and compelling cause for leaving employment when less drastic alternatives, including moving mother to Pennsylvania, were available). Thus, the



issue here is whether Claimant had less drastic options available to her to remedy her domestic situation other than moving far away from Employer.

This case is unlike other cases where this Court deemed domestic problems sufficient reason for leaving employment, whereby a claimant was unable to address the domestic situation causing him or her to leave without also leaving the region of employment. For example, in Fiedler this Court reversed the Board's decision to deny benefits to a claimant who moved out of the area of his employer because he was having emotional difficulties tied to his son's recent death. There, the claimant argued he needed to leave the area of employment for his own emotional well-being because he needed the support of his family to help him through his loss. For that reason, this Court held that Fiedler's emotional problems brought on by domestic trauma constituted sufficient grounds compelling him to leave the area of employment and reunite with his family in another state.

By contrast, here, Claimant did not move far away to live with her parents because she needed their emotional support as a victim of recent trauma. Importantly, Claimant did not articulate that she moved in with her parents for any reason beyond her immediate need for affordable shelter. At no time did Claimant represent an unwillingness to reside in Employer's vicinity due to concerns for her personal safety. Rather, Claimant consistently maintained she was willing, physically and emotionally, to live away from her parents, within a reasonable commuting distance of Employer. Thus, the domestic violence incident is relevant

only insofar as it deprived Claimant of her housing.<sup>4</sup> Had Claimant moved away from Brookville to live with her family because she was unable to live within a reasonable commuting distance based on personal safety or emotional trauma, the Board may have reached a different result.<sup>5</sup>

Ultimately, the reason Claimant provided for being unable to maintain employment was a lack of affordable housing in the area, not an ongoing threat to her physical safety posed by residing within Employer's vicinity. Accordingly, it was appropriate for the Board to analyze the voluntariness of the quit based on the less drastic housing options available to Claimant that would have enabled her to continue her employment, and the reasonableness of Claimant's efforts to pursue and investigate those options.

### **B. Reasonable Efforts to Preserve Employment**

In this case, the Board concluded Claimant did not make reasonable efforts to preserve her employment by securing alternate housing near Employer. The Board's conclusion is based on its findings that Claimant did not look for living

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<sup>4</sup> Although Claimant maintained that she left employment because she "was afraid for [her] life," (Petitioner's Initial Appeal Letter, filed 5/14/14; N.T., 2/27/14, at 8), the context reveals that as an explanation for leaving her residence, not for leaving the area. See Pet'r's Br. at 16 ("a reasonable person would not continue to subject themselves [sic] to possible continued harm and the threat of being escorted from the property by law enforcement.") (emphasis added). Indeed, any further extension of the threat would be inconsistent with her housing search.

<sup>5</sup> We do not foreclose the possibility that domestic violence, when there is a threat to safety posed by staying in an employer's vicinity, may also constitute a necessitous and compelling reason for leaving employment. See Bacon v. Unemployment Compensation Board of Review, 491 A.2d 944 (Pa. Cmwlth. 1985) (remanded for additional findings as to claimant's emotional state).

accommodations with a roommate, and that she did not attempt to live with her sister in Grove City, an hour and fifteen minute commute away. F.F. Nos. 11-12. Notably, Claimant does not dispute these findings, acknowledging their accuracy. See Petitioner's Initial Appeal Letter, filed 5/14/14, at 3.

In her brief, Claimant admits that she limited her search for alternate housing to options within a 50-mile radius of Employer. See Pet'r's Br. at 12-15. She argues that Grove City is not within a reasonable commuting distance because the hour and fifteen minutes represents only one way. She also asserts that she could not afford housing for less than \$500.00 monthly rent, plus utilities.

Claimant cites no support for her allegation that a one-way commute of an hour and fifteen minutes is unreasonable. She submits the commute to Grove City is approximately 60 miles, estimated to take about an hour. See Pet. for Review, (Map Quest directions). Yet, this Court held that longer commutes are reasonable. Musguire v. Unemployment Comp. Bd. of Review, 415 A.2d 708 (Pa. Cmwlth. 1980) (concluding a 60 mile commute, taking three hours, is not sufficient cause for voluntary quit). Thus, Claimant's argument that residence in Grove City was infeasible based on commuting distance alone lacks merit.

Moreover, Claimant bore the burden of proving that she made reasonable attempts to find alternate housing. It was incumbent upon Claimant to investigate whether Grove City offered a viable housing option. She did not do so.

Claimant's brief reveals her confusion about her duty to preserve her employment. Misapprehending the burden, she emphasizes Employer did "not offer[] any financial assistance or housing assistance" to enable her to continue the work relationship. Pet'r's Br. at 16. However, Employer does not bear any burden of proof. Earnest. Claimant alone bears the burden of establishing that she made reasonable efforts to maintain the employment relationship. Solar Innovations.

Additionally, Claimant asserts that housing within a 50-mile radius of Employer was not affordable. Although she details these arguments in her brief on appeal, she cites no record evidence to support this assertion. Significantly, Claimant did not present evidence regarding the cost of the housing options, as compared with her income. As her conclusions regarding affordability were not substantiated by the record, the fact-finder was not compelled to accept them. Womeldorf, Inc. v. Unemployment Comp. Bd. of Review, 430 A.2d 722 (Pa. Cmwlth. 1981).

Lastly, Claimant contends the Board's conclusion that she did not make reasonable efforts to preserve employment are based upon misinformation. In that vein, Claimant challenges the findings based on her conversations with Reynolds, of which Kear's personal knowledge is unclear. See F.F. Nos. 4-6, and 9; N.T., 2/27/14, at 7 (Kear testified, "[Reynolds is] saying that she had told you to call in two weeks and give us an update"). In particular, Claimant alleges Kear's testimony regarding open-ended leave is inaccurate, such that there is no basis for the Board's conclusion that she had additional time to find alternate housing.

In the absence of clarity in the record as to the sources for Kear's testimony, and in the absence of an argument by any party, we decline to question the competency of such evidence on our own motion. In the remand hearing, Claimant had the opportunity to question Kear directly about the open-ended leave testimony, and she had the opportunity to object to it as secondhand or inherently unreliable. However, she did not contest the source of Employer's evidence in the proceedings before the Board or in her brief to this Court; rather, she disputes its truth. Under these circumstances, it is not surprising that the Board did not address a hearsay issue in its decisions, and it does not address a hearsay issue in its brief.

In short, as fact-finder the Board credited Kear's testimony over that of Claimant. We are bound by that credibility determination. Peak v. Unemployment Comp. Bd. of Review, 501 A.2d 1383 (Pa. 1985).

More importantly, we are unconvinced that the length of leave is material to the Board's decision. Claimant conceded that she did not seek additional leave beyond the two-weeks. She also admitted that access to additional leave would probably not have affected her decision to resign. N.T., 2/27/14, at 8.

In addition, we note that Claimant did not avail herself of the full two-weeks she concedes were allotted to her. The record reflects that Claimant first reported the domestic violence and her need to leave the area on September 12, 2014. She called Employer 12 days later on September 24, 2014, to advise she was resigning because she was unsuccessful in her search for alternate housing near Brookville. Claimant declined to continue searching for housing within a reasonable

commuting distance, resigning two days before exhausting the two-week leave she acknowledged. These circumstances corroborate her admission that additional time would not have altered her decision.

Viewing the record “in a light most favorable to the party which prevailed before the Board,” which is Employer here, and “giving that party the benefit of all logical and reasonable inferences deducible from the evidence,” we uphold the Board’s conclusion that Claimant did not meet her burden of proof. Stringent v. Unemployment Comp. Bd. of Review, 703 A.2d 1084, 1087 (Pa. Cmwlth. 1997).

### **III. Conclusion**

The Board’s findings that Claimant did not take reasonable efforts to preserve employment by seeking additional leave or by thoroughly investigating other available housing options are supported by the record. Because Claimant did not establish that she took reasonable efforts to preserve her employment, which is one of the four prerequisites in a voluntary quit case, we affirm the Board.

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ROBERT SIMPSON, Judge

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Sherri R. Bauer,	:	
Petitioner	:	
	:	
v.	:	No. 805 C.D. 2014
	:	
Unemployment Compensation	:	
Board of Review,	:	
Respondent	:	

**ORDER**

**AND NOW**, this 5<sup>th</sup> day of February, 2015, the order of the Unemployment Compensation Board of Review in the above-captioned matter is hereby **AFFIRMED**.

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ROBERT SIMPSON, Judge