

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

William Rivera Sanchez, :
Petitioner :
 : No. 821 C.D. 2013
v. :
 : Submitted: September 27, 2013
Unemployment Compensation :
Board of Review, :
Respondent :

BEFORE: HONORABLE DAN PELLEGRINI, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McCULLOUGH

FILED: November 20, 2013

William Rivera Sanchez (Claimant) petitions, *pro se*, for review of the April 25, 2013 order of the Unemployment Compensation Board of Review (Board), which reversed the decision of a referee and held that Claimant was ineligible for benefits under section 402(b) of the Unemployment Compensation Law (Law).¹ We affirm.

Claimant was employed by Savage Kia (Employer) as a recon manager from September 9, 2009, until November 2, 2012. During the course of his

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §802(b). Section 402(b) of the Law provides that a claimant is ineligible for benefits for any week in which his unemployment is due to voluntarily leaving work without necessitous and compelling cause.

employment, Claimant was involved in an accident with one of Employer's cars on its premises. Under Employer's automobile insurance policy, which Claimant signed, Claimant was responsible for paying the \$500 insurance deductible. Because Claimant was unhappy about paying the deductible, Employer scheduled a meeting for November 2, 2012, so that Employer could create a payment plan for Claimant. Immediately preceding the meeting, Claimant informed Joey Maturi (Maturi), Employer's general manager, that he was feeling ill and would be going home. (Board's Findings of Fact Nos. 1-6.) Later that day, Claimant sent his resignation to Employer through a text message that stated, "Yo I'm. Done!!! Now [sic] going back to work there!!! Have a nice life!" (Certified Record Item No. 3.) Prior to quitting, Claimant had discussions with Lancaster Pre-Owned (LPO) about potential employment, but he never informed Employer that he was quitting so that he could work for LPO. Claimant never began employment with LPO. (Board's Findings of Fact Nos. 8-10.)

The local service center determined that Claimant was ineligible for benefits under section 402(b) of the Law, stating that Claimant did not have a firm offer of employment from LPO and thus did not have a necessitous and compelling reason to quit. Claimant appealed, and a referee held a hearing on January 8, 2013.

At the hearing, Claimant testified that he voluntarily left his job with Employer because he accepted another job. He stated that he was going to be the full-time manager of LPO's new body shop, be paid \$14.50 per hour, and start on November 10, 2012. However, Claimant admitted into evidence a letter from the Pennsylvania Department of Transportation informing him that LPO requested his driving record, and he clarified that LPO did not hire him because of a problem with

LPO's insurance company related to his driving record. (Notes of Testimony (N.T.) at 7-8; Claimant's exhibit 1.)

Stacia Bradley (Bradley), Employer's human resources director, agreed that Claimant voluntarily left his employment, but she stated that Claimant informed Employer that he quit because he did not want to pay the insurance deductible. Bradley testified that Employer had no knowledge of Claimant's other job offer. Bradley stated that Employer received a text message from Claimant a few days after he quit asking for his job back, but she explained that Employer had already found another candidate to replace Claimant by that time. Maturi confirmed that Claimant never gave Employer another reason for quitting besides being dissatisfied with having to pay the deductible. (N.T. at 9-10, 12.)

By decision and order dated January 10, 2013, the referee reversed the order of the local service center and found that Claimant was not ineligible for benefits under section 402(b) of the Law. The referee found Claimant's testimony credible that he left his job with Employer to begin employment with LPO. The referee determined that because Claimant had a firm offer of employment, he had a necessitous and compelling reason to quit.

Employer appealed to the Board, which reversed. The Board specifically rejected Claimant's testimony that he had a firm offer of employment and credited Bradley's testimony that Claimant quit as a result of having to pay the deductible.² The Board noted that Claimant indicated on his internet initial claims

² In unemployment cases, the Board is the ultimate fact-finder empowered to make all determinations as to witness credibility and evidentiary weight. *Peak v. Unemployment Compensation Board of Review*, 509 Pa. 267, 270, 501 A.2d 1382, 1385 (1985). The Board's findings are conclusive and binding on appeal where the record contains substantial evidence to support them. *Brannigan v. Unemployment Compensation Board of Review*, 887 A.2d 841 (Pa. Cmwlth. 2005). Substantial evidence is such evidence as a reasonable mind might find adequate to **(Footnote continued on next page...)**

form that he and LPO had not determined his job title or discussed his salary. The Board also noted that LPO requested Claimant's driving record and that its failure to hire Claimant because of the driver record indicated a preliminary screen prior to making a firm offer of employment. Thus, the Board concluded that Claimant was ineligible for benefits under section 402(b) of the Law.

On appeal to this Court,³ Claimant argues that the Board erred in concluding that he was ineligible for benefits under section 402(b) of the Law. Specifically, Claimant argues that the record does not support the Board's determination that Claimant voluntarily quit to avoid paying the deductible and that the Board erred in determining that he quit his job without a necessitous and compelling reason. We disagree.

In order to be eligible for benefits, a claimant who voluntarily quits his employment bears the burden of proving a necessitous and compelling reason for doing so. *Solar Innovations, Inc. v. Unemployment Compensation Board of Review*, 38 A.3d 1051, 1056 (Pa. Cmwlth. 2012). In order for a necessitous and compelling reason to exist, a claimant 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

(continued...)

support a conclusion. *Tapco, Inc. v. Unemployment Compensation Board of Review*, 650 A.2d 1106 (Pa. Cmwlth. 1994).

³ Our scope of review in an unemployment compensation appeal is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with the law, or whether necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa.C.S. §704.

employment. *Brunswick Hotel & Conference Center, LLC v. Unemployment Compensation Board of Review*, 906 A.2d 657, 660 (Pa. Cmwlth. 2006). Mere dissatisfaction with an employer's policies or procedures alone does not constitute cause of a necessitous and compelling nature for voluntarily terminating one's employment. *Tom Tobin Wholesale v. Unemployment Compensation Board of Review*, 600 A.2d 680, 683 (Pa. Cmwlth. 1991).

In this case, Claimant argues that the record does not support the Board's determination that he voluntarily quit his job to avoid paying the insurance deductible. Claimant relies on his testimony that he left his job with Employer because he had a full-time managerial job offer in LPO's body shop at the same rate of pay that he received from Employer and allegedly was scheduled to start on November 10, 2012. (N.T. at 6.) However, Bradley testified that Claimant voluntarily quit because he did not want to pay the insurance deductible. (N.T. at 9.) The Board resolved the conflict in testimony by specifically rejecting Claimant's testimony and crediting Bradley's contrary version of the events. We conclude that Bradley's testimony constitutes substantial evidence supporting the Board's determination that Claimant left his employment to avoid paying the deductible.

Moreover, in discrediting Claimant's testimony, the Board noted that while the receipt and acceptance of a firm offer of employment is a necessitous and compelling reason for terminating employment, *Solar Innovations*, 38 A.3d at 1056, the employment offer must be definite, and prudent actions must be taken by the claimant with regard to his employer. *Township of North Huntingdon v. Unemployment Compensation Board of Review*, 450 A.2d 768, 769 (Pa. Cmwlth. 1982). A necessitous and compelling reason is not established when there is only a mere possibility of obtaining another job. *Id.*

Here, Claimant admitted in his internet initial claims form that he did not have a definitive job title or salary. Further, as the Board observed, LPO's failure to hire Claimant because of his driving record indicates that the offer of employment was conditional rather than firm. *Township of North Huntingdon; see Breslow v. Unemployment Compensation Board of Review*, 517 A.2d 590, 593 (Pa. Cmwlth. 1986) (noting that the claimant only had a job offer contingent upon passing an aptitude test, which she failed). Thus, the Board properly concluded that Claimant failed to establish necessitous and compelling cause to terminate his employment.

Accordingly, we affirm.

PATRICIA A. McCULLOUGH, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

William Rivera Sanchez,	:	
Petitioner	:	
	:	No. 821 C.D. 2013
v.	:	
	:	
Unemployment Compensation	:	
Board of Review,	:	
Respondent	:	

ORDER

AND NOW, this 20th day of November, 2013, the April 25, 2013 order of the Unemployment Compensation Board of Review is affirmed.

PATRICIA A. McCULLOUGH, Judge