

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

WFG National Title Insurance Co.,	:	
Petitioner	:	
	:	
v.	:	No. 1268 C.D. 2014
	:	SUBMITTED: February 13, 2015
Unemployment Compensation	:	
Board of Review,	:	
Respondent	:	

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, Judge**  
**HONORABLE P. KEVIN BROBSON, Judge**  
**HONORABLE ANNE E. COVEY, Judge**

**OPINION NOT REPORTED**

**MEMORANDUM OPINION BY  
JUDGE LEADBETTER**

**FILED: June 26, 2015**

Employer WFG National Title Insurance Co. petitions for review of an order of the Unemployment Compensation Board of Review that affirmed the decision of the referee to grant unemployment compensation benefits to Claimant Robert T. Spezialetti on the basis that he had voluntarily terminated his employment due to cause of a necessitous and compelling nature under Section 402(b) of the Unemployment Compensation Law (Law).<sup>1</sup> We affirm.<sup>2</sup>

---

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

<sup>2</sup> A determination of whether necessitous and compelling cause for a voluntary quit exists is a question of law, subject to plenary review by this Court. *Steinberg Vision Assocs. v. Unemployment Comp. Bd. of Review*, 624 A.2d 237, 239 (Pa. Cmwlth. 1993).

Claimant worked for Employer as a vice president of agency sales in Pennsylvania and New Jersey from May 2012 to October 2013. His compensation was an annual salary of \$105,000, plus commission. On September 11, 2013, Employer advised Claimant that he would be working under the direction of a new supervisor. In light of problems involving harassment and profanity that he was experiencing with his former supervisor, however, Claimant deemed it time to “go on the record.” Finding of Fact (F.F.) No. 4. On September 15, 2013, he registered a formal complaint with Employer’s human resources department outlining the behavior of his former supervisor and how it had increased his anxiety and led to a higher dose of medication. Certified Record (C.R.), Item No. 8 at 6. Although Employer conducted an investigation, it dismissed Claimant’s allegations and took no disciplinary action against the former supervisor.

On October 2, 2013, Claimant’s new supervisor presented him with an itemization of new goals and expectations for the fall of 2013. As part of the new plan, Claimant’s “top two income producing clients would be excluded from his bonus calculations moving forward.” F.F. No. 7. This exclusion “would result in a pay decrease of approximately fifteen to twenty percent yearly.” *Id.*, No. 8. Another part of the new plan included the expectation that Claimant would achieve an average of ten new agents per month. Operating in several states, Employer, as a whole, “achieve[d] only slightly higher than ten new agents per month.” *Id.*, No. 10. Soon thereafter, Claimant met with both his former and current supervisors, expressing his dissatisfaction with the new plan. In response, they advised Claimant that there would be no changes and that “he would be expected to conform to the new expectations.” *Id.*, No. 13. Claimant believed that the new plan constituted retaliation for his formal complaint. On October 8, 2013,

Claimant quit his job “due to his belief [that] the new goals and expectations represented a unilateral change to his job duties and contained unachievable expectations.” *Id.*, No. 14.

Subsequently, Claimant applied for unemployment compensation benefits, which the Allentown UC Service Center denied. Following a hearing where only Claimant, with counsel, appeared and presented evidence, the referee reversed the ineligibility determination, concluding: “[T]he substantial unilateral changes made by the employer in a retaliatory fashion . . . [gave] rise to a necessitous and compelling reason for claimant to quit this job.” Referee’s June 26, 2014 Decision at 3. Upon receiving the referee’s decision, Employer petitioned the Board and requested that the hearing be reopened on the ground that it did not receive notice of the hearing. In response, the Board scheduled a remand hearing for Employer to present evidence concerning its non-appearance at the referee’s hearing and for both parties to submit evidence on the merits. At the telephonic remand hearing, Claimant appeared without counsel. Employer, with counsel, presented the testimony of three witnesses: its human resources director and both supervisors. The Board affirmed on the merits<sup>3</sup> and Employer’s timely petition for review followed.

As a threshold matter, we address Employer’s arguments that the Board erroneously 1) adopted and incorporated the referee’s decision, which took into consideration only Claimant’s evidence; and 2) issued its decision without

---

<sup>3</sup> Regarding Employer’s non-appearance, the record reflects that its copy of the notice of hearing was returned as undeliverable. C.R., Item No. 7. As Employer’s human resources director subsequently testified at the remand hearing, the notice was sent to its Santa Barbara, California office instead of its Oregon office. The notice itself bears an Oregon mailing address for Employer.

rendering additional fact-findings based on the evidence presented at the remand hearing. Employer's arguments are without merit. In affirming the referee's decision, the Board stated that it was giving consideration to the *entire* record, including the prior proceedings and the testimony of *both* parties from the remand hearing. In addition, the Board was not obligated to render additional fact-findings or to specify its reasoning subsequent to the remand hearing. That obligation arises when the Board determines that particular findings of a referee are inconsistent, incredible or unsupported by the evidence. *Fiedler v. Unemployment Comp. Bd. of Review*, 18 A.3d 459, 462 (Pa. Cmwlth. 2011) [citing *Treon v. Unemployment Comp. Bd. of Review*, 453 A.2d 960, 962 (Pa. 1982)]. Such was not the case here, where the Board's decision was consistent with that of the referee and his findings were supported by the evidence.

Employer additionally argues that much of its evidence was unrefuted and that, therefore, the Board erred in not accepting it. This contention, however, is not supported by the record, which reflects conflicting testimony as to, *inter alia*, whether the goals of the new plan were unrealistic and unachievable. In any event, a careful review of Employer's arguments indicates an attempt to substitute its version of the facts for those found by the Board. In affirming the referee's decision, the Board accepted Claimant's version of events. Because the Board resolved any relevant credibility conflicts in favor of Claimant, we are bound to view the evidence, and every reasonable inference deducible therefrom, in the light most favorable to Claimant as the prevailing party. *Penn Hills Sch. Dist. v. Unemployment Comp. Bd. of Review*, 437 A.2d 1213, 1218 (Pa. 1981). We turn now to the issue of whether, based on the facts as found by the Board and as

supported by the evidence, Claimant established necessitous and compelling cause for his voluntary quit.

A claimant bears the burden of proving necessitous and compelling cause for leaving his or her job. *Brunswick Hotel & Conference Ctr., LLC v. Unemployment Comp. Bd. of Review*, 906 A.2d 657, 661 (Pa. Cmwlth. 2006). In order to show such cause, the claimant must establish 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] employment.” *Id.* While we recognize that cause of a necessitous and compelling nature may exist where an employer has instituted an unreasonable, unilateral change in the employment agreement, mere dissatisfaction with reasonable modifications in working conditions is not considered good cause for a voluntary quit. *Kistler v. Unemployment Comp. Bd. of Review*, 416 A.2d 594, 597 (Pa. Cmwlth. 1980). It is up to the claimant to establish that the change was so unreasonable and so burdensome that a reasonable person under like circumstances would have been compelled to quit. *Unangst v. Unemployment Comp. Bd. of Review*, 690 A.2d 1305, 1307-08 (Pa. Cmwlth. 1997).

Where an employer modifies the method by which it pays its employees, such as altering the basis for commissions, necessitous and compelling cause for a voluntary quit may be established. *#1 Cochran, Inc. v. Unemployment Comp. Bd. of Review*, 579 A.2d 1386, 1390 (Pa. Cmwlth. 1990). While a significant reduction in pay may constitute necessitous and compelling cause, *Naylon v. Unemployment Compensation Board of Review*, 477 A.2d 912, 914 (Pa. Cmwlth. 1984), there is no talismanic percentage figure to denote a sufficiently

substantial reduction in pay from one that is not. Each case must be decided on its own circumstances. *Ship Inn, Inc. v. Unemployment Comp. Bd. of Review*, 412 A.2d 913, 915 (Pa. Cmwlth. 1980).

In concluding that Claimant established necessitous and compelling cause for his voluntary quit, the Board weighed the evidence and found significance in both the combination and relatively quick succession of events. These events included Claimant's reassignment to a new supervisor, Employer's unwillingness to act on Claimant's formal complaint, the substantial reduction in his compensation and presentation of the memo itemizing unachievable new goals and expectations. The proverbial "last straw" occurred at the supervisors' meeting with Claimant when they refused to negotiate the unreasonable goals outlined in the memo. As the Board determined, it was not unreasonable for Claimant to conclude that Employer's presentation of unattainable targets was retaliation for his recent complaint, which resulted in no action being taken by Employer. Accordingly, accepting Claimant's version of the events and weighing the evidence, the Board concluded that Employer's substantial and unilateral changes, done in the spirit of retaliation, constituted necessitous and compelling cause for Claimant's voluntary quit. We agree.

Further, we reject Employer's contention that the fact-findings are unsupported by the evidence. The Board accepted Claimant's testimony that Employer was taking two accounts from his compensation thereby substantially reducing his annual compensation. December 16, 2013 Hearing, Notes of Testimony (N.T.) at 6, 15. Although Claimant acknowledged at the remand hearing that he did not sign those accounts, he nonetheless testified that he was responsible for "developing" that business. April 10, 2014 Hearing, N.T. at 15. In

addition, the Board accepted his testimony that Employer's new goals and expectations were unachievable, which Claimant substantiated by referencing the charts attached to his formal complaint. December 16, 2013 Hearing, N.T. at 9-10. Claimant confirmed his reasoning at the remand hearing, again referencing the charts and additionally describing the company's paucity of available resources during his time with Employer. April 10, 2014 Hearing, N.T. at 13-14, 42. Specifically regarding the new goal of ten new agents per month, both Claimant and his former supervisor, Joe Drum, agreed that Drum never told Claimant at the time of hire that he had to procure eight to ten agents per month. *Id.* at 34 and 42.

Moreover, contrary to Employer's suggestion, the mere fact that both of the supervisors opined that the new goals were achievable does not render invalid the Board's fact-findings to the contrary. As the ultimate finder of fact, it is within the Board's purview to resolve all conflicts in evidence and to determine witness credibility and evidentiary weight. *Ductmate Indus., Inc. v. Unemployment Comp. Bd. of Review*, 949 A.2d 338, 342 (Pa. Cmwlth. 2008). In that regard, "[i]t is irrelevant whether the record contains evidence to support findings other than those made by the fact-finder; the critical inquiry is whether there is evidence to support the findings actually made." *Id.* In the present case, Claimant's evidence provides the requisite support.

Finally, we note that the Board interpreted Claimant's meeting with the two supervisors as an attempt to preserve his employment. Under the circumstances of this case, that construction is reasonable. Accordingly, we affirm.

---

**BONNIE BRIGANCE LEADBETTER,**  
Judge

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

WFG National Title Insurance Co.,	:	
Petitioner	:	
	:	
v.	:	No. 1268 C.D. 2014
	:	
Unemployment Compensation	:	
Board of Review,	:	
Respondent	:	

**ORDER**

AND NOW, this 26th day of June, 2015, the order of the Unemployment Compensation Board of Review is hereby AFFIRMED.

---

**BONNIE BRIGANCE LEADBETTER,**  
Judge