

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Giovanni Faia,	:	
	:	No. 1882 C.D. 2012
Petitioner	:	Submitted: June 7, 2013
	:	
v.	:	
	:	
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

BEFORE: HONORABLE DAN PELLEGRINI, President Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FRIEDMAN

FILED: July 11, 2013

Giovanni Faia (Claimant) petitions for review of the September 7, 2012, order of the Unemployment Compensation Board of Review (UCBR) affirming the decision of a referee to deny Claimant unemployment benefits. The UCBR concluded that Claimant was ineligible for benefits under section 402(b) of the Unemployment Compensation Law (Law)¹ because he voluntarily quit his employment without cause of a necessitous and compelling nature. We affirm.

Claimant worked as a full-time sales account manager for Majestic Wine and Spirits USA, LLC (Employer) from August 1, 2011, through April 13, 2012.

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 an employee is ineligible for benefits 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).

(UCBR's Findings of Fact, No. 1.) When Claimant was hired, Employer informed Claimant that he would earn a base salary of \$40,000, plus five percent commission on special liquor order (SLO) accounts. (*Id.*, No. 2.) Employer also informed Claimant that his projected first-year salary would be \$60,000 and that Employer would assign him approximately 60 SLO accounts. (*Id.*, Nos. 3-4.)

In August 2011, Employer assigned Claimant 45 SLO accounts. (*Id.*, No. 5.) In October 2011, Claimant complained to Employer that he would not earn the income promised due to the number of accounts he received. Employer explained that Claimant received fewer accounts due to attrition in his territory. (*Id.*, No. 6.) On October 28, 2011, Employer's vice president loaned Claimant \$5,000 with the understanding that Claimant would continue working another 12 months. (*Id.*, No. 7.) Claimant accepted the loan, thereby accepting Employer's term of working another 12 months. (*Id.*, No. 8.)

In early March 2012, Claimant complained to his manager about his sales territory, the number of accounts he received, and his inability to earn the projected \$60,000 salary within his first year. (*Id.*, No. 9.) Claimant also complained about the long hours he worked and the stress it caused him and his family. (*Id.*, Nos. 10, 14.) Employer told Claimant that, based on Employer's calculations, Claimant would earn approximately \$58,000 by the end of his first year in August 2012. (*Id.*, No. 11.) By Claimant's own calculations, he would earn approximately \$52,000 by August 2012, not including the \$5,000 loan. (*Id.*, No. 12.) Claimant's manager told Claimant that Employer would not loan him any more money and devised a plan to help Claimant obtain more accounts. (*Id.*, No. 13.)

In mid-March 2012, Claimant informed Employer that he wished to resign and come up with an exit strategy, but he did not discuss a specific time frame. (*Id.*, No. 15.) Claimant had his best sales month in March 2012 and was over his quota. (*Id.*, No. 18.)

On March 30, 2012, Claimant gave Employer two weeks' written notice of his resignation. (*Id.*, No. 16.) On April 13, 2012, Claimant quit his employment due to his dissatisfaction with his earnings and working conditions. (*Id.*, No. 17.)

Claimant filed a claim for unemployment benefits with the local service center, which was denied. Claimant timely appealed to the referee. After a hearing, the referee affirmed the service center's decision, concluding that Claimant voluntarily quit his employment without a necessitous and compelling cause under section 402(b) of the Law.

Claimant timely appealed to the UCBR, which affirmed. The UCBR concluded that Claimant's mere dissatisfaction with his salary and working conditions was not good cause for voluntarily quitting his job. Claimant also did not make a good faith effort to preserve the employment relationship by continuing to work until the end of his first year. Therefore, the UCBR concluded that Claimant was ineligible for benefits under section 402(b) of the Law. Claimant now petitions for review of that decision.²

² 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 fact were unsupported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

First, Claimant asserts that the UCBR erred in concluding that Claimant voluntarily quit his employment where the evidence established that Employer asked him to resign. We disagree.

Whether a claimant's unemployment was the result of voluntarily leaving work is a question of law reviewable by this court. *Middletown Township v. Unemployment Compensation Board of Review*, 40 A.3d 217, 224 (Pa. Cmwlth. 2012). Claimant bears the burden of proving that his or her termination was involuntary. *Spadaro v. Unemployment Compensation Board of Review*, 850 A.2d 855, 859 (Pa. Cmwlth. 2004).

Claimant testified that in March 2012, he expressed a desire to leave within two or three months, but Employer asked him to leave within two or three weeks. (N.T., 7/3/12, at 6-7, 9.) The UCBR, however, specifically disbelieved Claimant's testimony and found that Employer "credibly established that . . . [E]mployer did not tell [Claimant] that he had to end his employment in two or three weeks." (UCBR's Op. at 3.) Questions of witness credibility and evidentiary weight are within the UCBR's sole province, and the UCBR's findings are conclusive on appeal as long as the record contains substantial evidence to support them. *Spiropoulos v. Unemployment Compensation Board of Review*, 654 A.2d 642, 644 (Pa. Cmwlth. 1995).

Here, the UCBR found that in March 2012, Claimant informed Employer that he wanted to devise an exit strategy, but he did not specify a time frame. Two weeks later, Claimant submitted a resignation letter to Employer. (UCBR's Findings of Fact, Nos. 15-16; *see* N.T., 7/3/12, at 13.) Employer's witness

also credibly testified that Employer wanted Claimant to continue working and remained supportive of Claimant's efforts to obtain more sales accounts. (N.T., 7/3/12, at 12.) Therefore, the record contains substantial evidence to support the UCBR's conclusion that Claimant voluntarily quit his employment.

Next, Claimant asserts that the UCBR's determination that Claimant voluntarily quit without a necessitous and compelling cause is unsupported by substantial evidence. We disagree.

A claimant's mere dissatisfaction with his or her working conditions is not a necessitous and compelling reason to quit his or her employment. *Brunswick Hotel & Conference Center, LLC v. Unemployment Compensation Board of Review*, 906 A.2d 657, 660 (Pa. Cmwlth. 2006). However, an employer's substantial, unilateral change in the terms of employment can be a necessitous and compelling cause. *Id.* In determining whether a change in employment was so substantial as to create necessitous and compelling cause, we must consider the impact on the employee and whether there was a real difference in the employment conditions. *Middletown Township*, 40 A.3d at 228.

Here, Claimant argues that Employer substantially changed the conditions of his employment by assigning him fewer SLO accounts than promised at the time of his hiring. He also claims that his actual earnings fell short of the projected \$60,000 first-year salary, thereby causing him financial strain. We reject both claims.

When Claimant began working in August 2011, Employer assigned him 45 SLO accounts. Claimant accepted this work condition, thereby establishing its initial suitability. *See Unemployment Compensation Board of Review v. Holtz*, 338 A.2d 690, 691 (Pa. Cmwlth. 1975). While Claimant's job offer stated that he would receive approximately 60 SLO accounts, Employer credibly testified that it notifies prospective employees that account numbers are not guaranteed and that Claimant received fewer accounts due to attrition in his territory. (N.T., 7/3/12, at 11-12.) Significantly, Employer testified that when Claimant expressed concerns about his sales numbers, Employer not only loaned Claimant money, but it also devised a plan to help Claimant obtain more accounts. (*Id.* at 12, 15-16, 23.)³

With regard to Claimant's salary, the credited evidence established that Employer estimated that Claimant would earn \$58,000 by the end of his first year. (*Id.* at 15.) Likewise, Claimant believed that he would earn \$57,000, including the \$5,000 loan. (*Id.* at 17-18.) We agree with the UCBR that Claimant failed to prove a substantial change in his employment terms to justify his voluntary quit. *See Hostovich v. Unemployment Compensation Board of Review*, 414 A.2d 733, 735 (Pa. Cmwlth. 1980) ("[M]ultiple causes, none compelling or necessitous, do not in combination become one qualifying cause.").

Furthermore, Claimant resigned four months before the end of his first year, even though he had agreed to stay another 12 months when he accepted Employer's \$5,000 loan in March 2012. (UCBR's Findings of Fact, Nos. 7-8.) Considering that Claimant had his best sales month in March 2012 and was on track

³ Employer testified that the loan would be forgiven if Claimant stayed through the end of his first year. (N.T., 7/3/12, at 15-16.)

to earn \$58,000 by August 2012—just \$2,000 shy of the projected \$60,000 salary—the UCBR properly concluded that Claimant voluntarily quit without a necessitous and compelling cause.

Accordingly, we affirm.

ROCHELLE S. FRIEDMAN, Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Giovanni Faia,	:
	: No. 1882 C.D. 2012
Petitioner	:
	:
v.	:
	:
Unemployment Compensation	:
Board of Review,	:
	:
Respondent	:

ORDER

AND NOW, this 11th day of July, 2013, we hereby affirm the September 7, 2012, order of the Unemployment Compensation Board of Review.

ROCHELLE S. FRIEDMAN, Senior Judge