

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Suzette Watkins, :  
Petitioner :  
 : No. 928 C.D. 2013  
v. :  
 : Submitted: November 8, 2013  
Unemployment Compensation :  
Board of Review, :  
Respondent :

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE ROBERT SIMPSON, Judge  
HONORABLE PATRICIA A. McCULLOUGH, Judge

**OPINION NOT REPORTED**

MEMORANDUM OPINION  
BY JUDGE McCULLOUGH

FILED: January 23, 2014

Suzette Watkins (Claimant) petitions for review of the May 1, 2013 order of the Unemployment Compensation Board of Review (Board), which affirmed a referee's determination that Claimant was ineligible for benefits pursuant to section 402(b) of the Unemployment Compensation Law (Law).<sup>1</sup> We affirm.

This matter returns to us after remand to the Board for additional findings. The Board's decision may be summarized as follows. Colonial Intermediate Unit 20 (Employer) employed Claimant as a full-time special education teacher from January 12, 2006, until her last day of work on February 7, 2011. Her

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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). In relevant part, section 402(b) provides that an employee who voluntarily leaves work without cause of a necessitous and compelling nature is ineligible for compensation.

job duties included classroom instruction and administrative tasks. (Board’s Findings of Fact Nos. 1, 8.) Prior to being employed by Employer, Claimant had surgery to remove a benign brain tumor in 2005. (Board’s Finding of Fact No. 2; Reproduced Record (R.R.) at 10A.)<sup>2</sup> In November 2008, Claimant’s neurologist diagnosed her with trigeminal neuralgia (TN), with effects that range from mild to severe pain anywhere from a few seconds to two minutes, sometimes recurring. Claimant experienced flare-ups of TN once a month with symptoms that included fatigue. (Board’s Findings of Fact Nos. 3-6.)

Claimant informed Employer of her condition, and, in March 2010, asked Employer to help her catch up with any work that she would miss whenever she was not in school due to the TN flare-ups. (Board’s Finding of Fact No. 9.) Claimant submitted a form from her internist, David M. Stein, DO, FACOI (Dr. Stein), requesting leave under the Family and Medical Leave Act (FMLA), 29 U.S.C. §§2601–2654. Dr. Stein stated in the form that “[a]t this time my recommendation is that my patient receive assistance in completing time sensitive [sic] paperwork and in meeting required deadlines that may hinder quality of work—as needed.” His recommendation was for the time period from March 8, 2010, until approximately March 7, 2011. (Certified Record (C.R.) Item No. 20.)

Per Claimant’s request, Employer instructed the master teacher to help Claimant with her work, specifically, to create timelines and reminders, and placed Claimant on an improvement plan. In April or May 2010, Claimant took a leave of absence and returned to work in August 2010. By December 2010, Employer had

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<sup>2</sup> The reproduced record submitted by Claimant does not follow the proper numbering format, i.e., the Arabic figure followed by a lowercase “a,” as set forth in Pa.R.A.P. 2173.

removed Claimant from the improvement plan and understood that Claimant was progressing well with her work. Claimant never complained to Employer about the accommodations provided to her. (Board’s Findings of Fact Nos. 9-12.)

In late January 2011, Claimant requested a leave of absence, citing stressors at work and at home, and Employer approved a 20-workday leave of absence for her. On February 7, 2011, Claimant left work according to the approved leave of absence and she was expected to return on March 7, 2011. On March 4, 2011, Claimant sent an e-mail to Anthony Pidgeon (Pidgeon), Employer’s human resources director, indicating that her condition had deteriorated such that she could no longer perform her administrative tasks on a daily basis and requesting accommodations under the Americans with Disabilities Act of 1990, 42 U.S.C. §§12101–12213.<sup>3</sup> Pidgeon did not receive this e-mail until late in the day on Sunday,

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<sup>3</sup> In its entirety, Claimant’s e-mail reads as follows:

Dear Mr. Pidgeon:

As you are aware, I am afflicted with trigeminal neuralgia resulting from a meningioma brain tumor. This condition has resulted in limitations, including those arising from the corresponding development of fatigue, cognitive difficulties, and depression. Unfortunately, as a result of this deterioration, I am no longer physically able to conduct the entirety of my administrative responsibilities on a daily basis. Prior to my most recent leave, I attempted to conduct my position in its entirety – including the administrative aspects – and was able to complete the time-sensitive administrative tasks only with great difficulty and extended hours. My condition now prevents me from conducting this work in a reasonably reliable and efficient fashion. Furthermore, my prior attempts regularly aggravated my symptoms, including fatigue, cognitive deterioration and depression.

By way of this letter, I am asking that you provide accommodations under the Americans with Disabilities Act of 1990,

**(Footnote continued on next page...)**

March 6, 2011, and was not sure what Claimant was requesting. (Board’s Findings of Fact Nos. 13-17.)

On March 7, 2011, Claimant returned to work but was told that she had to meet with Pidgeon before she could begin. On March 8, 2011, Claimant met with Pidgeon to discuss her condition and request accommodations. At the meeting, Claimant provided Employer with a request for leave under the FMLA dated March 7, 2011, from Dr. Stein. (Board’s Findings of Fact Nos. 17-20.) Dr. Stein recommended that “[a]ccommodations needed may include assistance from co-workers in complex administrative tasks . . . reduction in hours or change in

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**(continued...)**

excuse me from the full administrative tasks, and replace these duties with an alternative task within my limitations. Such accommodations may include allowing another employee to assist with time-sensitive paperwork, replacing this administrative work with alternative duties, transferring me to another available position within my limitations, or permitting me to reduce my hours to the contract hours (7:30 am to 3:00 pm). Please advise me of any alternative tasks that are available, including those not listed above. Importantly, I remain capable of my teaching responsibilities and conducting limited administrative duties, the primary tasks of my position.

Please provide me with your suggested accommodations within two weeks, or by March 18, 2011. Additionally, please place a copy of this request in my personnel file. As always, I thank you for your continued understanding, and look forward to working with you to find a mutually agreeable solution.

Sincerely,

Suzette Watkins

(R.R. at 45A.)

assignment. There is no restriction in primary teaching activities other than as above.” (C.R. at Item No. 20.) However, Employer and Claimant could not agree on what accommodations Claimant required. (Board’s Finding of Fact No. 21.)

Subsequently, Pidgeon met with Claimant’s supervisor and the director of special education to create a description for Claimant’s position, which was then sent to Dr. Stein for approval. Dr. Stein responded that he was not qualified to comment on the specific aspects of the essential job duties for Claimant and that Pidgeon would need to receive a medical opinion from either a neuropsychologist or a neuropsychiatrist. (R.R. at 29A.) Claimant confirmed during a conversation with Pidgeon that a neuropsychologist would be best to offer an opinion and informed him that she was attempting to set up an appointment with one. On April 29, 2011, Claimant sent an e-mail to Pidgeon describing her specific accommodation requests, stating that Dr. Stein would send written documentation and that she would return to work as soon as the issue of reasonable accommodation was resolved.<sup>4</sup> On April 29,

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<sup>4</sup> In its entirety, Claimant’s e-mail states as follows:

Dear Mr. Pidgeon,

Due to the limited time from your response on Wednesday, April 27 at 6:05 pm to this day, Friday, April 29, 2011, my response is presented via email at this time. This email will be sent to you by mail as well.

Your [sic] requested a response regarding my intentions along with obtaining a note from my physician with specific accommodations “so that [we] can re-evaluate [your] situation.” Per my physicians [sic] verbal response he indicated that I am capable of returning to work with reasonable accommodations.

Those specific reasonable accommodations include but are not limited to direct assistance in completing paperwork as necessary

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**(continued...)**

during trigeminal neuralgia flare-ups; excused time off as necessary for physician appointments for the management of trigeminal neuralgia flare-ups; excused time off when a debilitating trigeminal neuralgia flare-up occurs; home access to Teacher's Manuals, or scanned answer keys from the Teacher's Manual's [sic], as needed for each subject that I instruct, without daily transport of those manuals from home to school due to the number and weight of several Teacher's Manuals used; the Teacher's Manuals or scanned answer keys as previously mentioned are required to grade students' completed school papers at home, when a flare-up of trigeminal neuralgia is minimal or is not present, therefore freeing-up associates [sic] time during the school day to assist me in time sensitive required paperwork on a daily or weekly basis, in the event that a trigeminal flare-up occurs.

If you perceive the preceding accommodations as unreasonable please indicate what accommodations you would implement that you consider reasonable. I am willing to engage in a professional written or verbal dialogue to determine the recommendations you would suggest as reasonable to resolve this issue in an amicable and expeditious manner.

My physician's written documentation will be provided at his earliest convenience which you will receive by email as well as a hard copy by mail. In my physician's professional statement he indicates that I am fully capable of performing all of the essential teaching job duties, with reasonable accommodations, as outlined in the 'Job Description' provided by your office of Human Resources. I look forward to returning to work as soon as the issue of reasonable accommodations is resolved.

Thank you for your time in this manner.

Sincerely,

Suzette Watkins

(R.R. at 48A-49A.)

2011, Dr. Stein sent an e-mail to Employer stating that there was little that he could add to the March 7, 2011 FMLA form that he previously sent, noting that Claimant is able to perform all of her job duties with reasonable accommodations and that further information may be available from Claimant's neurologist.<sup>5</sup> Employer never received medical documentation from a neuropsychologist, a neuropsychiatrist, or Claimant's

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<sup>5</sup> In its entirety, Dr. Stein's e-mail reads as follows:

Dear Mr. Pigeon [sic],

Per the request of Suzette Watkins, I am emailing this letter (unsigned) to you with the intent to mail it (signed) as my scanner is not working. Unfortunately, there is little I can add to what I have sent you previously as documented on the FMLA form Faxed 3/7/2011.

To the best of my knowledge, as a Board Certified Internist, and within a reasonable degree of medical certainty, Suzette Watkins is capable of performing all of the duties of her job for the description that was previously provided to me.

When Ms. Watkins is ill from uncontrolled pain caused by trigeminal neuralgia she may need to either be absent from work for treatment or to have assistance in certain tasks that are made more difficult by severe pain. Therefore, in summary, Ms. Watkins is able to perform all of the duties of her job with reasonable accommodation for when she is ill.

It may be helpful for you to reference available information on this disorder. Further documentation may be available from Ms. Watkin's [sic] neurologist.

Sincerely,

David M. Stein, DO, FACOI

(R.R. at 47A.)

neurologist, and Claimant did not return to work. (Board's Findings of Fact Nos. 22-28.)

Claimant applied for unemployment compensation, and on June 3, 2011, the local job center determined that Claimant was ineligible for benefits pursuant to section 402(b) of the Law. Claimant appealed, and the matter was assigned to a referee.

At the referee's hearing, Claimant testified that her TN flare-ups are unpredictable, usually occur when she is under a lot of stress, and cause her to have fatigue. (R.R. at 11A, 13A.) She further testified that "[the flare-ups] can last anywhere from a few seconds to 2 minutes. Sometimes recurring, sometimes ending for several days, hours, weeks, months. It's unpredictable." (R.R. at 11A.) Claimant clarified that the pain can be severe for any period of time including up to days. She stated that she thought the accommodations provided by Employer in March 2010 were limited and not consistent with Dr. Stein's recommendation for Claimant to have assistance in completing her work. She explained that her last day of work was March 7, 2011, because Pidgeon informed her not to return to work until she was cleared medically by Dr. Stein. Claimant testified that Pidgeon was unsure if the accommodations she requested in March 2011 could be met and told her not to work effective March 8, 2011.

Claimant testified that Dr. Stein cleared her to work in the beginning of March 2011 and that his clearance was adequate to allow her to return to work. Claimant noted that her correspondence on April 28, 2011, with Pidgeon requested the same accommodations that had already been in place but on a more regular schedule. She stated that Dr. Stein communicated with her neurologist, with whom she had been treating since 2010, when devising his opinions. Claimant also testified



that there was no definitive plan in place between Claimant and Pidgeon for Claimant to schedule an appointment with a neuropsychologist, only a suggestion to do so. On cross-examination, Claimant stated that she can perform all of her job duties without assistance whenever she is not experiencing a TN flare-up. (R.R. at 11A, 16A, 18A-22A, 25A, 38A-39A.)

Pidgeon testified that Claimant's March 4, 2011 correspondence was inconsistent with the accommodations already in place, because Claimant requested that she only teach and to have all other essential administrative tasks removed from her job description. He stated that the only medical documentation that Claimant produced was from Dr. Stein, who also admitted that he was not qualified to approve Claimant's job description. Pidgeon noted that Claimant sent him an e-mail on August 15, 2011, asking if she could come back to work and that he informed her that she had not sent him any documentation that she had been medically cleared to work. On cross-examination, Pidgeon testified that the 2010 accommodations provided Claimant with a timeline to help her complete her work, whereas the 2011 requested accommodations sought someone to do her work for her. He stated that Claimant has advised him that she is available to return to work. (R.R. at 28A-30A, 36A-38A.)

Jeremy Silimperi (Silimperi), who was the master teacher while Claimant was working for Employer, testified that he created timelines for Claimant in order to accommodate her and that he provided these timelines even when Claimant was not experiencing a TN flare-up. Silimperi further testified that although teaching and administrative tasks can be performed separately, that arrangement does not allow for the maximum benefit to a student. (R.R. at 40A-41A.)

By decision and order dated September 12, 2011, the referee determined that Claimant did not meet her burden of proving that she had necessitous and compelling reason for leaving work due to a medical condition. The referee found that Claimant's medical documentation showed that she was physically capable of performing her essential job functions. The referee further found that while Claimant asked for additional accommodations, she did not make a good-faith effort to provide Employer with the medical documentation Employer requested in order to make the proper accommodations. Thus, the referee affirmed the determination of the local job center that Claimant was ineligible for benefits under section 402(b) of the Law.

Claimant appealed to the Board, which adopted the referee's findings and affirmed the referee's decision. Claimant then appealed to this Court. We determined that the Board properly analyzed this matter under section 402(b) of the Law. However, we vacated the Board's order and remanded the matter to the Board to issue a new decision that included new findings of fact and conclusions of law. Specifically, we stated as follows:

As to Claimant's burden, the findings do not address: (1) whether Claimant's health reasons were of sufficient dimension to compel her to leave her employment; (2) whether Claimant sufficiently informed Employer of her health problems; and (3) whether Claimant is able and available for work if Employer can make a reasonable accommodation. As to Employer's burden (assuming Claimant met her burden), the findings do not address whether Employer made a reasonable attempt to identify and propose possible accommodations for Claimant's health problems.

*Watkins v. Unemployment Compensation Board of Review*, 65 A.2d 999, 1005 (Pa. Cmwlth. 2013) (citations omitted).

On remand, the Board issued the findings summarized above. The Board also found that Claimant's job remains available to her, either with no restrictions or with the accommodations that were in place as of February 7, 2011. (Board's Finding of Fact No. 29.) The Board resolved any conflicts in testimony in Employer's favor and specifically rejected Claimant's testimony that an appointment with a neuropsychologist or a neuropsychiatrist was merely an option and that Employer only requested medical documentation from a specialist, which included Dr. Stein. The Board determined that, based on the cognitive nature of Claimant's disability and Dr. Stein's reluctance to offer an opinion regarding Claimant's job description, it was reasonable for Employer to request medical clearance from either a neuropsychologist or a neuropsychiatrist before allowing Claimant to return to work. The Board concluded that, in failing to provide further medical documentation, Claimant did not make a reasonable effort to preserve her employment and thus failed to prove a necessitous and compelling reason existed to voluntarily leave her job. Accordingly, the Board again affirmed the referee's determination that Claimant was ineligible for benefits under section 402(b) of the Law.

On appeal to this Court,<sup>6</sup> Claimant argues that the Board erred in holding that she is ineligible for benefits, because the evidence of record proves that medical reasons of a necessitous and compelling nature caused Claimant to voluntarily quit her employment. We disagree.

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<sup>6</sup> Our scope of review is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with the law, and whether findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa.C.S. §704.

The Board, as fact-finder, is entitled to assess the credibility of witnesses, determine the weight to be accorded evidence, and consider all reasonable inferences deducible therefrom. *Peak v. Unemployment Compensation Board of Review*, 509 Pa. 267, 501 A.2d 1382 (1985). Where a claimant fails to challenge the Board's factual findings, they are conclusive on appeal. *Campbell v. Unemployment Compensation Board of Review*, 694 A.2d 1167, 1169 (Pa. Cmwlth. 1997). In order to be entitled to unemployment benefits, an employee who voluntarily terminates her employment bears the burden of proving that she had cause of a necessitous and compelling nature. *Wert v. Unemployment Compensation Board of Review*, 41 A.3d 937, 940 (Pa. Cmwlth. 2012). Whether a claimant has necessitous and compelling cause to quit is a question of law subject to appellate review. *Taylor v. Unemployment Compensation Board of Review*, 474 Pa. 351, 358, 378 A.2d 829, 832 (1977). Generally, necessitous and compelling cause exists when there is real and substantial pressure to terminate one's employment that would compel a reasonable person to do the same under similar circumstances. *Wert*, 41 A.3d at 940. A claimant must show that she acted with ordinary common sense in quitting, made a reasonable effort to preserve her employment, and had no real choice but to leave her employment. *Cowls v. Unemployment Compensation Board of Review*, 427 A.2d 722, 723 (Pa. Cmwlth. 1981).

A medical condition or health reason may constitute cause of a necessitous and compelling nature for a claimant to voluntarily terminate employment. *Deiss v. Unemployment Compensation Board of Review*, 475 Pa. 547, 555, 381 A.2d 132, 136 (1977). To establish health problems as a compelling reason to quit, a claimant must show that: (1) adequate health reasons existed to justify the voluntary termination; (2) she communicated her medical problem to her employer;

and (3) she is available for suitable work, consistent with her medical condition. *Genetin v. Unemployment Compensation Board of Review*, 499 Pa. 125, 451 A.2d 1353 (1982). While medical testimony is not required, a claimant's testimony and supporting documents may be inadequate in some cases. *Emmitt v. Unemployment Compensation Board of Review*, 500 A.2d 510, 511 (Pa. Cmwlth. 1985). If any one of these conditions is not met, an unemployment compensation claim is barred. *Lee Hospital v. Unemployment Compensation Board of Review*, 637 A.2d 695, 698 (Pa. Cmwlth. 1994). Once the claimant has informed the employer of her health problems, the employer bears the burden of proving that it made a reasonable attempt to propose possible accommodations for the claimant. *Id.* at 699. Significantly, in order to make a reasonable accommodation, an employer must have sufficient information to know what is reasonable. *Bonanni v. Unemployment Compensation Board of Review*, 519 A.2d 532, 536 (Pa. Cmwlth. 1986).

In *Bonanni*, the claimant missed days of work because of complications with her pregnancy. After receiving an absenteeism warning, the claimant presented a note from her doctor stating that she should be limited in the type of work that she could do and should have a position that requires less physical exertion, if possible. The employer requested a more specific letter detailing her work limitations, which the claimant never produced. The claimant filed for benefits and, following a hearing, the referee denied the claim under section 402(b) of the Law. The referee made credibility determinations in favor of the employer and concluded that, because the claimant failed to produce a more specific letter from the doctor, the claimant failed to establish cause of a necessitous and compelling reason to voluntarily leave her employment. The Board affirmed.

On appeal to this Court, we held that an employer's request for specific information as to what a claimant can and cannot do is reasonable, and we opined that an employer cannot make a reasonable accommodation when it does not know what is reasonable. Because the claimant failed to provide her employer with adequate information for the employer to reasonably accommodate her medical condition, we affirmed the Board's decision.

As in *Bonanni*, the Board resolved all conflicts in testimony in favor of Employer, and we will not disturb these credibility determinations on appeal. *Peak*. Based on those credibility determinations, the Board specifically found that Claimant agreed to provide medical documentation from a neuropsychologist in order for Employer to provide accommodations necessary for her to return to work. In light of our holding in *Bonanni*, Dr. Stein's admitted lack of qualifications, and the cognitive nature of Claimant's disability, we agree that Employer's request for further medical documentation from a neuropsychologist was reasonable. Because Claimant did not provide the requested documentation, she did not make a good-faith effort to preserve her employment and thus failed to establish a necessitous and compelling reason to voluntarily leave her employment. *Id.* Under the circumstances, the Board correctly held that Claimant is ineligible for benefits under section 402(b) of the Law.

Accordingly, we affirm.

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PATRICIA A. McCULLOUGH, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Suzette Watkins,	:
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Petitioner	:
	:
v.	:
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Unemployment Compensation	:
Board of Review,	:
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Respondent	:

**ORDER**

AND NOW, this 23<sup>rd</sup> day of January, 2014, the May 1, 2013 order of the Unemployment Compensation Board of Review is affirmed.

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PATRICIA A. McCULLOUGH, Judge