

COMMONWEALTH COURT OF PENNSYLVANIA

LaKesia Phillips v. Unemployment Compensation Board of Review

No. 761 C.D. 2019 (Pa. Commw. Ct. Jan. 6 2020) (Commonwealth Court of Pennsylvania 2020) · No. No. 761 C.D. 2019 · Decided January 6, 2020

SUMMARY

The Pennsylvania Commonwealth Court affirmed the Unemployment Compensation Board of Review's denial of benefits to LaKesia Phillips under Section 402(b) of the Unemployment Compensation Law. The court held that Phillips waived her argument that incarceration provided a necessitous and compelling reason for voluntarily leaving employment because she did not raise it before the referee or Board. The court further concluded that, even if preserved, incarceration and her failure to attend or reschedule a meeting with the employer did not establish a necessitous and compelling reason or reasonable efforts to preserve employment.

CASE DETAILS

COURT	Commonwealth Court of Pennsylvania
WRITING FOR THE COURT	Renée Cohn Jubelirer; Patricia A. McCullough; Ellen Ceisler
JURISDICTION	Pennsylvania
DECIDED	January 6, 2020
DOCKET	No. 761 C.D. 2019
DISPOSITION	affirmed
PROCEDURAL POSTURE	Claimant petitioned for review of the Unemployment Compensation Board of Review's order affirming a referee's denial of unemployment compensation benefits under Section 402(b) of the Pennsylvania Unemployment Compensation Law.
STANDARD OF REVIEW	The Court reviewed whether the necessary findings of fact were supported by substantial evidence, whether errors of law were committed, and whether constitutional rights were violated. Whether a claimant had a necessitous and compelling reason for voluntarily quitting was reviewed as a question of law fully reviewable by the Court.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	LaKesia Phillips v. Unemployment Compensation Board of Review

TOPICS

unemployment benefits

administrative law

preservation of error

appellate procedure

standard of review

PRACTICE AREAS

unemployment compensation

administrative law

appellate procedure

QUESTIONS PRESENTED

1. Whether Phillips preserved for appellate review the issue of whether she had a necessitous and compelling reason for voluntarily leaving employment.
2. Whether incarceration resulting from criminal conduct constitutes a necessitous and compelling reason for voluntarily quitting employment under Section 402(b) of the Pennsylvania Unemployment Compensation Law.
3. Whether Phillips made reasonable efforts to preserve her employment after contacting the employer about returning to work.

HOLDINGS

1. Phillips waived review of whether she had a necessitous and compelling reason for quitting because she did not raise that issue before the referee or the Board, where factual findings could have been made.
2. Even if preserved, a claimant's need to abandon employment to serve a criminal-incarceration sentence does not constitute a necessitous and compelling reason for voluntarily quitting under Section 402(b).
3. Phillips did not establish a necessitous and compelling reason for quitting because she failed to make a reasonable effort to preserve her employment after missing the employer's scheduled return-to-work meeting.

KEY QUOTATIONS

“To demonstrate a necessitous and compelling reason for leaving employment, Claimant must demonstrate the following: “(1) circumstances existed that produced real and substantial pressure to terminate employment; (2) such circumstances would compel a reasonable person to act in the same manner; (3) [she] acted with ordinary common sense; and, (4) [she] made a reasonable effort to preserve her employment.”” (7)

“Therefore, the fact that Claimant had to abandon her job due to a sentence of incarceration does not rise to the level of a necessitous and compelling voluntary quit because her inability to work was due to her own fault in engaging in activity that led to her incarceration.” (8)

FACTUAL BACKGROUND

Phillips worked as a part-time certified nursing assistant and home health aide from September 14, 2016, through December 10, 2018. She stopped working after telling her client and employer that she needed two months off to handle a situation, and she was incarcerated beginning December 12, 2018. After her release, she

contacted the employer about returning to work, but she did not attend a scheduled meeting, notify the employer that she could not attend, or follow up afterward, despite continuing work being available.

PROCEDURAL HISTORY

The Harrisburg Overflow UC Center determined that Phillips was ineligible for benefits because she voluntarily left employment without a necessitous and compelling reason. A referee affirmed that determination after a hearing, and the Board adopted the referee's findings and conclusions, with a modification to one factual finding. The Board denied reconsideration, and the Commonwealth Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Johns v. Unemployment Compensation Board of Review, 87 A.3d 1006, 1009 n.2 (Pa. Cmwlth. 2014)
- Schaal v. Unemployment Compensation Board of Review, 870 A.2d 952, 954-55 (Pa. Cmwlth. 2005)
- Brunswick Hotel & Conference Ctr., LLC v. Unemployment Compensation Board of Review, 906 A.2d 657, 661 (Pa. Cmwlth. 2006)
- RIO Supply, Inc. of PA v. Unemployment Compensation Board of Review, 124 A.3d 401, 404 (Pa. Cmwlth. 2015)
- Havrilchak v. Unemployment Compensation Board of Review, 133 A.3d 800, 804 (Pa. Cmwlth. 2015)
- Violi v. Unemployment Compensation Board of Review, No. 982 C.D. 2011, slip op. at 5-6 (Pa. Cmwlth. Dec. 30, 2011)