

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Donisha Tobe,	:
Petitioner	:
	:
v.	: No. 315 C.D. 2025
	: Submitted: June 16, 2026
Unemployment Compensation	:
Board of Review,	:
Respondent	:

BEFORE: HONORABLE ANNE E. COVEY, Judge
HONORABLE STACY WALLACE, Judge
HONORABLE STELLA M. TSAI, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE WALLACE

FILED: September 28, 2026

Donisha Tobe (Claimant), representing herself, petitions this Court for review of the Unemployment Compensation (UC) Board of Review’s (Board) order mailed February 4, 2025, determining Claimant was not entitled to UC benefits because she voluntarily left her employment without a necessitous and compelling reason. After careful review, we affirm.

BACKGROUND

Claimant received a Disqualifying Separation Determination (Determination) dated March 15, 2024, stating she was not entitled to UC benefits because she left her employment at a Giant Food Stores, LLC (Employer) grocery store for “personal or

other reasons.” Certified Record (C.R.) at 20. Specifically, Claimant was a “no call no show for [three] consecutive shifts.” *Id.* Claimant timely appealed.

A referee held a hearing on July 10, 2024, at which Claimant and Employer’s store manager, Keith Wagner (Wagner), appeared and testified in person. Claimant testified she worked about 25 to 30 hours per week in the deli at Employer’s grocery store. C.R. at 81-82. However, Claimant learned from speaking to her supervisor in January 2024 that Employer discharged her for being absent and failing to call off in advance.¹ *Id.* at 87. Claimant did not dispute that she was absent for “[t]wo or three days” but contended she did call off in advance. *Id.* at 83-86.

Claimant testified she was absent from work because of a health-related crisis that was very “personal.”² C.R. at 84-85. According to Claimant, she explained her circumstances to her supervisor and “asked her . . . to not tell anyone.” *Id.* at 83-84. Claimant’s supervisor assured her that she would not discuss the matter with anyone else. *Id.* at 85. Although Claimant also testified she was absent from work because of car issues, she conceded Employer’s grocery store was a 15-minute walk from her home and she sometimes walked to work. *Id.* at 88.

Conversely, Wagner testified Claimant worked about 25 to 30 hours per week in the deli until October 2023, when Claimant informed Employer she was resigning. C.R. at 91-93. Wagner explained Claimant and her supervisor “worked out between the two of them that [Claimant] would stay after that” with reduced hours. *Id.* at 93.

¹ Claimant testified she called her supervisor on the phone because she heard by “word of mouth” that Employer had discharged her. C.R. at 89-90.

² Although Claimant testified she was hospitalized, she conceded the hospitalization occurred after Employer discharged her, and she did not blame the hospitalization for her inability to attend work. C.R. at 85. Instead, Claimant explained she “just couldn’t get [her]self out of bed to make it, you know, into work.” *Id.* at 86.

Claimant took one week off, after which Employer scheduled her to work one or two days per week. *Id.*

Wagner testified Claimant last attended work for one hour on January 4, 2024, and called off in advance for her scheduled shift on January 7, 2024. C.R. at 91-92. Wagner testified Employer scheduled Claimant for work on January 18, 22, and 25, 2024. *Id.* at 92. However, Claimant was “marked down as absent, no-call, no-show for those three dates,” resulting in her discharge. *Id.* at 92, 98.

Wagner testified employees’ schedules are available online and in Employer’s grocery store. C.R. at 93. Employer’s policy is that employees must call off at least two hours before a scheduled shift. *Id.* at 93-94. Wagner testified an employee who calls off must speak with a “salary manager” who then makes a record in Employer’s computer system. *Id.* at 94-96. Claimant’s supervisor is not a salary manager. *Id.* at 94. Wagner testified he is a salary manager and did not speak to Claimant regarding the shifts for which she was absent. *Id.* at 94-95. Moreover, Wagner spoke to other salary managers who indicated they had not heard from Claimant.³ *Id.* at 95.

In response, Claimant testified she did not know she was scheduled to work on January 18, 22, and 25, 2024. C.R. at 99-100. Claimant explained she always went to Employer’s grocery store to review her schedule in person. *Id.* at 101. Claimant acknowledged, nonetheless, that she did not review her schedule after calling off on January 7, 2024. *Id.* Claimant appeared to testify she spoke with her supervisor and

³ Claimant testified she called off by speaking with a salary manager named Lushanna. C.R. at 86. Wagner agreed he spoke to Lushanna, who “said that [she] hadn’t spoken to her -- the Claimant[.]” *Id.* at 95.

learned Employer discharged her in about the first week of January, before the shifts on January 18, 22, and 25, 2024.⁴ *Id.*

The referee issued a decision dated July 10, 2024, affirming the Determination and concluding Claimant was not entitled to UC benefits because she failed to prove she had a necessitous and compelling reason for voluntarily leaving her employment. C.R. at 105-06. Particularly, the referee concluded Claimant failed to prove that she acted with ordinary common sense, and that she made a good faith effort to preserve her employment. *Id.* The referee found Claimant was absent from work and failed to call off in advance on January 18, 22, and 25, 2024. *Id.* at 105. The referee reasoned Claimant should have maintained contact with Employer and made herself aware of her scheduled shifts. *Id.* Further, the referee rejected Claimant’s testimony that she was unaware of her scheduled shifts and learned from speaking to her supervisor that Employer discharged her before those shifts occurred as not credible. *Id.* at 105-06. Claimant timely appealed.

By order mailed February 4, 2025, the Board affirmed the referee and denied Claimant’s UC benefits claim, adopting and incorporating the referee’s findings and conclusions with minor additions. The Board did not credit Claimant’s explanation that she called off in advance and resolved “all conflicts of testimony” in Employer’s favor, citing Claimant’s “inconsistent” testimony. C.R. at 130. Like the referee, the Board explained Claimant should have made herself aware of her scheduled shifts. *Id.* With respect to Claimant’s testimony that she was absent from work for personal reasons, the Board conceded Claimant did not need to disclose why she was absent. *Id.* The Board explained Claimant had the burden of proof in this case, however, and

⁴ Claimant testified she “had spoke to [her supervisor] maybe about two, three days after that. . . . That had to be the first week of January, something like that. . . . She had told me that she would [inaudible] the [Employer] right.” C.R. at 101.

“refusing to provide details can impede the Board’s ability to find that circumstances existed which produced real and substantial pressure” on Claimant to leave her job. *Id.*

Claimant timely filed a petition for review in this Court.⁵ Claimant argues on appeal that she called off in advance by speaking to her supervisor at the deli, but her supervisor “never reported it back to the store manager,” resulting in Claimant being “treated unfairly and not right.” Claimant’s Br. at 3. In addition, Claimant provides further details regarding her personal crisis, explaining she had “a rough pregnancy which cause[d] [Claimant] to[] have a miscarriage from so much stress from the job and being treated unfairly with no breaks.” *Id.* at 4.

DISCUSSION

We review the Board’s order for violations of Claimant’s constitutional rights, violations of agency practice and procedure, and other errors of law. Section 704 of the Administrative Agency Law, 2 Pa.C.S. § 704. Additionally, we review whether substantial evidence supports the findings necessary to sustain the Board’s decision. *Id.* The Board is the ultimate finder of fact and is entitled to assess witness credibility and weight of the evidence. *Hubbard v. Unemployment Comp. Bd. of Rev.*, 252 A.3d

⁵ Claimant submitted a request for reconsideration to the Board on February 3, 2025, i.e., one day before the Board mailed its order affirming the referee. The apparent purpose of the request was to present additional evidence, namely “the document showing [Claimant] could not come back to[] employ[ment] and was fired.” C.R. at 151. The Board denied Claimant’s request by order mailed February 12, 2025. Claimant filed an initial written communication to this Court evidencing her intention to appeal, which did not include a copy of the Board order Claimant intended to challenge but was timely as to both the order affirming the referee and the order denying reconsideration. At this Court’s direction, Claimant filed a timely ancillary petition for review, which included a copy of a notice from the Board indicating it received her request for reconsideration but explaining the request did not toll the deadline for Claimant to appeal from the order affirming the referee. Upon review of Claimant’s filings, and mindful of her self-represented status, we will liberally construe Claimant’s ancillary petition for review as indicating an intention to appeal from the Board’s order affirming the referee rather than its notice or order denying reconsideration.

1181, 1185 n.2 (Pa. Cmwlth. 2021). Accordingly, we view the evidence in the light most favorable to the party that prevailed before the Board, granting the benefit of all logical and reasonable inferences. *Sweeney v. Unemployment Comp. Bd. of Rev.*, 74 A.3d 1175, 1177 n.1 (Pa. Cmwlth. 2013).

The Board concluded Claimant was not entitled to UC benefits under Section 402(b) of the Unemployment Compensation Law,⁶ which provides, in pertinent part, that an employee “shall be ineligible” for UC benefits “for any week” in which his or her “unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature.” 43 P.S. § 802(b). Section 402(b) includes the caveat that a disability “shall be deemed not a cause of a necessitous and compelling nature” when “the employer is able to provide other suitable work.” *Id.*

As a general matter, this Court has explained that “[a] voluntary quit requires a finding that the claimant had a conscious intention to leave employment,” based on a totality of the circumstances. *Procyson v. Unemployment Comp. Bd. of Rev.*, 4 A.3d 1124, 1127 (Pa. Cmwlth. 2010). It is unnecessary that the claimant expressly resign. Engaging in “conduct which is tantamount to a voluntary termination of employment is sufficient.” *Thiessen v. Unemployment Comp. Bd. of Rev.*, 178 A.3d 255, 260 (Pa. Cmwlth. 2018) (quoting *Greenray Indus. v. Unemployment Comp. Bd. of Rev.*, 135 A.3d 1140, 1143 (Pa. Cmwlth. 2016)). The Court has explained a claimant’s “failure to take all necessary and reasonable steps to preserve his employment will result in a voluntary termination of employment.”⁷ *Id.*

⁶ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. § 802(b).

⁷ See also, e.g., *Gosner v. Unemployment Comp. Bd. of Rev.*, 234 A.3d 934, 938 n.5 (Pa. Cmwlth. 2020) (quoting *Hutt v. Unemployment Comp. Bd. of Rev.*, 367 A.2d 390, 391 (Pa. Cmwlth. 1976)) (recognizing an “(a)bsence from work, even for a good cause such as illness may become, through the lapse of an unreasonable amount of time, a voluntary termination”).

The claimant bears the burden of proving a necessitous and compelling reason for leaving employment. *Petrill v. Unemployment Comp. Bd. of Rev.*, 883 A.2d 714, 716 (Pa. Cmwlth. 2005). This Court has explained:

In showing a necessitous and compelling cause, the claimant must establish that 1) circumstances existed which produced real and substantial pressure to terminate employment; 2) like 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. In other words, it can be said that good cause for voluntarily leaving one's employment (i.e. that cause which is necessitous and compelling) results from circumstances which produce pressure to terminate employment that is both real and substantial, and which would compel a reasonable person under the circumstances to act in the same manner. . . .

First Fed. Sav. Bank v. Unemployment Comp. Bd. of Rev., 957 A.2d 811, 816 (Pa. Cmwlth. 2008) (citations and quotation marks omitted).

In addition, the Court has recognized a separate standard applicable to medical conditions:

An employee's medical condition or health reason may create cause of a necessitous and compelling nature to terminate (or leave) employment voluntarily. An employee seeking to obtain benefits on health-related grounds bears the burden to demonstrate through competent and credible evidence the following: (1) health reasons of sufficient dimension compelled the employee to quit; (2) the employee informed the employer of the health problems; and (3) the employee is able and available for work if her employer can make a reasonable accommodation. While this standard does not require medical testimony, there may be cases where a claimant's testimony and supporting documents are inadequate. Further, in such cases, once an employee makes an employer aware of such health problems, the employer bears the burden to establish that it made a reasonable attempt to identify and propose possible accommodations for the employee's health problems.

Watkins v. Unemployment Comp. Bd. of Rev., 65 A.3d 999, 1004-05 (Pa. Cmwlth. 2013) (citations omitted).⁸

Our review of the record supports the determination that Claimant voluntarily left her employment. By her own admission, Claimant did not review her schedule after calling off on January 7, 2024, and was unaware of any of her subsequent shifts. C.R. at 100-01. Claimant's apparent disinterest in when she was scheduled to work indicates she had a "conscious intention" not to return. *Procyson*, 4 A.3d at 1127. In addition, Claimant's absence and her failure to call off for three consecutive shifts is tantamount to express resignation and establishes she did not "take all necessary and reasonable steps to preserve" her employment. *Thiessen*, 178 A.3d at 260.

We recognize that Claimant testified she called off in advance. C.R. at 83-86. Further, Claimant appeared to testify she learned that Employer discharged her from speaking with her supervisor before the shifts occurred. *Id.* at 101. The Board found Claimant not credible and resolved "all conflicts of testimony" in Employer's favor. *Id.* at 130. The Board also adopted and incorporated the referee's factual findings with minor additions. *Id.* at 129. The referee found Claimant "was a no call/no show for her scheduled shifts" and rejected Claimant's explanation "that she was informed that she was terminated prior to her scheduled shift on January 18, 2024." *Id.* at 139-40.

Because there is substantial evidence in the record supporting these findings, they are binding and conclusive. *See Allen v. Unemployment Comp. Bd. of Rev.*, 189 A.3d 1128, 1133 (Pa. Cmwlth. 2018). Wagner explained an employee who calls off must speak to a "salary manager," and Claimant's supervisor is not a salary manager.

⁸ Case law directs that pregnancy is the same as other medical conditions for purposes of proving a necessitous and compelling reason for voluntarily leaving employment. *Howell v. Unemployment Comp. Bd. of Rev.*, 413 A.2d 782, 783 (Pa. Cmwlth. 1980).

C.R. at 94-96. Wagner testified he is a salary manager, he did not speak to Claimant regarding the shifts for which she was absent, and he spoke to other salary managers who indicated they had not heard from Claimant. *Id.* at 94-95. In addition, Wagner testified Employer discharged Claimant only after she was absent from work and did not call off for her scheduled shifts. *Id.* at 92, 97-98.

Although the Court is not unsympathetic to Claimant’s description of “a rough pregnancy” and a subsequent miscarriage, *see* Claimant’s Br. at 4, Claimant did not offer this explanation to the referee or the Board, and the record does not contain any evidence to support it. Moreover, Claimant testified she disclosed her “crisis” to her supervisor while insisting the supervisor not tell anyone else. C.R. at 84. Under the circumstances, Claimant did not adequately inform Employer of her health problems and, therefore, failed to establish a necessitous and compelling reason for voluntarily leaving her employment. Employer could not make “a reasonable attempt to identify and propose possible accommodations for [Claimant’s] health problems” if she was opting to keep those problems to herself. *See Watkins*, 65 A.3d at 1005.

CONCLUSION

Based on the foregoing, our review of the certified record supports the Board’s determination that Claimant was not entitled to UC benefits because she voluntarily left her employment without a necessitous and compelling reason. Accordingly, we affirm the Board’s February 4, 2025 order.

STACY WALLACE, Judge

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Board of Review,	:
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ORDER

AND NOW, this 28th day of September 2026, the Unemployment Compensation Board of Review's order mailed February 4, 2025 is **AFFIRMED**.

STACY WALLACE, Judge