

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Katrina Walker,	:	
Petitioner	:	
	:	
v.	:	No. 254 C.D. 2025
	:	Submitted: June 16, 2026
Unemployment Compensation	:	
Board of Review,	:	
Respondent	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, President Judge
HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE CHRISTINE FIZZANO CANNON, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
PRESIDENT JUDGE COHN JUBELIRER

FILED: September 1, 2026

Katrina Walker (Claimant), pro se, petitions for review of the December 26, 2024 Order of the Unemployment Compensation Board of Review (Board), which adopted the Referee's findings and conclusions and affirmed the Referee's decision finding Claimant ineligible for unemployment compensation (UC) benefits. Specifically, the Board determined that Claimant resigned without a necessitous and compelling reason to do so, and continuing work was available. Claimant contends she did not quit but instead was terminated. Based on the Board's credibility determinations and findings, which are supported by substantial evidence, we affirm.

I. Background

Claimant worked full time for Croyle Nielsen Therapeutic Associates, Inc. (Employer), caring for one patient (the Individual) from February 16, 2021, until May 25, 2024, when she separated from employment. (Certified Record (C.R.) at 3, 47.) Shortly thereafter, Claimant filed an Application for unemployment compensation (UC) benefits (Application), indicating she was terminated as a disciplinary measure for an alleged patient abuse incident involving her having accompanied the Individual and her family on their family vacation but not bringing the Individual's oxygen machine (oxygen concentrator) on a trip from April 28 through May 3, 2024 (April-May Trip). (*Id.* at 15-16.) In her Application, Claimant stated her occupation was a Registered Nurse. (*Id.* at 3.) In the Claimant Questionnaire, she further stated "I worked as direct support care specialist[]/RN" and that Employer interpreted Claimant's offer to be demoted or to "step down from an RN to a DSP" after the alleged patient abuse incident as a resignation. (*Id.* at 17-18.) A UC Service Center issued a determination finding Claimant was eligible for UC benefits because Employer failed to provide sufficient evidence of Claimant's willful misconduct. (*Id.* at 51.) Employer appealed the determination, and the Board scheduled a hearing before a Referee. (*Id.* at 81.)

At the Referee hearing, Employer's witness Loedicia Marguccio, Director of Human Resources (Director Marguccio), testified that at the end of Claimant's time with Employer, her job title or position was full-time "Registered Nurse" (RN) making \$19.50 per hour. (*Id.* at 108.) She identified several documents, including an undated oxygen protocol, an employee training plan, an employee training attendance sheet, and a Discipline Without Punishment Memo¹ (Discipline Memo)

¹ A copy of the Discipline Without Punishment Memo can be found on pages 245, 247, and 249 of the Certified Record.

that Employer had submitted into evidence. (*Id.* at 109, 215-16, 231, 233, 235-37, 245-49.) Director Marguccio testified that Claimant provided care for the Individual, who used supplemental oxygen. (*Id.* at 108.) Director Marguccio read from Employer's oxygen protocol: "In the event [the I]ndividual is staying elsewhere overnight, oxygen concentrator and tanks will be taken with her." (*Id.* at 109, 231.) She also explained that Employer uses an internal document to "track any trainings that [the] employees have. We're required by the State to have the trainings that are typed in. And at the end of the document, if there's anything handwritten, that will be of additional trainings that happened throughout the year." (*Id.*) She testified to one such training attendance sheet admitted into evidence, which listed Claimant's name followed by "RN" for "Registered Nurse" at the top of the document. (*Id.* at 109, 235-37.) She also testified that the signature on the tracker was Claimant's and that the last entry in the training tracker was an oxygen training for the oxygen protocol, meaning Claimant "was trained on this [oxygen] protocol" requiring the Individual to have an oxygen concentrator when she traveled overnight. (*Id.* at 109-10.)

Furthermore, Director Marguccio testified that when Employer became aware Claimant was accused of having violated the oxygen protocol by not taking an oxygen concentrator on the Individual's vacation, Employer suspended Claimant and "initiated [a] certified investigative process." (*Id.* at 110.) This process involved tasking an employee who had undergone a "State-rigorous system through Temple University to be a certified investigator" with "speak[ing] with all the witnesses, collect[ing] all of the facts, the data, [and] any documentation." (*Id.*) After the investigation, an "Administrative Review Committee" of three of Employer's

management employees “review the facts of the case, and then they make a decision on whether or not [the violation is] confirmed, unconfirmed or inconclusive.” (*Id.*)

Once the committee confirmed Claimant had violated the oxygen protocol, Employer underwent the last step of their disciplinary process with Claimant, whereby Employer suspended Claimant with pay for 24 hours “to make a decision as to whether or not she want[ed] to comply with the expectations of her position or leave employment with [Employer].” (*Id.* at 111.) Director Marguccio stated that Claimant “would still be employed as the [RN] to the [I]ndividual,” providing that she take “corrective actions” detailed in the Discipline Memo, with “the only new expectation [for Claimant to maintain her employment being] . . . ongoing biweekly meetings with her direct supervisor . . . and [] the Director of the Residential Program.” (*Id.* at 111-12, 245-47.)

Regarding Claimant’s role, Director Marguccio testified that the Discipline Memo required Claimant to sign a revised job description for the RN position, but that this revised job description merely outlined duties she already was completing as an RN. (*Id.* at 112.) Director Marguccio testified that Claimant’s wages were “significantly higher” than those of a Direct Support Professional (DSP) “because she possessed the skills [of] an RN.” (*Id.*) She stated Claimant started working for Employer making \$17.00 per hour, while “a [DSP] at that time was hired around [\$]11[.00] to \$12[.00] an hour.” (*Id.*) Director Marguccio stated Employer had “never hired [Claimant] in [the role of a DSP].” (*Id.* at 113.) Director Marguccio explained that when Claimant returned from leave, she gave a letter to Employer which read “I, Katrina Walker, as of this day on May 23rd, 2024[,] have resigned **as the RN Medical Professional** at [Employer] but agree to remain working at the group home for [Employer] as a DSP Caregiver. Sincerely, Katrina Walker, RN,

May 23rd, 2024.” (*Id.* (emphasis added).)² Employer interpreted this letter to mean Claimant was “resigning from her position as an RN” and that she was “seeking a new position in a lesser role as a [DSP].” (*Id.*)

Director Marguccio testified that after receiving this letter, Employer offered Claimant the opportunity to maintain her position as an RN with one additional requirement (the biweekly meetings) and denied her request for a demotion to DSP. (*Id.* at 113-14.) She stated Employer took 24 hours to consider this request, after which she called Claimant and “told her that she has resigned -- according to her first letter -- as the [RN]. That [wa]s her position with [Employer]. So, [Employer] consider[ed] her to have resigned from her position with [the] company.” (*Id.* at 114.) Director Marguccio testified that Employer gave Claimant “until 3:00 that day to either sign the decision-making leave and accept the corrective actions and sign the Job Description, or to continue in her resignation from RN.” (*Id.*) She says Claimant arrived at the office just before 3:00 with a letter “resigning from her position.” (*Id.*)³ Employer “spoke with [Claimant] about it, said [‘]we accept your resignation,[’] and asked her to leave [the] property.” (*Id.*)

When Claimant cross-examined Director Marguccio, she asked if Director Marguccio had documentation that Claimant started working for Employer as a DSP. (*Id.* at 118.) Director Marguccio responded that Claimant signed all work documents with “RN” and “was completing RN duties,” but that Director Marguccio had not brought any job descriptions with her to the hearing. (*Id.*) Director Marguccio also testified again on cross-examination that Claimant had been trained in and signed off on the oxygen protocol, as evidenced by the training attendance sheet. (*Id.*) Claimant objected to the oxygen protocol on the grounds that she had never seen it

² A copy of the letter can be found on page 251 of the Certified Record.

³ A copy of the letter can be found on page 253 of the Certified Record.

and that it was not the “original” oxygen protocol, which she described as handwritten. (*Id.* at 115.)

Claimant testified that she “was never an RN [at Employer] and . . . was not classified, was not even acknowledged as an RN until closer to January [or] March of 2024.” (*Id.* at 119.) She stated she “was hired as a DSP,” though she was a licensed RN throughout her tenure with Employer and signed employment-related records with that professional title. (*Id.* at 118-19.) Claimant testified that her salaries reflected that she was a DSP until January 2024.⁴ (*Id.* at 124.) She testified that in January 2024, Employer presented her with an RN job description, but she did not sign this paper. (*Id.* at 124-25.) She started at \$12.50 per hour, not making \$15.00 per hour until January 31, 2022. (*Id.* at 124.) She testified that she was making \$19.50 per hour by 2024 but claims it was because of job performance raises, rather than because she was an RN. (*Id.* at 124-25.)

Claimant testified that on March 22, 2024—before the April-May Trip involving the alleged patient abuse incident—she, the Individual, and the Individual’s family went on an overnight trip in March 2024 (the March Trip). Claimant testified that on the March Trip, “[The c]oncentrator was not taken with us. [Employer] did not say anything about it.” (*Id.* at 119.) She testified that before the April-May Trip at issue, a nurse from Employer “presented [Claimant] with this handwritten paper saying . . . the [oxygen] concentrator was to be taken on vacation

⁴ Specifically, Claimant testified as follows:

R[eferee]: So, you’re telling me that you were considered a [DSP] until January 2024, is that correct?

C[laimant]: Basically, yes.

(C.R. at 124.)

when [the Individual] went.” (*Id.* at 120.) Claimant stated she informed Employer “approximately three or four weeks prior to the actual vacation” that the Individual’s “parents aren’t going to agree to this. They’re not going to take the concentrator with them,” but Employer did not provide any further instructions on how to proceed. (*Id.* at 120-21.) Claimant testified that later at a staff meeting, she brought up the issue of the Individual’s parents not wanting to bring the concentrator on the April-May Trip, but no one said if the “parents don’t load [the oxygen concentrator] up, if parents don’t take it, then it was [Claimant’s] duty.” (*Id.* at 120.) Claimant admits that she accompanied Individual and Individual’s parents on the April-May Trip and that she did not bring the oxygen concentrator with them. (*Id.* at 121-22.)

Claimant testified that Employer ultimately suspended her when it learned she had not brought the oxygen concentrator on the April-May Trip, even though she had brought a pulse oximeter and oxygen. (*Id.* at 121-22, 131-32.) Employer presented her with the Discipline Memo, giving her the options of (1) accepting conditions of employment in the Discipline Memo or (2) being terminated. (*Id.*) Claimant stated she feared she would lose her RN license if she accepted the conditions because Employer had “filed a false accusation [of neglect] against [her].” (*Id.*) Moreover, one of the conditions to maintain her employment was to sign a revised job description that affirmed her role as an RN. (*Id.* at 249.) Claimant testified that she chose to “resign as [RN]” because “[Employer] [was] saying that I [was] an RN.” (*Id.* at 122.) Claimant later testified “I did not resign. I stepped down as an RN and still into my DSP position” (*Id.* at 123.) Claimant testified that she tried to stay in the DSP position and that she had “always” been a DSP. (*Id.* at 122-23, 126.)

Claimant testified that Employer initially stated she could “still be a DSP, take a pay cut, [] be at her address and still work with [the Individual]” but would need her supervisor’s accompaniment at doctor’s appointments. (*Id.* at 123.) She said Employer then reneged on that offer and told her she could be an RN or be terminated, as she “was never a DSP” and “there was really no option.” (*Id.* at 122-23.)

On cross-examination, Claimant testified that she would “not be [Employer’s] fall guy” “when the parents [of the Individual] were found non[-]neglectful through [Adult Protective Services].” (*Id.* at 128.) She explained that she felt she did not need to bring the oxygen concentrator with her on the April-May Trip because she had previously not brought the concentrator on the March Trip. (*Id.*) However, she testified to Employer having directly informed her, through discussion between Claimant and her supervisor, to bring the oxygen concentrator on the April-May Trip. (*Id.* at 126-27.) Claimant also testified to being “trained on the [oxygen] concentrator” “**prior** to [the April-May T]rip” that led to her suspension but **after** the March Trip, which she raises as a reason for having not brought the oxygen concentrator on the trip at issue. (*Id.* (emphasis added).) She claimed she had not been trained on the protocol itself. (*Id.* at 129.) Claimant also affirmed that Employer’s Discipline Memo sent to her stated she “could retain [her] job if [she] agreed to take the outlined steps,” and that it “does not say [she] will receive a pay decrease,” or that her “benefits will be reduced.” (*Id.* at 130.)

The Individual’s father testified that the family was aware of Employer’s oxygen protocol requiring them to bring the oxygen concentrator on overnight trips, but that he “didn’t sign it [or] discuss it. The doctors weren’t involved in it. It was simply written by a [m]edical [s]pecialist with little or no insight as to [the

Individual's] oxygen needs.” (*Id.* at 134.) He also stated the protocol deviated from prior practice, where caretakers “[r]ouse [the Individual] in the middle of her sleep to cause her brain to re-engage to cause her internal organs to operate normally,” which he and his wife had done for “20 years” and believed was sufficient for the Individual’s care. (*Id.* at 132-33, 135.) He testified that Claimant was not “medically neglectful,” as Employer had a responsibility to “review[] and discuss[]” the oxygen protocol “as part of an [Individual Support Program] team meeting” before the trip per Department of Human Services requirements and did not do so. (*Id.* at 134.)

In its decision, the Referee found the following facts:

1. On March 25, 2024, the claimant received training and a review of an order for oxygen for an individual in her care as well as reviewing the oxygen plan protocol and the demonstration and safe and appropriate use of oxygen.
2. The claimant was aware of the proper protocol.
3. In April 2024, the claimant failed to adhere to the proper protocol for the individual.
4. In May 2024, the employer became aware of the issue.
5. On May 22, 2024, the claimant was suspended due to the violation of protocol pending the outcome of an investigation.
6. The claimant admitted to the violation.
7. As a result of the investigation, the employer offered the claimant continuing work with some stipulations as a result of the findings.
8. On May 23, 2024, the claimant provided the employer with a written letter of resignation.
9. The claimant’s resignation letter requested she resign her position as a[n] [RN] and accept a demotion to a [DSP].

10. Continuing work as a[n] [RN] was available to the claimant.

11. The employer could not accommodate the claimant's request and accepted her resignation effective May 24, 2024.

(Referee's Decision at 2, Findings of Fact (FOF) ¶¶ 1-11.) The Referee found that Claimant should not receive UC benefits because she had voluntarily quit her position when "continuing work was available," and she did not present a "necessitous and compelling" reason as to why she could not continue to work in that position. (Referee's Decision at 2-3.) The Referee further found that Claimant's testimony that she resigned from one position but not the other was "not credible or valid." (*Id.* at 3.)

Claimant appealed the Referee's decision. The Board ultimately adopted and incorporated the Referee's findings and conclusions, deciding in favor of Employer, whom it found more credible than Claimant due to its "corroborating evidence." (Board's Decision at 1.) The "corroborating evidence" thus prevented the Board from finding for Claimant, who argued "she was not working as a[n] [RN] but as the [DSP]. She also argue[d] that she did not resign." (*Id.*) The Board found that Claimant lacked a compelling and necessitous reason to resign and that continuing work was available, thus denying her appeal. (*Id.*)

Claimant then filed a Petition for Review with this Court.

II. Parties' Arguments

Claimant argues that the Board's "decision was not supported by credible testimony and evidence" and the Board "did not give sufficient weight to exculpatory evidence" pertaining to Claimant's alleged violation of the Individual's oxygen protocol. (Claimant's Brief (Br.) at 7.) She challenges the Board's finding

that she was trained on the oxygen protocol, arguing that she could not have been trained on when to use the oxygen concentrator where the Individual's pulmonologist did not provide her or Employer with a medical order or protocol specific to the Individual until **after** the April-May Trip. (*Id.*) She further states that the Board erred by giving more weight to Employer's oxygen protocol than the Individual's pulmonologist's medical order. (*Id.*) She also challenges Employer's "original" oxygen protocol⁵ as not credible evidence,⁶ as it was not from the Individual's medical provider, but rather was a handwritten document that a medical specialist of Employer created, which was undated, unsigned, lacked an implementation date, and was not even on Employer's letterhead. (*Id.* at 8.) Additionally, Claimant contends the Board erred in finding that Employer only became aware of the violation in May 2024, as she informed the Employer's medical specialist twice before the April-May Trip that the Individual's family did not wish to bring an oxygen concentrator on the trip. (*Id.*) Finally, Claimant challenges the Board's finding that she admitted to the violation of the oxygen protocol; rather, Claimant asserts she "simply acknowledged that the oxygen concentrator was not taken on [the April-May Trip]," which she says was the parents' decision, not hers. (*Id.* at 9.)

Additionally, Claimant challenges the Board's findings related to her role with Employer and the circumstances of her separation from employment. Claimant argues that the Board erred in finding she was offered "continuing work 'with some stipulations'" from Employer because while she was licensed as an RN, her role at

⁵ This so-called "original" handwritten protocol was not introduced at the hearing or submitted as evidence. Claimant referenced it during the Referee Hearing as the predecessor to the written protocol Employer submitted into evidence. (C.R. at 115.)

⁶ There is no indication that the Board credited this evidence, so this issue is without merit.

Employer was that of a DSP. (*Id.* at 10.) She points to the lack of evidence that she acted in the capacity of an RN while with Employer and to evidence she presented identifying her as a DSP. (*Id.* at 6, 13-14.) She argues that she did not quit her position as an RN but rather refused to take on a new role as an RN, which had additional requirements to the role she already possessed, that of a DSP. (*Id.* at 10-11.) She contends, therefore, that the Board erred by finding that she voluntarily quit, as she was instead terminated without cause when Employer denied her request to remain in her position as a DSP. (*Id.* at 6, 11-12, 15.) Claimant also contests the Board's finding that an RN position was available, (*id.* at 11),⁷ and argues she only had a short amount of time to respond to Employer's demand, which "creat[ed] an atmosphere of duress upon [] Claimant." (*Id.* at 10.)

In its brief, the Board argues that substantial evidence supports the Board's findings. (Board's Br. at 5.) It argues that Claimant asks this Court to disregard and/or reweigh the Board's factual findings and credibility determinations, which is not the role of this Court. (*Id.* at 5, 7-10.) The Board also argues that Claimant voluntarily quit when continuing work as an RN was available to her. (*Id.* at 5.) The Board asserts Claimant's attempt to unilaterally change her position from that of an RN to that of a DSP is not a necessitous and compelling reason to justify her resignation. (*Id.* at 11-12.) The Board argues Employer was not obligated to honor Claimant's request to change her position from RN to DSP. (*Id.* at 12.) According to the Board, the denial of unemployment compensation benefits should be affirmed. (*Id.*)

⁷ However, Claimant also implies that the RN position was available, as she states, "[s]imply because a[n RN] position is available, it does not mean the Claimant occupied that position anytime during her tenure with [Employer] nor at the time of this action." (Claimant's Br. at 11.)

Employer intervened in this case and filed a brief arguing first that Claimant violated the oxygen protocol and that Claimant’s “contrary arguments on appeal are waived because she did not raise them before the Board.” (Employer’s Br. at 5.) Employer emphasizes that even if Claimant had not waived those arguments, she admitted to violating the oxygen protocol by not bringing the oxygen concentrator on the April-May Trip. (*Id.*). Moreover, Employer “did not terminate her employment as a result of the Oxygen Incident,” rendering Claimant’s arguments related to this issue irrelevant. (*Id.*) Second, Employer echoes the Board’s arguments that Claimant voluntarily resigned and that Claimant was employed as an RN. (*Id.* at 6, 10.) Employer argues that not only is Claimant’s employment as an RN supported by evidence, as the Board argues, but also by the fact that Claimant’s “contrary claim is . . . implausible on its face” because to accept Claimant’s argument that she was only employed as a DSP would mean that “in response to an investigation that confirmed [Claimant] had placed the Individual’s health and safety at risk, [Employer] offered [Claimant] a *promotion* and increased medical responsibilities.” (*Id.* at 6, 10 (emphasis in original).)

III. Discussion⁸

A. Substantial Evidence

Pennsylvania law limits this Court to determining whether the order violated constitutional rights, committed an error of law, or failed to support facts with substantial evidence. 2 Pa.C.S. § 704. Evidence is substantial if “a reasonable mind would accept [it] as adequate to support a conclusion.” *Cambria Cnty. Transit Auth. v. Unemployment Comp. Bd. of Rev.*, 201 A.3d 941, 947 (Pa. Cmwlth. 2019) (internal quotation marks and citation omitted). “The Board’s findings are

⁸ We have reordered and consolidated the issues for ease of review.

conclusive on appeal so long as the record, when viewed in its entirety, contains substantial evidence to support the findings.” *Western & Southern Life Ins. Co. v. Unemployment Comp. Bd. of Rev.*, 913 A.2d 331, 335 (Pa. Cmwlth. 2006) (internal citation omitted). Further, we are prohibited from re-examining the evidence de novo and instead may only reverse the Board’s decision if we find it lacks substantial evidence to support its findings. *Cambria Cnty. Transit Auth.*, 201 A.3d at 947 (citations omitted). Additionally, “[i]t is irrelevant whether the record contains evidence to support findings other than those made by the fact[]finder.” *Ductmate Indus., Inc. v. Unemployment Comp. Bd. of Rev.*, 949 A.2d 338, 342 (Pa. Cmwlth. 2008) (citation omitted). At this level of review, what matters is “whether there is evidence to support the findings actually made.” *Id.* Our scope of review is limited to whether there was substantial evidence to support the Board’s findings, not whether there was *also* evidence to support Claimant’s claims. *Id.* With these principles in mind, we address each of the findings of the Board Claimant challenges to determine whether substantial evidence supports them.

Claimant challenges the Board’s finding that she was employed as an RN. Employer submitted Director Marguccio’s testimony that Claimant was an RN, along with multiple employment-related documents referring to Claimant as an RN and/or that Claimant signed as an “RN.” (C.R. at 108, 112, 139-45, 235, 237, 245, 247, 249, 251.) Director Marguccio also testified during the Referee Hearing and submitted evidence that Claimant received an RN’s salary, not a DSP’s salary, (*id.* at 112, 203, 205, 207, 209), which further supports the Board’s findings. The Board credited the testimony of Employer over that of Claimant, as well as the letter in which Claimant specifically resigned from the RN position. (*Id.* at 308, 318.) Additionally, Claimant herself indicated her occupation was that of an RN on her

initial Application for UC benefits. (*Id.* at 3.) Likewise, Claimant stated in her Claimant Questionnaire for UC benefits that she worked for Employer in the position of “direct support care specialist[]/RN” and that she “begged and pleaded” to “**step down from an RN to a DSP**” position. (*Id.* at 18 (emphasis added).) Based on this testimony and these exhibits, substantial evidence supports the Board’s finding that Claimant was employed as an RN for Employer.⁹

To the extent that Claimant argues that certain employment-related documents, such as employee evaluations (C.R. at 213-14, 217-22), staff scheduling documents, (*id.* at 151-93), a DSP job description, (*id.* at 195-201), and payroll records, (*id.* at 203-11), all identify Claimant as a DSP—contrary to Director Marguccio’s testimony that Claimant was always employed as an RN—we have reviewed these documents and acknowledge they are contained in the record. We

⁹ We note that Employer offered potentially inconsistent testimony concerning Claimant’s role with Employer at the hearing, insofar as Director Marguccio testified Claimant was **never** hired as a DSP, (C.R. at 112-13), yet also offered testimony suggesting Claimant was **initially hired** as a DSP before transitioning into an RN role once the Individual transitioned from needing DSP care to fully moving into the Residential Program. (*Id.* at 112.) We also note a **letter** from Employer to Claimant referred to Claimant **as a DSP** in 2023, (*id.* at 147), and neither the Referee nor the Board addressed **Claimant having never signed the RN job description**. However, the Referee determined that both the 2023 letter and DSP job description were inadmissible, and, unfortunately, Claimant did not appeal that determination to the Board, so they are not part of the record we can consider. (*Id.* at 125.) Notwithstanding that some discrepancies in the record we can consider may support an alternative finding as to whether Claimant worked as a DSP for Employer at some point during her employment, that “conflicting evidence was presented does not necessarily mean there is no competent evidence to support the findings of the Board.” *Hercules, Inc. v. Unemployment Comp. Bd. of Rev.*, 604 A.2d 1159, 1163 (Pa. Cmwlth. 1992) (citing *Unemployment Comp. Bd. of Rev. v. Moran*, 346 A.2d 591 (Pa. Cmwlth. 1975)). Accordingly, for the reasons set forth above, we are **constrained** and cannot disturb the findings of the Board that Claimant was an RN at the time of her separation from Employer. *See Wise v. Unemployment Comp. Bd. of Rev.*, 111 A.3d 1256, 1262 (Pa. Cmwlth. 2015) (“[W]here there is substantial evidence to support the agency’s factual findings and those findings support the legal conclusions, ‘it should remain a rare instance in which an appellate court would disturb an adjudication based upon capricious disregard.’”) (quoting *Leon E. Wintermyer, Inc. v. Workers’ Comp. Appeal Bd. (Marlowe)*, 812 A.2d 478, 487 n.14 (Pa. 2002)).

also acknowledge that these payroll records indicate Claimant's starting salary as \$12.50, closer to the DSP range than an RN range per Director Marguccio's testimony that DSPs at the time Claimant was hired started at \$11.00 to \$12.00 per hour, and contradict Director Marguccio's testimony that Claimant started with a salary of \$17.00 per hour. (*Id.* at 112.) Unfortunately for Claimant, the Referee sustained Employer's objection to the admission of each of these records on relevance grounds, on the basis that they predate the 2024 year at issue. Moreover, although Claimant's Brief argues error related to the exclusion of these exhibits, our careful review of the record confirms that, unfortunately, Claimant did not raise this issue before the Board, and this issue is, therefore, waived. *See Hubbard v. Unemployment Comp. Bd. of Rev.*, 252 A.3d 1181, 1186 (Pa. Cmwlth. 2021) ("[I]ssues not raised before the Board have not been preserved for appellate review and are deemed waived."). Accordingly, we cannot consider these exhibits in our review of the Board's Order.

Regarding Claimant's challenge to the Board's finding that she was not terminated but rather resigned voluntarily, Claimant herself testified that she rejected Employer's offer for her to maintain employment as an R.N. (C.R. at 122-23.) Additionally, the record contains evidence, credited by the Board, showing that Claimant wrote a letter to Employer stating that she "**resigned** as the RN." (*Id.* at 251 (emphasis added).) Director Marguccio also testified that Claimant resigned, even after Claimant was given a second opportunity to consider Employer's offer of continuing employment. (*Id.* at 113-14.) The Board credited Employer's testimony as credible. (*Id.* at 308.) The combination of both parties' testimony and Claimant's letter containing **an admission that she was resigning as an RN** could convince a reasonable person that Claimant did, in fact, resign from Employer; thus, the record

contains substantial evidence in support of this finding. Notwithstanding Claimant's argument that she would not voluntarily separate from her employment after having worked with the Individual for 23 years (Petitioner's Br. at 15.), our scope of review is limited to whether there is substantial evidence to indicate that she did voluntarily separate; it is not to reweigh the evidence on appeal. *Western & Southern Life Ins. Co.*, 913 A.2d at 335. We therefore are constrained to uphold the Board's finding that Claimant voluntarily resigned from her position.

As it pertains to Claimant's assertions that the Board erred by finding that she violated the oxygen protocol, Claimant herself admitted she did not take the oxygen on the trip and that she knew about the oxygen protocol beforehand. (C.R. at 119-20, 126-27.) The Individual's father also testified that Claimant did not bring the oxygen concentrator on the trip. (*Id.* at 133.) Employer submitted a copy of the oxygen protocol and a signed attendance sheet indicating Claimant was trained on the oxygen protocol, both of which the Board credited. (*Id.* at 109, 114-15, 118, 129, 231, 233, 235, 237.) The Board did not credit Claimant's testimony that Employer neglected to train her on the oxygen protocol, as the Board resolved the determination of credibility in favor of Employer to the extent there was conflicting testimony. (*Id.* at 308.) Where the Board was free as factfinder to make credibility determinations and decide what weight to afford the evidence, this Court cannot reweigh evidence and must only assess whether there was substantial evidence to support the Board's finding that Claimant did violate the oxygen protocol. *See Western & Southern Life Ins. Co.*, 913 A.2d at 335. Based on the combination of evidence and testimony, including Claimant's admission that she did not bring the oxygen concentrator on the April-May Trip, the copy of the policy in the record, and

Claimant's signed attendance sheet, substantial evidence supports the finding that Claimant knowingly violated the oxygen protocol.

Claimant also argues that the Board erred in finding that Employer only became aware of the oxygen policy violation in May 2024, as she reported to Employer that the Individual's parents would not bring the oxygen concentrator as early as April 1. (Claimant's Br. at 8.) However, substantial evidence supports the Board's finding that Employer was not aware of the violation until May 2024, given that the violation itself could not occur until Claimant, the Individual, and the Individual's parents went on the April-May Trip without the oxygen concentrator, from which they returned on May 3, 2024. That is, there is a difference between knowledge of a **potential** for a protocol violation and knowledge of an **actual** violation. Therefore, substantial evidence supports the conclusion that Employer became aware of the oxygen protocol violation in May 2024 and not the earlier April 1, 2024 date alleged by Claimant.

Further, Claimant challenges the Board's finding that Employer offered for her to maintain her employment if she agreed to "some stipulations," arguing that the offer added both different and "unrealistic stipulations to [her] job description," as well as "collateral duties above and beyond her current duties as a DSP." (Claimant's Br. at 10). Turning to the record, Director Marguccio testified that Employer's only new requirement in Employer's conditions for continued employment, set forth in the Discipline Memo, required Claimant to attend one additional biweekly meeting that was not listed as a requirement in the RN job description. (C.R. at 112.) This testimony is consistent with a comparison of language in the RN job description attached to the Discipline Memo. For example, the requirements in the Discipline Memo that "[a]ll documentation through Therap

[] will be completed at the end of every shift,” (*id.* at 247), and that “[a]ny necessary paperwork is handed into Residential Management no later than the deadline given,” (*id.*), reflect Employer’s expectation of Claimant articulated in the RN job description that she “[a]ccurately completes, maintains, and submits all documentation and written records as required by the state, Federal laws, statutes, rules, regulations, and policies or procedures of the agency.” (*Id.* at 141.) The requirement that Claimant “agrees to return all phone calls to Residential Management within 24 hours of the call being made,” (*id.* at 247), reflects the prior expectation that she “[c]arries out all tasks and responsibilities in a professional and timely manner.” (*Id.* at 141.) There are additional similarities.¹⁰ When coupled with Director Marguccio’s above testimony, which the Board found credible, a reasonable person would believe that the conditions offered for Claimant to maintain her employment were substantially similar to the previous expectations of her workplace, save for the additional biweekly meeting.

While we acknowledge Claimant’s argument that the Discipline Memo would require her to complete duties she had not completed before as a DSP,¹¹ we must examine the duties in the Discipline Memo as if Claimant were an RN, as found by the Board; thus, we are constrained to conclude that the duties in the Discipline Memo resemble the expectations on Claimant as an RN. Accordingly, substantial

¹⁰ Ideally, the Board would have made findings pertaining to the similarities and differences of these requirements. The finding is implicit in the Board’s decision that Claimant lacked a necessitous and compelling reason to resign, but an explicit analysis of that evidence would have benefitted this Court in its review process.

¹¹ While Claimant argued the Discipline Memo imposed additional expectations on her outside of her normal duties, she did not offer any exhibits or testimony specifying which expectations were different, nor did she provide any evidence showing a distinction between the duties in the Discipline Memo and what her duties were before its issuance. We are therefore limited to analyzing whether the Discipline Memo substantially resembles the RN job description.

evidence supports the Board's finding that Employer offered Claimant continuing work with just "some stipulations," rather than an entirely new position with new obligations. Despite Claimant's arguments that the Board erred in finding that continuing work in the RN position was available, Director Marguccio's testimony and documentary evidence support the Board's finding that an RN position was available and offered to Claimant.

B. Voluntary Quit or Discharge for Willful Misconduct

Claimant asserts that the Board erred in concluding that she voluntarily quit without a necessitous and compelling cause because she was terminated without cause. (Claimant's Br. at 6.) This Court has articulated the standard to be applied in voluntary quit cases under Section 402(b) of the UC Law, 43 P.S. § 802(b), as follows:

a claimant shall be ineligible for [UC] benefits for a period "[i]n which [their] unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature" However, a determination that a claimant voluntarily quit is not an absolute bar to the recovery of [UC] benefits. A claimant may prove necessary and compelling reasons that could excuse the voluntary action of the claimant An employee who claims to have left employment for a necessitous and compelling reason must prove 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 [their] employment.

Brunswick Hotel & Conf. Ctr., LLC v. Unemployment Comp Bd. of Rev., 906 A.2d 657, 660 (Pa. Cmwlth. 2006) (citations omitted).

Pressure to terminate employment is “substantial” if the change in circumstances “involves any real ‘difference’ in employment conditions.” *McCarthy v. Unemployment Comp. Bd. of Rev.*, 829 A.2d 1266, 1272 (Pa. Cmwlth. 2003) (citation omitted). For example, this Court has found a change to be insubstantial if it does not change the pay or responsibilities of an employee. *Shrum v. Unemployment Comp. Bd. of Rev.*, 690 A.2d 796, 800-01 (Pa. Cmwlth. 1997). Pressure could, however, be substantial if it affects a claimant’s “physical and mental condition [and] personal and family problems,” “imperiously call[ing] for decision and action.” *Taylor v. Unemployment Comp. Bd. of Rev.*, 378 A.2d 829, 833 (Pa. 1977). As this Court articulated in *Taylor*,

When therefore the pressure of real not imaginary, substantial not trifling, reasonable not whimsical, circumstances compel the decision to leave employment, the decision is voluntary in the sense that the worker has willed it, but involuntary because outward pressures have compelled it. Or to state it differently, if a worker leaves his employment when he is compelled to do so by necessitous circumstances or because of legal or family obligations, his leaving is voluntary with good cause, and under the [UC Law] he is entitled to benefits. The pressure of necessity, of legal duty, or family obligations, or other overpowering circumstances and his capitulation to them transform what is ostensibly voluntary unemployment into involuntary unemployment.

Id. (emphasis and footnote omitted).

This Court, for example, has found substantial pressure to exist where a claimant tried multiple times to work with her superiors to receive reimbursement for unpaid expenses and resolve her discrimination complaints, even going so far as to write to the general counsel of her employer and the head of the agency that employed her without success. *Brown v. Unemployment Comp. Bd. of Rev.*, 780 A.2d 885, 888 (Pa. Cmwlth. 2001). The hardship the claimant in *Brown* experienced

included incurring over \$5,000 in unreimbursed work-related expenses, receiving racially derogatory comments from her supervisor, and facing a lack of cooperation and racially-motivated outbursts from a co-worker. *Id.* at 887. The claimant's suffering was so severe that she experienced internal bleeding and stress-induced migraines. *Id.* This Court considered these experiences to be so severe and the claimant's efforts to resolve the problems to be so sufficient that it found she had met the requirements to take reasonable steps to preserve her employment and that she acted with common sense in resigning. *Id.* at 889.

In this case, Claimant testified that Employer attempted to force her to sign an agreement to work in an RN position she had never previously worked in to continue her employment, and in no way left her job voluntarily. (C.R. at 122.) Employer, by contrast, testified that the only condition imposed on Claimant to maintain her employment was to meet with her supervisor and the Director of the Residential Program biweekly, as she was already employed as an RN. (*Id.* at 112.) Ultimately, the Board credited Employer's version of events over that of Claimant where their testimony conflicted, (C.R. at 308), rejecting Claimant's argument that Employer had imposed "unrealistic" or burdensome requirements or caused her real and substantial pressure to terminate her employment.

Because the Board credited Employer's testimony that Claimant was employed as an RN, we are constrained to conclude that Claimant did not have a necessitous and compelling reason to leave her employment. That is, the circumstances did not create real and substantial pressure to terminate her employment and would not compel a reasonable person to reject Employer's offer for Claimant to **continue employment** if she had an existing role as an RN. (*Id.* at 308.) Because of the Board's finding that she was hired and employed as an RN

prior to her leaving employment, this case is also different from cases where claimants face significant changes in compensation and responsibilities, which might also have supported finding that the change in Claimant's employment was substantial. *See Shrum*, 690 A.2d at 800-01.

Additionally, unlike the employer in *Brown*, Employer provided a solution to the concerns arising out of the oxygen protocol incident by making Claimant an offer of continued employment. 780 A.2d at 888. Because, under the facts as found by the Board, substantial evidence establishes that her offer of continued employment was substantially similar to her existing role, a reasonable person using ordinary common sense under these facts would have tried to maintain this offer of similar employment. Resigning rather than continuing in the RN position that the Board determined she held did not evidence an effort to preserve employment.

In *Middletown Township v. Unemployment Compensation Board of Review*, this Court found that “[c]laimants who, *while employed*, refuse to accept an offer of *continued* employment are deemed to have quit their position” under Section 402(b) of the UC Law. 40 A.3d 217, 225 (Pa. Cmwlth. 2012) (internal quotations and citation omitted) (italics in original). Based on their factual findings, we cannot say the Board erred in finding that the change to Claimant's employment did not amount to a “substantial pressure” and, therefore, that Claimant had not “established a necessitous and compelling reason for leaving employment at the time” (Board's Decision at 1; Referee's Decision FOF ¶¶ 2-3.) Nor can we say the Board erred in finding, based on their factfinding, that Claimant had voluntarily quit her position, not that Employer had terminated her.

IV. Conclusion

Based on the Board's findings, with which we are bound, we cannot say the Board erred in its determination that Employer did not terminate Claimant but, instead, that she resigned from her position without a necessitous and compelling reason for doing so. Under these facts, we are constrained to affirm the Board's Order concluding that Claimant must be denied UC benefits under Section 402(b) of the Pennsylvania UC Law.

RENÉE COHN JUBELIRER, President Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Katrina Walker,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 254 C.D. 2025
	:	
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

ORDER

NOW, September 1, 2026, the Order of the Unemployment Compensation Board of Review, entered in the above-captioned matter, is **AFFIRMED**.

RENÉE COHN JUBELIRER, President Judge