

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Silicon Power Corporation,	:	
Petitioner	:	
	:	
v.	:	No. 1051 C.D. 2011
	:	
Unemployment Compensation	:	Submitted: November 4, 2011
Board of Review,	:	
Respondent	:	

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE SIMPSON**

FILED: December 30, 2011

Silicon Power Corporation (Employer) petitions for review of an order of the Unemployment Compensation Board of Review (Board) that reversed a referee's order, and granted Lorrie A. Sonsini (Claimant) benefits. Employer contends Claimant engaged in willful misconduct and is ineligible for benefits under Section 402(e) of the Unemployment Compensation Law (Law).¹ Specifically, Employer claims the Board erred in finding it terminated Claimant's employment solely for financial reasons rather than for her willful misconduct. Additionally, Employer claims the Board did not make sufficient findings. Upon review, we affirm.

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. § 802(e).

Claimant worked full-time for Employer as a human resources manager/safety representative for approximately two years. In November 2010, Employer terminated Claimant citing insubordination, poor job performance, and financial reasons as the grounds for her termination. Claimant filed for unemployment benefits stating Employer terminated her solely for financial reasons. Benefits were initially granted. Employer appealed, and a hearing ensued.

After the hearing, a referee denied benefits, reasoning Claimant engaged in willful misconduct by violating Employer's safety oversight policies.² Furthermore, the referee imposed a fault based overpayment penalty, because Claimant filed for benefits citing Employer's financial reasons as the sole reason for her termination when other grounds existed. Claimant appealed.

On appeal, the Board reversed. Specifically the Board found:

1. [C]laimant was employed full time as the human resource manager/safety representative from the Fall 2008 until her last day worked on or about November 22, 2010 at a final annual salary of approximately \$60,000.

² It is undisputed Employer enacted and updated its safety policies as a result of a fatal accident at Employer's workplace. Pertinent to the current dispute is Employer's policy forbidding employees from working in the testing facility alone. What remains in dispute is whether, as part of Employer's effort to prevent another accident, Claimant was required to report employees for clocking-in early as they could possibly begin work alone before other employees arrive. Therefore, the work rule in question is not the actual safety policy regarding when employees can begin work, but Claimant's alleged duty to effectively oversee the execution of that policy.

2. [C]laimant was discharged for alleged insubordination, alleged poor job performance and financial reasons.
3. [C]laimant was in fact discharged for one reason, financial reasons.
4. [E]mployer had laid off four other individuals when for economic reasons they [sic] then let [C]laimant go.
5. The alleged insubordination occurred in July 2010 for which [C]laimant was suspended at that time for spreading alleged false rumors.
6. From July 2010 to November 2010, there were no further issues involving insubordination.
7. The alleged poor job performance involved [C]laimant's alleged violation of [E]mployer rules pertaining to attendance of co-workers.
8. [C]laimant did not knowingly violate any policy.
9. [C]laimant received benefits to which she was entitled.

Bd. Op., 5/12/11, Findings of Fact (F.F.) Nos. 1-9 (emphasis added).

In sum, the Board determined Employer terminated Claimant for financial reasons and not for alleged insubordination or safety rule violations. In doing so, the Board found Robin Burgess's (Employer's Representative) testimony as to why Employer terminated Claimant not credible. Additionally, the Board concluded, in the alternative, even if financial reasons were not the sole reason for Claimant's termination, Employer did not carry its burden to establish Claimant engaged in willful misconduct. Employer petitions for review.

On appeal,³ Employer contends the Board erred in making findings contrary to substantial record evidence, which established Employer terminated Claimant for engaging in willful misconduct. Also, the Board erred in capriciously disregarding the competent testimony of Employer’s Representative. Furthermore, Employer asserts the Board erred in not making adequate findings to resolve all the critical issues.

Section 402(e) of the Law provides, “[a]n employe shall be ineligible for compensation for any week ... [i]n which his unemployment is due to his discharge ... from work for willful misconduct connected with his work” 43 P.S. §802(e). Under Section 402(e) an employer must prove the employee engaged in willful misconduct, and the willful misconduct was the actual reason for termination. PrimePay, LLC v. Unemployment Bd. of Review, 962 A.2d 684 (Pa. Cmwlth. 2008) (en banc).

Whether a claimant’s conduct rises to the level of willful misconduct is a question of law fully reviewable on appeal. Caterpillar, Inc. v. Unemployment Comp. Bd. of Review, 550 Pa. 115, 703 A.2d 452 (1997). “Our Supreme Court defines willful misconduct as behavior that evidences a willful disregard of the employer’s interest, a deliberate violation of the employer’s work rules, or a disregard of standards of behavior the employer can rightfully expect from its employees.” Ductmate Indus., Inc. v. Unemployment Comp. Bd. of Review, 949

³ Our review is limited to determining whether the necessary findings of fact were supported by substantial evidence, whether errors of law were committed, or whether constitutional rights were violated. Oliver v. Unemployment Comp. Bd. of Review, 5 A.3d 432 (Pa. Cmwlth. 2010) (en banc).

A.2d 338, 341 (Pa. Cmwlth. 2008) (citing Caterpillar, Inc.). When an employer asserts a violation of a work rule as the basis for willful misconduct, the employer must prove the existence of a known, reasonable rule and a violation of that rule. Ductmate Indus.; Bishop Carroll High Sch. v. Unemployment Comp. Bd. of Review, 557 A.2d 1141 (Pa. Cmwlth. 1989) (en banc).

Here, Employer contends it terminated Claimant for insubordination and poor work performance in addition to its own financial problems.⁴ Viewing the evidence is the light most favorable to Claimant, the prevailing party, the record supports the Board's findings that Employer terminated Claimant's employment solely for financial reasons.

First, to the extent Employer asserts Claimant's July 2010 insubordination was the reason her employment was terminated, the record supports the Board's findings to the contrary. Specifically, Employer suspended Claimant for insubordination related to spreading rumors and inappropriately using company property to investigate those rumors approximately five months prior to termination. Reproduced Record (R.R.) at 60. Thus, the Board determined because the alleged July 2010 insubordination was remote in time to the November 2010 termination, and Employer already punished Claimant for this behavior, the insubordination was not the reason for Claimant's termination. See Rainmondi v.

⁴ Additionally, in its brief Employer contends Claimant's deficient disclosure of reasons for her termination in applying for unemployment benefits constituted additional grounds for the denial of benefits. However, Employer raises this issue for the first time in its brief; therefore, it is waived. Moreover, it is impossible for Claimant's behavior after her termination to constitute a basis for termination of her employment. See PrimePay.

Unemployment Comp. Bd. of Review, 863 A.2d 1242 (Pa. Cmwlth. 2004) (a prior incident's temporal remoteness from discharge cannot support a denial of benefits).

Second, Employer argues Claimant's poor job performance in monitoring timesheets for safety violations constituted a work rule violation for which it terminated her employment. See Tundel v. Unemployment Comp. Bd. of Review, 404 A.2d 434 (Pa. Cmwlth. 1979) (poor performance alone is not willful misconduct; an employer must show a specific act amounting to willful misconduct). Claimant's alleged work rule violation related to an asserted duty to report co-workers who clock in 15 minutes or more before the start of the shift. According to Employer's Representative, Claimant did this job inconsistently by not reporting the improper punch-ins of particular employees, including someone she was dating.

However, the Board rejected Employer's Representative's testimony regarding Employer's reasons for terminating Claimant. See Peak v. Unemployment Comp. Bd. of Review, 509 Pa. 267, 501 A.2d 1383 (1985) (the Board is not bound by the referee's credibility determinations). In so doing, the Board determined Claimant's monitoring of the punch-in data and failure to report infractions was not the reason Employer terminated her. F.F. Nos. 3, 4, 7, 8; See Tapco, Inc. v. Unemployment Comp. Bd. of Review, 650 A.2d 1106 (Pa. Cmwlth. 1994) ("The fact [an e]mployer ... produced witnesses who gave a different version of the events ... is not grounds for reversal if substantial evidence supports the Board's findings.).

Contrary to Employer's claims, the record reflects Employer's financial problems were the cause for termination. Notably, Employer's Representative conceded Employer's financial problems were among the reasons it terminated Claimant. R.R. at 68. Moreover, in the month prior to Claimant's termination Employer laid-off four employees, asked Claimant to resign twice, and held budget meetings to discuss its financial problems and necessary lay-offs. R.R. at 70-71. Therefore, the record supports the Board's finding that Employer's financial problems were Employer's only true reason to terminate Claimant's employment. See F.F. No. 3. Accordingly, as Employer did not produce credible evidence to establish it terminated Claimant for violation of a work rule, Employer failed to meet its burden to prove Claimant's willful misconduct. See PrimePay.⁵

The Board also determined that even if Claimant's failure to report early clock-ins was the reason for her termination, it did not constitute willful misconduct. Specifically, the Board concluded Employer did not establish Claimant's behavior violated an existing work rule. F.F. No. 8.

To that end, Employer's Representative testified Claimant's job required her to review time-clock data and report any employee who improperly clocked-in. R.R. at 56. However, Claimant testified Employer did not have a policy prohibiting Employees from clocking-in early, so long as they did not begin work by themselves. R.R. at 77. Additionally, Claimant testified employees who

⁵ Furthermore, the Board did not capriciously disregard competent evidence consisting of Employer's Representative's testimony. Porco v. Unemployment Comp. Bd. of Review, 828 A.2d 426 (Pa. Cmwlth. 2003). The Board did not disregard the testimony; rather, after considering it, the Board expressly rejected the testimony as not credible.

punched in early would only be paid for their scheduled time. R.R. at 73. Therefore, because no safety code violation occurred, and the employees were not overpaid, Claimant believed she had no duty to report anything to her supervisors.

While Employer's Representative testified contrary to Claimant regarding its safety policies and Claimant's responsibility in overseeing those policies, the Board credited Claimant's testimony over Employer's Representative's testimony. R.R. at 56; see Tapco; Peak. Therefore, the Board's finding that Claimant did not violate a work rule is supported by substantial evidence. Employer's argument to the contrary is meritless.

Employer also contends the Board did not make sufficient findings. Specifically, Employer argues the Board did not consider whether Claimant established good cause for her violation of a work rule after it established Claimant's willful misconduct. Contrary to Employer's claim, Employer did not meet its initial burden to establish Claimant engaged in willful misconduct. See Ductmate Indus. Therefore, the Board did not err in declining to make findings regarding whether Claimant had good cause for her conduct.

For all the reasons discussed, we affirm.

ROBERT SIMPSON, Judge

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ORDER

AND NOW, this 30th day of December, 2011, the order of the Unemployment Compensation Board of Review is **AFFIRMED**.

ROBERT SIMPSON, Judge