

had good cause for her final absence from work, we will affirm the Board's grant of benefits.

Claimant was employed by Employer as a medical assistant from July 6, 2009, to January 22, 2010, when she was discharged for excessive absenteeism. Claimant applied for unemployment compensation benefits, which were denied by the UC Service Center. Claimant appealed and a hearing was conducted by the Referee.

At the hearing, Claimant's supervisor, Dr. Sharon Abdul-Rahman, testified that shortly after she hired Claimant on July 6, 2009, Claimant began a pattern of absenteeism. Dr. Rahman placed Claimant on probation on December 16, 2009, by warning Claimant in writing that she was at risk of termination due to her frequent and unpredictable absences. Dr. Rahman instructed Claimant to notify her at least two hours in advance of the start of her shift if she was going to be absent from work on a particular day. Reproduced Record at 45a (R.R. __). Dr. Rahman testified that on Monday, January 18, 2010, which was Martin Luther King, Jr. Day, Claimant was scheduled to work at 8:00 a.m. Dr. Rahman received a text message from Claimant after 6:00 a.m. stating that Claimant was not coming to work due to childcare issues.² Dr. Rahman immediately suspended Claimant and discharged her on January 22, 2010.

Claimant testified as follows regarding the events leading up to her final absence from work on January 18:

On the 18th I actually was in the town where I'm from which is Lancaster. I went there over the weekend to take my kids to see their father and he was supposed to keep them so that I could

² The exact time of Claimant's text message is not of record.

work on Martin Luther King Day because they didn't have school. He said that he couldn't watch them and he gave me a hard time as far as him working, so I couldn't work, and that's when I text[ed] her and told her that I couldn't work. It might have been a little after 6:00 in the morning that day, but I tried to give as much notice as possible.

Notes of Testimony, March 12 2010, at 6 (N.T. ___); Reproduced Record at 37a (R.R. ___).

The Referee rejected as not credible Claimant's testimony that her children's father refused to babysit them at the last minute. Because she failed to demonstrate good cause for her final absence from work on January 18, 2010, the Referee held that Claimant was ineligible for benefits under Section 402(e) of the Law, 43 P.S. §802(e). Claimant appealed to the Board.

On appeal, the Board reversed. Unlike the Referee, the Board credited Claimant's testimony. It found, as fact, that Claimant had arranged for the father of her children to babysit on January 18th and that he declined to do so that morning, leaving Claimant with no childcare options.³ The Board granted benefits, holding that Claimant established good cause for her absence and failure to follow Employer's absence reporting policy. Employer now petitions for this Court's review.⁴

³ The Board stated that it credited Claimant's testimony that she had recently moved to Philadelphia, where Employer is located, and she had no family nearby to watch her children. Claimant actually made this statement in her Internet Initial Claims form, R.R. 5a, and not at the Referee's hearing. Employer did not object to admission of the form and its contents into the record, so the Board's finding is supported by substantial competent evidence.

⁴ This Court's scope of review in an unemployment compensation case is limited to determining whether constitutional rights were violated, whether an error of law has been committed, or whether necessary findings of fact are supported by substantial evidence. *Blue v. Unemployment Compensation Board of Review*, 616 A.2d 84, 86 n.4 (Pa. Cmwlth. 1992).

Employer argues that the Board erred in finding that Claimant's actions on January 18th did not constitute willful misconduct. Specifically, Employer contends that the Board's finding that Claimant had good cause to violate Employer's absence reporting policy is not supported by substantial evidence.⁵ We disagree.

Whether a claimant's conduct constituted willful misconduct is a question of law subject to this Court's review. *Glatfelter Barber Shop v. Unemployment Compensation Board of Review*, 957 A.2d 786, 792 (Pa. Cmwlth. 2008). Willful misconduct has been judicially defined as, *inter alia*, a deliberate violation of the employer's rules. *Ruiz v. Unemployment Compensation Board of Review*, 887 A.2d 804, 807 (Pa. Cmwlth. 2005). Where a work rule violation is alleged, employer has the burden of establishing the existence of the rule and its violation. *Id.* Once the employer establishes those elements, the burden shifts to the claimant to show that he had good cause to violate the rule or that the rule was unreasonable. *Bishop Carroll High School v. Unemployment Compensation Board of Review*, 557 A.2d 1141, 1143 (Pa. Cmwlth. 1989).

Absenteeism, although a legitimate basis for discharge, does not constitute willful misconduct if the absences are properly reported according to company policy. *Steth v. Unemployment Compensation Board of Review*, 742 A.2d 251, 253 (Pa. Cmwlth. 1999). However, the burden is upon the claimant to prove good cause for her absences. *Id.* Lack of childcare may constitute good

⁵ "Substantial evidence" is judicially defined as all relevant evidence that a reasonable mind would accept as adequate to support a conclusion. *Hercules, Inc. v. Unemployment Compensation Board of Review*, 604 A.2d 1159, 1163 (Pa. Cmwlth. 1992).

cause for an absence from work where the claimant is the primary caregiver and demonstrates that circumstances required her to be with her children. *Id.*⁶

Here, it is undisputed that Claimant violated Employer's absence reporting policy by not providing at least two hours notice that she would be absent on Monday, January 18, 2010. However, when Claimant recalled the events leading up to her absence that day, she testified that her children's father "said that he couldn't watch them and he gave me a hard time as far as him working, so I couldn't work, *and that's when I text[ed] [Employer]* and told her that I couldn't work." N.T. 6; R.R. 37a (emphasis added). Thus, Claimant's testimony, which was credited by the Board, indicates that she learned of her childcare issue at the last minute and alerted Employer as soon as possible that she would be absent.⁷ The record also established that Claimant is a single mother of four who had recently moved to the area and had no other childcare options. The foregoing evidence supports the Board's determination that Claimant had good cause for violating Employer's absence reporting policy.

Accordingly, we affirm the Board's adjudication that Claimant was not ineligible for benefits under Section 402(e) of the Law, 43 P.S. §802(e).

MARY HANNAH LEAVITT, Judge

⁶ In *Steth*, the Board found that the claimant, who was the primary caretaker of her six-year-old cousin, had good cause to be absent from work in order to accompany the child to her grandmother's funeral. This Court upheld the Board's award of benefits.

⁷ The Board is the ultimate fact-finding body empowered to resolve conflicts in evidence and determine credibility of witnesses. *Metropolitan Edison Co. v. Unemployment Compensation Board of Review*, 606 A. 2d 955, 957 (Pa. Cmwlth. 1992).

