

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Tracy J. Griffin, :
Petitioner :
 :
v. : No. 1349 C.D. 2009
 : Submitted: December 18, 2009
Unemployment Compensation :
Board of Review, :
Respondent :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE BERNARD L. MCGINLEY, Judge
HONORABLE MARY HANNAH LEAVITT, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE LEAVITT

FILED: May 27, 2010

Tracy J. Griffin (Claimant) petitions, *pro se*, for review of an adjudication of the Unemployment Compensation Board of Review (Board) holding that Claimant's willful misconduct rendered him ineligible for unemployment compensation benefits under Section 402(e) of the Unemployment Compensation Law (Law).¹ In doing so, the Board affirmed the Referee. Discerning no error in the Board's adjudication, we affirm.

Claimant worked for Lawrence D. Haban Security (Employer) as a security guard until December 3, 2008, when he was dismissed for being absent from

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §§751-914. Section 402(e) states that an employee is ineligible for unemployment compensation for any week "[i]n which his unemployment is due to his discharge or temporary suspension from work for willful misconduct connected with his work." 43 P.S. § 802(e).

work without notifying Employer. This was not the first such absence, and Claimant had been warned not to repeat this conduct. Employer's attendance policy, which is posted on a bulletin board, provides, in relevant part:

If you have a problem getting to work on time, you are to notify one of the following:

- Isaac McDonald – cell phone 267-[XXX-XXXX]
- Larry Haban – cell phone 215-[XXX-XXXX]
- Office – phone 215-[XXX-XXXX]

Notes of Testimony, 03/16/2009 (N.T. _____), Exhibit 1. Claimant applied for unemployment compensation benefits, which were granted by the Scranton UC Service Center. Employer appealed, and a hearing was conducted by the Referee.

Employer appeared at the Referee's hearing and presented evidence. Claimant did not attend the hearing and did not contact the Referee's office prior to the hearing to request a continuance or to otherwise explain his failure to appear. Employer presented the testimony of two witnesses, Lawrence Haban, Employer's president, and Isaac McDonald, Claimant's supervisor.

Haban testified that Claimant began working for Employer in November of 2007. Haban explained that Employer's longstanding policy requires that an employee who will be late or absent must notify either Haban or McDonald by cell phone or call the office at least four hours before the employee's shift begins. Employer explains this policy to each employee upon hiring. According to Haban, Employer understands that emergencies occur; however, an employee's violation of Employer's attendance policy cannot become "a constant thing" because Employer needs a reliable work force to be able to serve its clients. N.T. 4. Haban explained that Claimant had either been late or absent without notifying Employer "at least six times" and had been warned "many times." N.T. 5.

McDonald testified that he talked to Claimant on the first day Claimant was scheduled to work again after his December 3, 2008, absence. He questioned Claimant as to why he had not responded to McDonald's voice mail message requesting an explanation for the no call/no show of December 3, 2008. Claimant responded that "he had a little problem," which McDonald found inadequate to justify Claimant's failure to call or appear at work. N.T. 6. McDonald explained that he had warned Claimant about one month earlier that he would be fired if he continued to violate Employer's attendance policy. He testified that Employer had given Claimant these opportunities to improve because Employer recognized that Claimant had a family to support.

On March 17, 2009, the Referee issued her determination granting Employer's appeal. She found that Claimant's no call/no show on December 3, 2008, constituted willful misconduct, particularly in light of the warnings he had received. Claimant appealed to the Board, and it affirmed. The Board explained that

notice of the Referee's hearing was mailed to [C]laimant at his last known post office address and was not returned by the postal authorities as undeliverable, nor did [C]laimant contact the Referee's office prior to the hearing to request a continuance or to otherwise explain his nonappearance. *Because [C]laimant did not appear at the Referee's hearing without good cause, all factual allegations made by [C]laimant on appeal are rejected by the Board as neither competent nor credible.*

Board's Order, 5/19/2009 (emphasis added). Claimant now petitions for our review.

On appeal,² Claimant asserts that he misunderstood the instructions for appearing at the hearing and that he tried to get another hearing date. He does not

² This Court's review in an unemployment compensation case is limited to a determination of whether constitutional rights were violated, errors of law were committed, or findings of fact were **(Footnote continued on the next page . . .)**

specify what efforts he took to reschedule his hearing. Claimant contends that the Board erred and should have considered the merits of his appeal because he had a good reason for not attending the hearing before the Referee.

The Board counters that Claimant cannot present the merits of his case for the first time on appeal after failing to appear at the Referee hearing, which is the appropriate forum for this presentation. Claimant did not explain to the Board why he missed his hearing, and he did not ask the Board to remand the matter to the Referee for a hearing on the merits. Accordingly, the Board contends that Claimant waived the issue. We agree.

The Pennsylvania Rules of Appellate Procedure provide that issues not raised, specifically, before the Referee and the Board are waived. Pa. R.A.P. 1551 provides that, generally, no question will be considered by this Court unless it has been raised at the administrative hearing.³ Only in his request for reconsideration of the Board's decision did Claimant contend that he missed his hearing due to a misunderstanding. Reconsideration is not the time to raise new issues. Because Claimant did not preserve the issue that he had a good reason for not appearing at the Referee's hearing, the issue is waived.

(continued . . .)

not supported by substantial evidence. *Lee Hospital v. Unemployment Compensation Board of Review*, 637 A.2d 695 (Pa. Cmwlth. 1994).

³ Rule 1551(a) provides, in relevant part:

- (a) Appellate jurisdiction petitions for review. Review of quasijudicial orders shall be conducted by the court on the record made before the government unit. No question shall be heard or considered by the court which was not raised before the government unit.

Pa. R.A.P. 1551(a).

Claimant also argues that he informed Employer that he would be arriving to work late on December 3, 2008. However, the Board responds that the reason for Claimant's nonappearance at the hearing before the Referee is the only issue Claimant raised in his petition for review.⁴ The Board contends that Claimant cannot argue issues in his brief that were not included in the general statement of objections in his petition for review. Claimant did not challenge any of the Board's findings of fact in his petition for review.

Where a party fails to challenge any specific factual findings, the Board's findings are conclusive on appeal. *Campbell v. Unemployment Compensation Board of Review*, 694 A.2d 1167, 1169 (Pa. Cmwlth. 1997). Claimant did not challenge the Board's factual finding that he "was a no call/no show." Accordingly, that finding is conclusive on appeal.

For the foregoing reasons, we affirm the Board.

MARY HANNAH LEAVITT, Judge

⁴ Pennsylvania Rule of Appellate Procedure 1513(d) provides that the statement of objections in a petition for review "will be deemed to include every subsidiary question fairly comprised therein." Pa. R.A.P. 1513(d). Where a claimant fails to include an issue in his petition for review, but addresses the issue in his brief, this court has declined to consider the issue, since it was not raised in the stated objections in the petition for review, nor "fairly comprised therein." *Tyler v. Unemployment Compensation Board of Review*, 591 A.2d 1164, 1168 (Pa. Cmwlth. 1991).

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Tracy J. Griffin,	:	
Petitioner	:	
	:	
v.	:	No. 1349 C.D. 2009
	:	
Unemployment Compensation	:	
Board of Review,	:	
Respondent	:	

ORDER

AND NOW, this 27th day of May, 2010, the order of the Unemployment Compensation Board of Review dated May 19, 2009, in the above-captioned matter is hereby AFFIRMED.

MARY HANNAH LEAVITT, Judge