

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Irvin S. Sanders, :
 :
 Petitioner :
 :
 v. :
 :
 Unemployment Compensation :
 Board of Review, : No. 1357 C.D. 2010
 Respondent : Submitted: December 30, 2010

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY

FILED: February 18, 2011

Irvin S. Sanders (Petitioner) appeals from the Decision and Order of the Unemployment Compensation Board of Review (Board) which reversed the decision of the Referee and denied benefits under Section 402(e) of the Law.¹

The relevant facts, as found by the Board, are as follows:

1. The claimant was last employed as a part-time school bus driver by Philly Transportation, LLC from January 1, 2007 at a final rate of \$350 per week and his last day of work was January 20, 2010.
2. All school bus drivers are required under the Pennsylvania law to have an “S” endorsement on their driver’s license.

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

3. The claimant was aware of this requirement. The claimant had a valid commercial driver's license expiring in 2011, but his "S" endorsement had expired.
4. The claimant received notification in the mail that he had to become recertified for his "S" endorsement.
5. The claimant enrolled in a recertification class.
6. The claimant completed the class, but did not take the accompanying computerized School Bus Knowledge and/or Skills Examination.
7. The claimant did not take the test after he completed the class because he did not have the appropriate paperwork.
8. The claimant asked the employer to help him get the paperwork initially, but later forgot that he needed to complete his certification.
9. On January 9, 2010, the Department of Transportation suspended the claimant's school bus driving privilege until he had completed the "S" endorsement School Bus Knowledge and/or Skills Examination.
10. The employer did not assign anyone else to the claimant's route after he notified them [sic] that his "S" endorsement had been suspended.
11. The claimant continued to drive the school bus route, with a suspended school bus driver's license until January 20, 2010.
12. The employer's policy requires that when driving of a [sic] school bus the driver have a valid school bus driver's license, which includes the proper endorsements.
13. The claimant signed that he received and understood the employer's handbook.

14. The claimant was terminated from his employment on January 20, 2010 for failing to renew his “S” endorsement and for driving a school bus with a suspended school bus driver’s license.

Board’s Decision and Order (Decision), June 11, 2010, Findings of Fact 1-14 at 1-2; Reproduced Record (R.R.) at 52a.

The Board determined:

The claimant testified that he took the class for his “S” endorsement recertification, and asked the employer to help him get the paper work to take the test. Subsequently, the claimant forgot to continue requesting the paper work to take the test, and that he needed to obtain his “S” endorsement on his license. The claimant’s school bus driver’s license was subsequently suspended by the Pennsylvania Department of Transportation. The employer became aware of this on January 19, 2010. The employer determined that the claimant had violated its policies by failing to maintain his school bus driver’s license and by driving the employer’s school bus without a valid school bus driver’s license. The claimant attempted to comply with the requirements for renewing his school bus driver’s license, but needed the assistance of the employer which he did not get. The Board therefore, concludes that the claimant’s failure to complete the necessary requirements to renew his school bus driver’s license was not intentional and therefore, not disqualifying willful misconduct.

The claimant was also discharged for driving a company school bus without a valid school bus driver’s license as required by the employer’s policy. The claimant was or should have been aware of the policy and did violate it. Therefore, the burden shifts to the claimant to establish good cause for violating the employer’s policy. The Board finds the employer’s testimony credible that it would not have allowed the claimant to drive its buses

with a suspended license. Moreover, the claimant violated the employer's policy when he drove the employer's school bus knowing his school bus driver's license was suspended. This was also illegal. The claimant's knowing violation of the employer's policy rises to the level of disqualifying willful misconduct. The claimant has not established good cause for this violation of the employer's policy. That the employer did not stop the claimant at the time does not give him good cause for his conduct.

When a claimant is discharged for multiple reasons, as is the case here, only one of the reasons for his discharge need be disqualifying willful misconduct for there to be a denial of benefits. As the claimant's driving of the employer's school bus without a valid school bus driver's license rises to the level of disqualifying willful misconduct the claimant is ineligible for benefits under the provisions of Section 402(e) of the Law.

Decision at 2-3; R.R. at 53a-54a.

Petitioner contends² that the Board erred when it determined that it was willful misconduct for Petitioner to operate a school bus for Philly Transportation (Employer) after the school bus endorsement (S Endorsement)³ to

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

³ 75 P.A.C.S. §1509 of the Vehicle Code states the qualifications necessary for a school bus driver endorsement:

(a) School bus driver requirements.- No person shall be issued an endorsement to operate a school bus unless the person:

(1) has successfully completed a course of instruction as provided in subsection (c);

(2) has satisfactorily passed an annual physical examination to be given in accordance with rules and regulations promulgated and adopted by the department;

(3) is 18 years of age or older; and

(Footnote continued on next page...)

his commercial driver's license had expired. Petitioner also contends that the Board erred when it determined that Petitioner did not have good cause to operate a school bus after the S Endorsement to his commercial driver's license expired.

Whether a claimant's conduct rises to the level of willful misconduct is a question of law subject to this Court's review. *Lee Hospital v. Unemployment Compensation Board of Review*, 589 A.2d 297 (Pa. Cmwlth. 1991). Willful misconduct is defined as conduct that represents a wanton and willful disregard of an employer's interest, deliberate violation of rules, disregard of standards of behavior which an employer can rightfully expect from the employee, or negligence which manifests culpability, wrongful intent, evil design, or intentional and substantial disregard for the employer's interest or employee's duties and obligations. *Frick v. Unemployment Compensation Board of Review*, 375 A.2d 879 (Pa. Cmwlth. 1977).

Don Foster Duckett (Mr. Duckett), a state Certified CDL Examiner/Instructor, testified on behalf of Employer. Mr. Duckett testified that Publication 117 established the role, responsibilities, and requirements of school bus drivers.⁴

(continued...)

(4) is qualified to operate school buses in accordance with this title and the rules and regulations promulgated and adopted by the department.

⁴ **[Employer Attorney (EA)]:** If I may call your attention to Page A-9 of this document, could you very briefly state for the Referee the requirements of the state for a driver re-certification?

[Mr. Duckett]: Well the state sends a letter for re-certification for that class a year in advance... directly to the driver himself...

(Footnote continued on next page...)

(continued...)

Now it calls for a ten-hour [sic] in the classroom and three hours on the bus. That re-certification is sent to the driver himself and the driver has total responsibility to get recertified through any means necessary, either privately or through the company. We offer that certification recertification [sic] at no fee to the employee but they must attend these classes at the time we establish a scheduled date for the recertification class. Then once the class is completed then he must go out on the bus and be certified behind the wheel stating that he's now have [sic] been re-qualified to drive the school bus.

[EA]: Ultimately, who's responsible for ensuring the driver correctly obtains their [sic] recertification of an S endorsement?

[Mr. Duckett]: The driver's responsible for everything in accordance with the state rules and regulations. We are there to assist and make sure that these rules and regulations are carried out. What we do is when they receive this notification they are supposed to bring the recertification letter to us, we will then establish a classroom for recertification. Now what we normally do is that, at no expense, we will do two classes a year as far as the recertification and that's on a voluntary - - basis. If they chose not to attend those classes then again it falls back on their responsibilities as far as them becoming re-certified.

[EA]: In addition to the state requirements that you just referenced Mr. Duckett, does Philly Transportation have any policies that address this issue?

[Mr. Duckett]: Yes they have a policy manual that is given to each employee stating the dos [sic] and don'ts and what the requirements of the company are.... Well this basically coincides with what the state requires. And it's a mandate saying that each employee must have a valid Pennsylvania driver's license, a valid school bus certificate, a valid certificate of completion and a valid S endorsement.

....

[EA]: ...[W]hat is that document?

(Footnote continued on next page...)

Mr. Duckett also testified that “I told [Petitioner] that he’s not permitted to drive... After I found out that - - we had to recertify him because his S endorsement had expired, I told him, that I said it’s your responsibility you cannot drive.” N.T. at 23; R.R. at 27a.

Melissa Milnes (Ms. Milnes), Human Resources Assistant, also testified on behalf of Employer. “[H]is S endorsement had expired and he had driven for three weeks without notifying his Employer, which is not only against the law but against the direct order of the people above him.” N.T at 16; R.R. at 20a.

In the present controversy, it is undisputed that Employer’s rule required all employees must maintain a valid S endorsement. Petitioner acknowledged that he was aware of his responsibility to maintain a valid S Endorsement when he signed the Employee handbook. Additionally, in April of

(continued...)

[Mr. Duckett]: This is from the handbook receipt.

....

[EA]: Does it show [Petitioner’s] signature?

[Mr. Duckett]: Yes it does.

[EA]: Does it acknowledge receipt of this document, the handbook?

[Mr. Duckett]: Yes it does.

Notes of Testimony (N.T), March 16, 2010, at 7-10; Reproduced Record (R.R.) at 11a-14a.

2009 Petitioner acknowledged that he initiated the process of completing the recertification before its expiration on December 31, 2009, “[b]ut in the meanwhile, you know, certain things that came about with, you know, personal problems... And it slipped my mind.” N.T. at 18; R.R. at 22a. The evidence clearly established that Petitioner violated Employer’s rule when he operated a school bus after the expiration of his S Endorsement on December 31st. Once the employer establishes that, the burden then shifts to the claimant to prove that the violation was for good cause. *Peak v. Unemployment Compensation Board of Review*, 509 Pa. 267, 501 A.2d 1383 (1985).

However, Petitioner contends that he did not commit willful misconduct because he established good cause for violating Employer’s policy. Specifically, Petitioner asserts that the “acceptance and condoning of [Petitioner’s] actions by [Employer] served as a recognition that his behavior was justifiable and reasonable, and effectively negated the charge of willful misconduct.” Petitioner’s Brief at 12. Petitioner also testified that Employer did not inform him that he was not permitted to drive. N.T. at 22; R.R. at 26a.

Assuming arguendo that Employer was lax in enforcing the stated policy, it is of no consequence. In *Chacko v. Unemployment Compensation Board of Review*, 410 A.2d 418 (Pa. Cmwlth. 1980), Alleykuty Chacko (Chacko), a nurse, had been informed at the time she was hired by St. Luke’s and Children’s Medical Center (Medical Center) that she was required to obtain a letter of permission from the state which would enable her to work for one year as a graduate nurse. After expiration of the year, Chacko was required to take and pass

the examination for state licensure as a registered nurse. The Medical Center allowed Chacko to work for nearly two years without a proper state license before she was discharged for failure to fulfill the requirements. On appeal, this Court rejected Chacko's argument that the Medical Center's conduct precluded a determination of willful misconduct:

Similarly, we believe that this claimant's failure to obtain a letter of permission or to take the examination as required by law constitutes willful misconduct. The claimant argues that the employer's conduct in allowing her to work as long as she did without proper credentials precludes a finding of willful misconduct, but with this contention we cannot agree. Whether the employer was overly indulgent or merely lax, the fact remains that the claimant had more than sufficient time and warning. Her employer's dilatory enforcement of the state standards provides no excuse for her conduct when she was well aware that meeting state standards was a condition of her employment which had not been waived. Nor do we believe that she was lulled into a false sense of security.... Here, on the contrary, the employer warned the claimant several times about *her* responsibility to comply with state standards.

Id. at 419.

Here, Ms. Milnes testified that Petitioner drove the bus after the expiration of his S Endorsement on December 31, 2009, but before he notified Employer on January 19, 2010, of its expiration. Petitioner did not dispute Ms. Milnes' testimony. Like in *Chacko*, Petitioner's conduct constituted willful misconduct.

Accordingly, the Order of the Board is affirmed.

BERNARD L. McGINLEY, Judge

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	:	
Respondent	:	

ORDER

AND NOW, this 18th day of February, 2011, the Order of the Unemployment Compensation Board of Review is affirmed.

BERNARD L. MCGINLEY, Judge