

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Deborah Klaes,	:	
Petitioner	:	
	:	
v.	:	No. 137 C.D. 2010
	:	Submitted: June 25, 2010
Unemployment Compensation	:	
Board of Review,	:	
Respondent	:	

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge**  
**HONORABLE P. KEVIN BROBSON, Judge**  
**HONORABLE JIM FLAHERTY, Senior Judge**

***OPINION NOT REPORTED***

**MEMORANDUM OPINION**  
**BY JUDGE BROBSON**

**FILED:** October 6, 2010

Petitioner Deborah Klaes (Claimant) petitions for review of a decision and order of the Unemployment Compensation Board of Review (Board). The Board affirmed the Unemployment Compensation Referee’s decision denying Claimant unemployment compensation benefits under Section 402(e) of the Unemployment Compensation Law (Law)<sup>1</sup> based on willful misconduct. We affirm the Board’s order.

Claimant applied for unemployment compensation benefits after being discharged from her employment as an office manager with PPG & Associates Federal Credit Union (Employer). The Indiana unemployment compensation Service Center (Service Center) issued a determination, finding

---

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

Claimant eligible for unemployment compensation benefits. Employer appealed the Service Center's determination, and an evidentiary hearing was held before the Referee. Following the hearing, the Referee issued a decision, concluding that Employer met its burden to prove that Claimant was discharged for willful misconduct as result of dishonesty in connection with her work. The Referee reversed the Service Center's determination and denied Claimant unemployment compensation benefits based upon willful misconduct under Section 402(e) of the Law. Claimant appealed to the Board.

The Board found, in pertinent part, that Claimant's responsibilities as office manager included the preparation and management of monthly financial closings and reporting functions, analyzing income and expenses, comparing the monthly budget with detailed explanations of budget variances to be reviewed by Employer's Board of Directors, and maintaining the office's petty cash account. (Reproduced Record (R.R.) at 321A.) A federal examiner inspected Employer's accounting and book-keeping records and found multiple problems with Claimant's records. (*Id.* at 321A-322A.) Specifically, the federal examiner found that Claimant had insufficient documentation for her mileage reimbursement and that she had used unapproved company funds for the purchase of Pirates tickets, water aerobic classes, staff gift cards, and multiple lunches. (*Id.* at 322A.) The federal examiner questioned Claimant's implementation of a cumulative based anniversary policy for herself and co-workers. (*Id.*) The federal examiner found that Claimant had falsified records regarding snow removal services that Claimant paid from the petty cash account to the individuals performing the snow removal service. (*Id.*) The individuals received \$25 for each snow removal occasion, but Claimant's records indicated they received \$35 for each service. (*Id.*) Claimant

admitted that she took the additional \$10 for herself. (*Id.* at 323A.) Claimant also stated that she falsified travel forms, including failing to deduct from her paid expenses an advance she received for a company-sponsored trip. (*Id.*) The federal examiner submitted a report to the Board of Directors, and, as a result, the Board of Directors demoted Claimant to the position of account manager. (*Id.*) Subsequently, the Credit Union Mutual Insurance Society revoked Claimant's fidelity bond after federal examiner submitted her report to the insurance company, causing Claimant to become ineligible to work for a credit union. (*Id.*) Employer then offered Claimant a severance package, which she refused, and Employer discharged her for inappropriate accounting activities. (*Id.*)

Based upon the above-described findings, the Board concluded that Claimant's conduct rose to the level of willful misconduct due to Claimant's violations of Employer's policies. (R.R. at 325A.) The Board affirmed the Referee's determination, denying Claimant unemployment compensation benefits. (*Id.*) Claimant then petitioned this Court for review, and Employer intervened in this matter.

On appeal,<sup>2</sup> Claimant argues that substantial evidence does not exist in the record to support the Board's finding that Claimant's expenditure transactions were not authorized and were in violation of Employer's policy that the Board of Directors approve all expenditure transactions. Claimant also argues that substantial evidence does not exist to support the Board's finding that Claimant

---

<sup>2</sup> This Court's standard of review is limited to determining whether constitutional rights were violated, whether an error of law was committed, or whether necessary findings of fact are supported by substantial evidence. 2 Pa. C.S. § 704. Substantial evidence is relevant evidence that a reasonable mind might consider adequate to support a conclusion. *Hercules, Inc. v. Unemployment Comp. Bd. of Review*, 604 A.2d 1159 (Pa. Cmwlth. 1992).

distributed more money in anniversary bonuses than Employer's policy allowed.<sup>3</sup> Claimant further argues that the Board erred in concluding that her actions constituted willful misconduct given the totality of the circumstances.

With regard to Claimant's first two arguments, we do not agree that the Board's findings of fact are not supported by substantial evidence in the record. Substantial evidence is defined as relevant evidence upon which a reasonable mind could base a conclusion. *Johnson v. Unemployment Comp. Bd. of Review*, 502 A.2d 738, 740 (Pa. Cmwlth. 1986). In determining whether there is substantial evidence to support the Board's findings, this Court must examine the testimony in the light most favorable to the prevailing party, giving that party the benefit of any inferences that can logically and reasonably be drawn from the evidence. (*Id.*) A determination as to whether substantial evidence exists to support a finding of fact can only be made upon examination of the record as a whole. *Taylor v. Unemployment Comp. Bd. of Review*, 474 Pa. 351, 355, 378 A.2d 829, 831 (1977). The Board's findings of fact are conclusive on appeal only so long as the record, taken as a whole, contains substantial evidence to support them. *Penflex, Inc. v. Bryson*, 506 Pa. 274, 286, 485 A.2d 359, 365 (1984).

First, we will address Claimant's argument that substantial evidence of record does not exist to support the Board's finding that Claimant's expenditure transactions were not authorized and were in violation of Employer's policy that all expenditure transactions receive Board of Directors' approval. Despite Claimant's testimony to the contrary, the Board found credible the testimony of Russel Corsi, President of the Board of Directors, that Employer had a written policy, requiring Claimant to obtain approval from the Board of Directors for all financial

---

<sup>3</sup> The Board's reference to Employer's anniversary bonus policy is often referred to in the record as a service award.

expenditures over \$25 and that Claimant was aware or should have been aware of this policy. (R.R. at 324A.) Mr. Corsi testified that Employer had a written expense policy, enacted in December 2007, that addressed reporting and approval of the managers' expense accounts. (*Id.* at 91A-92A.) Mr. Corsi testified that the expense policy required Board of Directors' approval and accompanying receipts for expenditures over \$25. (*Id.* at 138A.) Mr. Corsi testified that a Supervisory Committee oversees the expense management on behalf of the Board of Directors, and the Supervisory Committee has the discretion to review any financial reports the Board of Directors receives. (*Id.* at 98A.) Mr. Corsi testified that the Board of Directors received reports at their meetings from the Supervisory Committee and that Claimant was present at all of the Board of Director's meetings. (*Id.* at 99A.) Mr. Corsi testified that Claimant did not bring to the Board of Directors' attention the expenses in question. (*Id.* at 99A-100A.) Claimant testified that although she was aware of a policy that required her to have a receipt for any expense over \$25, she was not aware of a policy requiring her to have the Board of Directors' approval for any expense over \$25. (*Id.* at 172A-173A.)

Claimant also testified that she altered the snow removal receipts by changing the amount of \$25 to \$35 to pay herself \$10 for salting the sidewalks. (R.R. at 170A.) Robert Maier, who performed snow removal services for Employer, testified that he received \$25 cash for each visit and signed receipts for some of the services provided. (*Id.* at 48A-50A.) Mr. Corsi testified that the original 2009 receipts regarding snow removal had been altered to change the amount from \$25 to \$35 for the dates of 1/16, 1/22, 1/24, 1/25, 2/1, 2/12, 2/25, 3/8. (*Id.* at 74A.) The Board found credible the above testimony that Claimant changed the amounts on the snow removal receipts to pay herself. (*Id.* at 324A.)

Claimant argues that because Employer failed to introduce minutes from Board of Directors' meetings and Employer's written policy as evidence, the Board's decision should be reversed. Claimant, however, did not raise this issue during her hearing or before the Board. A claimant's failure to raise an issue before the Referee or the Board results in waiver of the issue. *Dehus v. Unemployment Comp. Bd. of Review*, 545 A.2d 434, 436 (Pa. Cmwlth. 1988). In this case, Employer correctly points out that this Court is precluded from reviewing any issue not raised before the governmental agency. *See* Section 703(a) of the Administrative Agency Law, 2 Pa. C.S. § 703(a); Pa. R.A.P. 1551(a); *Wing v. Unemployment Comp. Bd. of Review*, 496 Pa. 113, 116-117, 436 A.2d 179, 180 (1981). As a result, Claimant has waived any claim regarding the issue of additional evidence.

Claimant, next, argues that the Board's finding that Claimant violated Employer's anniversary bonus policy is not supported by substantial evidence of record. Chuck Fusko, a current member of the Board of Directors and former President, testified that when he served as President of the Board of Directors the service recognition policy for full-time employees was adopted at a meeting that Claimant attended. (R.R. at 146A.) Mr. Corsi testified that the policy regarding service awards was very clear, and it provided that for every five years of service an employee would receive a certain amount of money as a service award. (*Id.* at 62A.) Kristin Eckenrode, the federal examiner, testified that Claimant told her that the service awards were "accumulative," which she explained meant that you add the amount that was granted for five years, plus the amount granted for ten years, plus the amount granted for fifteen years, and so on to calculate the appropriate amount of the service award. (*Id.* at 23A.) The Board found that the

above-described testimony regarding the appropriate calculation of service awards and Claimant's alternative method of calculation to be credible. (*Id.* at 324A-325A.) This testimony constituted substantial evidence of record to support the Board's finding that Claimant violated Employer's anniversary bonus policy by distributing more money than was permitted pursuant to Employer's policy.

Finally, Claimant argues that the Board erred in concluding that her action's constituted willful misconduct given the totality of the circumstances. Under Section 402(e) of the Law, an employee shall be ineligible for 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." As Claimant notes, courts have defined willful misconduct to include the following:

- (a) wanton or willful disregard for an employer's interests;
- (b) deliberate violation of an employer's rules;
- (c) disregard for standards of behavior which an employer can rightfully expect of an employee; or
- (d) negligence indicating an intentional disregard of the employer's interest or an employee's duties or obligations.

*Grieb v. Unemployment Comp. Bd. of Review*, 573 Pa. 594, 600, 827 A.2d 422, 425 (2003). The employer has the burden of proving willful misconduct. *City of Beaver Falls v. Unemployment Comp. Bd. of Review*, 441 A.2d 510, 512 (Pa. Cmwlth. 1982). Where, as here, a policy violation is involved, the employer must establish both the existence of the policy and the fact of its violation. *Brunson v. Unemployment Comp. Bd. of Review*, 570 A.2d 1096, 1098 (Pa. Cmwlth.), *appeal denied*, 527 Pa. 603, 589 A.2d 693 (1990). Even a single, knowing violation of a work rule can constitute willful misconduct. *Maxwell v. Unemployment Comp. Bd. of Review*, 423 A.2d 430, 432 (Pa. Cmwlth. 1980). "Mere incompetence, inexperience, or inability which may indeed be sufficient to justify discharge, will

not constitute willful misconduct.” *Ungard v. Unemployment Comp. Bd. of Review*, 442 A.2d 16, 19 (Pa. Cmwlth. 1982). Where an employee works to the best of his ability, it does not amount to willful misconduct. *Geslao v. Unemployment Comp. Bd. of Review*, 519 A.2d 1096, 1098 (Pa. Cmwlth. 1987). Recognizing that willful misconduct represents a disregard of standards of behavior which the employer has a right to expect of an employee, our Supreme Court has said that “not only must we look to the employee’s reason for non-compliance, we must also evaluate the reasonableness of the request in light of all the circumstances.” *Frumento v. Unemployment Comp. Bd. of Review*, 466 Pa. 81, 87, 351 A.2d 631, 634 (1976). If an employer carries its burden to establish willful misconduct, the burden then shifts to the claimant to show that he had good cause for his action. *Williams v. Unemployment Comp. Bd. of Review*, 466 Pa. 81, 98, 351 A.2d 631, 634 (1976).<sup>4</sup>

In the case at hand, we must first determine whether Employer sustained its burden to establish a *prima facie* case of willful misconduct in light of the facts and totality of the circumstances. In doing so, Employer must initially establish the existence of a policy or rule. *Brunson*, 570 A.2d at 1098. The Board found that Employer had a written policy that Claimant must receive approval from the Board of Directors for all financial expenditures and a policy related to the distribution of anniversary bonus awards. (R.R. at 324A.) The Board found that Claimant was aware or should have been aware of these policies. (*Id.*)

Next, we must determine if Employer established that Claimant violated Employer’s policies. The Board found that Claimant violated Employer’s policy requiring approval for all financial expenditures when she took \$10 for

---

<sup>4</sup> Claimant does not claim good cause for her actions.



herself from petty cash without approval of the Board of Directors.<sup>5</sup> (R.R. at 323A.) The Board found that Claimant falsified financial records to show that the individuals performing snow removal were receiving \$35 for snow removal when, in fact, they were receiving \$25. (*Id.* at 322A.) The Board also found that Claimant violated Employer's written policy regarding the distribution of anniversary bonuses or service awards. (*Id.* at 324A.)

Claimant suggests that her actions were the result of an accounting mistake, and she urges us to apply the willful misconduct analysis used by the Pennsylvania Supreme Court in *Navickas v. Unemployment Compensation Board of Review*, 567 Pa. 298, 787 A.2d 284 (2001). In *Navickas*, this Court affirmed the Board's denial of benefits, holding that a registered nurse committed willful misconduct when, among other things, she negligently failed to properly dilute an antibiotic before administering it to a patient. In reversing the Court, our Supreme Court rejected the notion that mere negligence suffices to prove willful misconduct

---

<sup>5</sup> Here, Claimant's action in altering the snow removal receipts was not discovered until after she had been terminated from employment. This Court has held:

Where evidence of an employee's embezzlement of an employer's funds, or other criminal conduct committed against an employer which causes the employee's unemployment, is received within a reasonable time after the employee's separation and the employer promptly acts to contest a determination of eligibility for benefits, the Board is not deprived of authority to permit evidence of the after-discovered criminal conduct. The Board may thereafter reconsider the employee's entitlement to benefits in light of the after-discovered criminal conduct and terminate benefits if the employer sustained its burden of proof.

*Preservation Pa. v. Unemployment Comp. Bd. of Review*, 673 A.2d 1044, 1048 (Pa. Cmwlth. 1996). Therefore, the Board's consideration of Claimant's alteration of the snow removal records in determining that her conduct rose to the level of willful misconduct was proper.

under the Law; rather, the definition of willful misconduct speaks only of negligence of such magnitude as to “indicat[e] an intentional disregard” of the employer’s interest or the employee’s duties. *Navickas*, 567 Pa. at 306, 787 A.2d at 289.

In *Navickas*, in contrast to the facts in the instant case, the claimant followed the work policy, but did so negligently and was discharged for negligent application of the policy, not complete failure to follow the work policy. *Navickas*, 567 Pa. at 301, 787 A.2d at 287. In the present situation, Claimant failed to follow Employer’s policies by not receiving approval of all financial expenditures and by approving more money for employee anniversary bonuses than allowed by Employer’s written policy.

Furthermore, the Board is the ultimate fact-finding body empowered to resolve conflicts in evidence, to determine credibility of witnesses, and to determine the weight to be accorded the evidence. *Unemployment Comp. Bd. of Review v. Wright*, 347 A.2d 328, 329 (Pa. Cmwlth. 1975). As the ultimate fact finder, the Board also may accept or reject the testimony of any witness, in whole or in part. *Greif v. Unemployment Comp. Bd. of Review*, 450 A.2d 229, 230 (Pa. Cmwlth. 1982). Here, Claimant simply challenges the Board’s determinations regarding the credibility of the witnesses and the weight accorded the evidence. However, questions of credibility are within the sound discretion of the Board, and are not subject to re-evaluation on judicial review. *Peak v. Unemployment Comp. Bd. of Review*, 509 Pa. 267, 276-277, 501 A.2d 1383, 1388 (1985).

Based upon our review, we find substantial evidence of record exists to support the Board’s findings that Employer met its burden to establish that Claimant violated Employer’s policies regarding financial expenditures and the

distribution of anniversary bonuses. We discern no legal error in the Board's findings or conclusions of law, and we will not reweigh evidence. We cannot conclude, therefore, that the Board erred when it determined that Claimant engaged in willful misconduct without good cause when she failed to follow Employer's policies.

Accordingly, we affirm the order of the Board.

---

P. KEVIN BROBSON, Judge

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Deborah Klaes,	:	
Petitioner	:	
	:	
v.	:	No. 137 C.D. 2010
	:	
Unemployment Compensation	:	
Board of Review,	:	
Respondent	:	

***ORDER***

AND NOW, this 6th day of October, 2010, the order of the Unemployment Compensation Board of Review, dated January 14, 2010, is hereby **AFFIRMED**.

---

P. KEVIN BROBSON, Judge