

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Wendy Dunn, :
 :
 : Petitioner :
 :
 : v. : No. 1380 C.D. 2010 :
 : Submitted: December 30, 2010 :
 Unemployment Compensation :
 Board of Review, :
 : Respondent :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE DAN PELLEGRINI, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FRIEDMAN

FILED: February 16, 2011

Wendy Dunn (Claimant) petitions *pro se* for review of the May 14, 2010, order of the Unemployment Compensation Board of Review (UCBR), which affirmed the decision of a referee to deny unemployment compensation benefits to Claimant pursuant to section 402(e) of the Unemployment Compensation Law (Law).¹ We affirm.

Claimant was employed as a Mobile Therapist/Behavioral Specialist. Her employer had a policy prohibiting employees from submitting claims for services that were not rendered. Moreover, under applicable regulations, an employee was required

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §802(e). Section 402(e) of the Law provides that an employee shall be ineligible for compensation for any week in which his unemployment is due to discharge from work for willful misconduct.

to provide therapy on a one-on-one basis. It was illegal for an employee to bill for providing therapy to two clients at the same time. Because of such regulations, the employer had a policy making discharge a possibility where an employee failed to properly maintain records. Claimant was aware of these policies. (Referee's Findings of Fact, Nos. 1-5.)²

Claimant's employer received information that Claimant was not properly documenting the services she provided. After an investigation, Claimant's employer determined that Claimant had provided documentation indicating that she performed services to more than one client at the same time on several occasions. As a result, the employer discharged Claimant for violating its policies. (Referee's Findings of Fact, Nos. 6-8.)

Claimant applied for unemployment benefits, but her application was denied under section 402(e) of the Law. Claimant filed an appeal, and a hearing was held before a referee. Claimant testified before the referee that she made errors on her documentation as a result of being overworked and juggling multiple responsibilities. However, after considering all of the evidence, the referee concluded that Claimant violated her employer's policies without good cause. Claimant appealed to the UCBR, which affirmed. In doing so, the UCBR specifically stated that it discredited Claimant's assertion that she merely made mistakes. Claimant now petitions this court for review.³

² We note that the UCBR adopted the findings of the referee.

³ Our scope of review is limited to determining whether constitutional rights were violated, whether an error of law was committed and whether the necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

Claimant argues that the UCBR should have believed that she did not intentionally double bill for her services and that she simply made mistakes in her documentation. In support of her argument, Claimant explains in some detail the nature of her job, focusing on how easy it is to make mistakes in documenting precisely when her services were performed. However, the UCBR rejected Claimant's claim that she merely made mistakes in the documentation, and, as the ultimate fact-finder, the UCBR has the power to determine the credibility of witnesses. *Metropolitan Edison Company v. Unemployment Compensation Board of Review*, 606 A.2d 955, 957 (Pa. Cmwlth. 1992). Thus, Claimant cannot prevail on this argument.

Claimant next argues that her employer did not enforce its policy that required the proper maintenance of records, pointing out that the employer has not discharged other employees who made similar mistakes. However, the employer's treatment of other employees who made mistakes is irrelevant here because the UCBR did not believe that Claimant merely made mistakes. Thus, Claimant cannot prevail on this argument.

Finally, Claimant suggests that the employer actually discharged her because of her advancing age, her personality clashes with her supervisor and her increasing requests for accommodations for her physical disability. However, this argument is not based on the facts as found by the UCBR. The UCBR found that Claimant was discharged for her violation of the employer's policy. Thus, Claimant cannot prevail on this argument.

Accordingly, we affirm.

ROCHELLE S. FRIEDMAN, Senior Judge

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| | : | |
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ORDER

AND NOW, this 16th day of February, 2011, the order of the Unemployment Compensation Board of Review, dated May 14, 2010, is hereby affirmed.

ROCHELLE S. FRIEDMAN, Senior Judge