

willful misconduct, and was thereby eligible to receive unemployment compensation.

The Board made the following factual findings:

1. The claimant was last employed as a full-time quality technician by . . . [Employer] from January 2, 2006, at a final rate of \$17.09 per hour and his last day of work was February 13, 2009.
2. The employer is a machinery company that produces aluminum housing forms largely for the telecommunications industry, and initially when the claimant was hired as quality manager, he was responsible for overall quality and in-process inspections while parts were being manufactured and also after they were inspected.
3. The claimant's job was extremely important because of the employer's relationship with customers as defective parts could have a negative impact on the employer' [sic] relationship with individual customers.
4. When defective parts were detected and evaluated, the inspector could decide which parts could be re-worked and which others needed to be scrapped.
. . . .
6. Overall, the employer was satisfied with the claimant's technical abilities, but after the claimant began working for the employer, the employer became concerned about deficiencies in the claimant's work habits, including his ability to follow verbal instructions and his ability to follow through on certain deficient areas.
7. Eventually the employer decided to demote the claimant from . . . quality manager to a quality

technician when it found that he was not completing his tasks in a timely manner.

8. Approximately two weeks before the claimant was terminated, the employer's general manager met with the claimant to put him on notice that certain tasks were not being completed, that certain pieces produced by the employer were not conforming to the employer's quality standards, and that certain inspection documents were also not being properly handled.
9. The manager gave the claimant a final warning and also set forth certain written procedures regarding priorities.
10. One of the priorities given to the claimant was to provide a written summary of daily tasks so that the general manager would know what tasks had been completed. The employer specifically advised the claimant to spend five minutes daily on this priority.
11. The claimant did not submit these written summaries to the general manager on a daily basis.
12. In an e-mail sent on February 11, 2009, to the general manager, the claimant included daily task summaries from February 2, 2009, through February 11, 2009.
13. On February 13, 2009, the general manager met with the claimant and told him he was being terminated for unsatisfactory work performance for failing to follow the employer's work instructions by not completing the daily tasks of his position.
14. The claimant misunderstood the general manager's directive to provide a daily written summary of his tasks.

15. The claimant attempted to communicate verbally with the employer daily in regard to his daily tasks.
16. The claimant did not believe that he was required to hand in a written summary of his daily tasks on a daily basis.
17. The claimant had been keeping a written summary of his daily tasks for the past two years but never had been asked to hand them in on a daily basis prior to his final warning.
18. The claimant had been e-mailing his written summaries to the general manager every few days because the general manager was not always there or left without telling the claimant he was leaving.
19. The claimant had been told by the employer that he was only permitted to work 40 hours a week to complete his tasks.
20. The claimant advised the employer that he was unable to complete all of his tasks in a 40 hour work week and requested additional help.
21. The claimant requested to be a salaried employee, so that he could work additional hours, without compensation, but the employer denied his request.
22. The claimant worked to the best of his ability.

Decision and Order of the Board, July 7, 2009, Findings of Fact (F.F.) Nos. 1-4, 6-22 at 1-3; Reproduced Record (R.R.) at 131a-133a. The Board determined that Employer failed to establish that Claimant's "substandard work performance was the result of willful misconduct." Decision and Order of the Board at 4; R.R. at 134a.

On appeal,² Employer argues that the Board erred when it determined Employer failed to meet its burden of proving willful misconduct under Section 402(e) of the Law.

The employer has the burden of proving a claimant engaged in willful misconduct. Williams v. Unemployment Compensation Board of Review, 596 A.2d 1191 (Pa. Cmwlth. 1991). Once the employer meets its burden, a claimant may then prove he had good cause for his actions. Department of Corrections v. Unemployment Compensation Board of Review, 943 A.2d 1011 (Pa. Cmwlth. 2008). “A claimant has good cause if his . . . actions are justifiable and reasonable under the circumstances.” Docherty v. Unemployment Compensation Board of Review, 898 A.2d 1205, 1208-09 (Pa. Cmwlth. 2006).

While the statute does not define “willful misconduct,” the Supreme Court has held that “willful misconduct” in the unemployment compensation context means: (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 to the employer. Navickas v. Unemployment Compensation Review Board, 567 Pa. 298, 304, 787 A.2d 284, 288 (2001). Whether a claimant’s actions rise to the level of willful misconduct is a question of law fully reviewable

² This Court’s review is limited to a determination of whether an error of law was committed, whether necessary findings of fact were supported by substantial evidence, or whether constitutional rights were violated. Sheets v. Unemployment Compensation Board of Review, 708 A.2d 884 (Pa. Cmwlth. 1998).

on appeal. Stop-N-Go of Western Pennsylvania v. Unemployment Compensation Board of Review, 707 A.2d 560 (Pa. Cmwlth. 1998).

This Court has consistently held that “mere incompetence, inexperience, or inability which may indeed be sufficient to justify discharge, will not constitute willful misconduct.” Ungard v. Unemployment Compensation Board 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 Compensation Board of Review, 519 A.2d 1096, 1098 (Pa. Cmwlth. 1987); Herndon v. Unemployment Compensation Board of Review, 540 A.2d 633, 634 (Pa. Cmwlth. 1988).

As long as the Board’s findings are supported by substantial evidence,³ such findings are conclusive on appeal. Geesey v. Unemployment Compensation Board of Review, 381 A.2d 1343, 1344 (Pa. Cmwlth. 1978).

A scrutiny of the record discloses ample support for the Board’s findings. Based upon the record developed and the findings made by the Board, Employer failed to meet its burden to establish that Claimant committed willful misconduct.

³ Substantial evidence is relevant evidence that a reasonable mind might consider adequate to support a conclusion. Hercules, Inc. v. Unemployment Compensation Board of Review, 604 A.2d 1159 (Pa. Cmwlth. 1992).

Claimant was discharged for unsatisfactory work performance for failing to follow the employer's work instructions by not completing the daily tasks of his position. Decision and Order of the Board, F.F. No. 12 at 2; R.R. at 132a.

It is undisputed that Claimant's work performance did not meet the standards expected by Employer. First, Claimant was demoted from quality manager to quality technician because his tasks were not being completed in a timely manner. Decision and Order of the Board, F.F. No. 7 at 2; R.R. at 132a. Second, Claimant received a final warning that "certain tasks were not being completed, that certain pieces produced by the employer were not conforming to the employer's quality standards, and that certain inspection documents were also not being properly handled." Decision and Order of the Board, F.F. No. 8 at 2; R.R. at 132a. Although Claimant's unsatisfactory work performance was a basis for discharge from employment, this does not mean his actions rose to the level of willful misconduct. Ungard, 442 A.2d at 19.

As established in Geslao, willful misconduct will not be found where, as is here, Claimant credibly established that he worked to the best of his ability. Decision and Order of the Board, F.F. No. 22 at 2; R.R. at 133a. The credible testimony accepted by the Board established that Claimant was unable to complete his assigned tasks within the allotted forty-hour work week. In unemployment compensation proceedings, the Board is the ultimate fact finder and is therefore entitled to make its own determinations as to witness credibility and evidentiary weight. Peak v. Unemployment Compensation Board of Review, 509 Pa. 267, 501

A.2d 1383 (1985). To remedy Claimant's work-related deficiencies, he requested additional assistance. Decision and Order of the Board, F.F. No. 20 at 2; R.R. at 133a. Further, Claimant approached Employer to ask if he could become a salaried employee so that he could work additional hours, without additional compensation, in order to complete his tasks. Decision and Order of the Board, F.F. Nos. 23-24 at 2; R.R. at 133a. Claimant's request was denied by Employer.

Here, Claimant testified that when he received negative performance reviews he "took them very seriously and did . . . [his] best to try and work harder, work longer." Notes of Testimony (N.T.), April 22, 2009, at 10; R.R. at 69a. In January 2009, Claimant's hours were reduced to forty hours per week with no corresponding reduction in duties. N.T. at 11; R.R. at 70a. Claimant testified that forty hours was an insufficient "amount of time to complete all the tasks" but he "attempt[ed] to complete all the tasks" and "at all times . . . work[ed] to the best of his ability" N.T. at 12; R.R. at 71a. Claimant's testimony constitutes substantial evidence in support of the Board's findings.

In short, Claimant's failure to complete his daily tasks was the result of his "inability" to do so. Ungard, 442 A.2d at 19. Substantial evidence of record supported the Board's finding that Claimant attempted to the best of his abilities to conform his performance to Employer's expectations.

Claimant's discharge was also based, in part, on his failure to submit written summaries on a daily basis.

Again, it is undisputed that Claimant did not meet Employer's expectations when he failed to submit written summaries of his completed tasks on a daily basis. Claimant testified, however, that he "misunderstood the general manager's directive to provide a daily written summary of his tasks." Decision and Order of the Board, F.F. No. 14 at 2; R.R. at 132a. Although Claimant did not comply with Employer's expectations, Claimant compiled daily written summaries from February 2, 2009, until February 11, 2009, and submitted the accumulated summaries to Employer on February 11, 2009, rather than submitting the summaries at the end of each day. Decision and Order of the Board, F.F. No. 12 at 2; R.R. at 132a.

Here, the Board, as the arbiter of witness credibility, found Claimant credibly established that he kept a daily written summary of his tasks, as he had done for the previous two years, however, he had never been asked to hand them in on a daily basis prior to his final warning. Decision and Order of the Board, F.F. No. 17 at 3; R.R. at 133a. Employer's past expectations regarding submission of daily written summaries contributed to Claimant's misunderstanding of Employer's directive. Although Claimant understood he was to devote five minutes daily to recording his daily tasks, Claimant did not believe he was also required to hand in his written summary on a daily basis. Decision and Order of the Board, F.F. No. 16 at 2; R.R. at 132a. Instead, Claimant attempted to communicate verbally with Employer about his daily tasks and e-mailed his written summaries to the general manager every few days given that the general manager often was not available or left work without notifying Claimant. Decision and Order of the Board, F.F. No. 15, 18 at 2-3; R.R. at 132a-133a. Simply, there is

no evidence of record to support a conclusion that Claimant refused to comply with Employer's directive, rather, Claimant believed he was in compliance.

Again, given the circumstances in the current controversy and the substance of Claimant's credited testimony, this Court is of the opinion that the evidence of record supports the Board's finding that Employer did not establish Claimant's failure to provide daily written summaries on a daily basis was intentional.⁴

Accordingly, this Court affirms.

BERNARD L. MCGINLEY, Judge

⁴ Employer makes an additional argument that the Board erred in failing to find that Claimant engaged in willful misconduct through his negligence. "[A]n employee's negligence constitutes willful misconduct only if 'it is of such a degree or recurrence as to manifest culpability, wrongful intent, or evil design, or show an intentional and substantial disregard of the employer's interest or of the employee's duties and obligations to the employer.'" Navickas, quoting Coleman v. Unemployment Compensation Board of Review, 407 A.2d 130, 131-32 (Pa. Cmwlth. 1979). There must be a showing of intent in order for negligence to rise to the level of willful misconduct. As set forth, Claimant neither intentionally disregarded his duties nor Employer's interests. Homony v. Unemployment Compensation Board of Review, 312 A.2d 77, 78 (Pa. Cmwlth. 1973) (Willful misconduct can be proven by a finding of "conscious indifference to the duty owed the employer."). The record evidence established that Claimant worked to the best of his ability. Under this standard, Claimant's conduct did not amount to negligence so as to constitute disqualifying willful misconduct.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Hodge Tool Company Inc.,	:	
Petitioner	:	
	:	
v.	:	
	:	
Unemployment Compensation	:	
Board of Review,	:	No. 1465 C.D. 2009
Respondent	:	

ORDER

AND NOW, this 28th day of January, 2010, the order of the order of the Unemployment Compensation Board of Review is affirmed.

BERNARD L. McGINLEY, Judge