

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Donald A. Patton,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
Unemployment Compensation	:	
Board of Review,	:	No. 1467 C.D. 2010
	:	
Respondent	:	Submitted: March 11, 2011

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER

FILED: April 14, 2011

Donald A. Patton (Claimant) petitions this Court for review of the June 23, 2010 order of the Unemployment Compensation Board of Review (UCBR) affirming the decision of the Referee and denying benefits. There is essentially one issue before this Court: whether the UCBR's decision is supported by substantial evidence. For reasons that follow, we affirm the UCBR's order.

Claimant was employed by the Pennsylvania Liquor Control Board (Employer) as an intermittent liquor store clerk for approximately ten years ending January 15, 2010. Employer's rules and regulations required Claimant to obey all lawful orders from persons in charge, to treat all customers and fellow employees with courtesy, and to cooperate with other employees. In June of 2009, Claimant received a final warning for making inappropriate remarks in violation of Employer's rules.

On December 5, 2009, Karen L. Predko (Ms. Predko), the person in charge of the store to which Claimant was assigned that day, asked Claimant to decrease the volume of his radio. Claimant refused. There was a confrontation between Claimant and Ms. Predko, during which Claimant called Ms. Predko a “redneck rat.” Ms. Predko then contacted Patty Fleck, the district manager, who instructed her to send Claimant home. When Claimant was told he was being sent home he became very agitated. Claimant slammed his cash drawer onto a stack of boxed wine, and continued acting unruly until eventually leaving the store.

Effective December 5, 2009, Claimant was suspended pending an investigation for violation of the Employer’s rules. On December 15, 2009, Claimant was terminated for violation of Employer’s rules requiring employees to obey all lawful orders, to be courteous to customers and coworkers, and to cooperate with other employees. Claimant subsequently applied for Unemployment Compensation (UC) benefits.

On February 5, 2010, the Altoona UC Service Center mailed a notice of determination denying benefits under Section 402(e) of the Unemployment Compensation Law (Law).¹ Claimant appealed, and a hearing was held by a Referee. On April 9, 2010, the Referee mailed his decision affirming the determination of the UC Service Center. Claimant appealed to the UCBR. The UCBR affirmed the decision of the Referee. Claimant appealed to this Court.²

Claimant argues that the UCBR erred in affirming the Referee’s decision. Specifically, Claimant contends the UCBR’s determination that Employer

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

² This Court’s review is limited to determining whether the findings of fact were supported by substantial evidence, whether constitutional rights were violated, or whether errors of law were committed. *Johnson v. Unemployment Comp. Bd. of Review*, 869 A.2d 1095 (Pa. Cmwlth. 2005).

discharged Claimant for willful and wanton misconduct was not supported by substantial evidence. We disagree.

“Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *City of Pittsburgh, Dep’t of Pub. Safety v. Unemployment Comp. Bd. of Review*, 927 A.2d 675, 676 n.1 (Pa. Cmwlth. 2007) (quotation marks omitted). Further,

Section 402(e) of the Law provides that an employee is ineligible for unemployment compensation benefits when his unemployment is due to discharge from work for willful misconduct connected to his work. The employer bears the burden of proving willful misconduct in an unemployment compensation case. Willful misconduct has been defined as (1) an act of wanton or willful disregard of the employer’s interest; (2) a deliberate violation of the employer’s rules; (3) a disregard of standards of behavior which the employer has a right to expect of an employee; or (4) negligence indicating an intentional disregard of the employer’s interest or a disregard of the employee’s duties and obligations to the employer.

Dep’t of Transp. v. Unemployment Comp. Bd. of Review, 755 A.2d 744, 747 n.4 (Pa. Cmwlth. 2000) (citation omitted). “In the case of a work rule violation, the employer must establish the existence of the rule, the reasonableness of the rule and its violation.” *Lindsay v. Unemployment Comp. Bd. of Review*, 789 A.2d 385, 389 (Pa. Cmwlth. 2001).

At the hearing before the Referee, Employer submitted Employer’s Work Rules and Guide to Better Service, which contained a statement that violation of the rules would result in disciplinary action including discharge depending on the “type and seriousness of the offense, and the past history of the employee.” Original Record (O.R.), Item No. 9, Ex. 1. The rules contain specific prohibitions against being discourteous to customers or fellow employees, and failure to cooperate with

other employees, as well as a miscellaneous provision stating that all lawful orders are to be followed promptly. Employer also submitted a written acknowledgement of receipt and understanding of the work rules signed by Claimant on September 18, 2000. The work rules and acknowledgement were accepted into evidence without objection. O.R., Item No. 9 at 13. As it is more than reasonable for an employer to establish work rules such as those stated in the guide, Employer has established the first two requirements for proving willful misconduct in the context of a work rule violation.

Regarding Claimant's violation of the work rules, Ms. Predko testified that Claimant, when asked to turn down the volume on his radio became loud and belligerent requiring her to call the district manager. Further, Ms. Predko testified that the district manager asked to speak to Claimant, and that Claimant became loud and belligerent with her as well. The district manager directed Ms. Predko to tell Claimant to leave. She did so, asking Claimant to cash out his drawer. This task, which should have taken 5 minutes, took Claimant almost 45 minutes. Claimant continued to rant, and became so out of control that Ms. Predko threatened to call the police. Claimant eventually left, but returned shortly thereafter. Upon his return, Ms. Predko advised Claimant that he was not permitted to enter the store after being suspended for the day. Claimant, nonetheless, proceeded to the back of the store where he made a phone call. He left again after making certain derogatory statements to Ms. Predko. Clearly, this is relevant evidence that a reasonable mind might accept as adequate to support the conclusion that Claimant violated Employer's work rules. Accordingly, the UCBR did not err in finding that Claimant committed willful misconduct.

Claimant argues that a certain document that was admitted contained hearsay, and that other witnesses who testified did not have first hand knowledge of

the events, thus this evidence should not have been relied on by the Referee or the UCBR. However, since the testimony of Ms. Predko alone provides substantial evidence to support the UCBR's order, this Court need not address those issues.

For all of the above reasons, the order of the UCBR is affirmed.

JOHNNY J. BUTLER, Judge

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ORDER

AND NOW, this 14th day of April, 2011, the June 23, 2010 order of the Unemployment Compensation Board of Review is affirmed.

JOHNNY J. BUTLER, Judge