

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Fairmont Supply Company,	:	
Petitioner	:	
	:	
v.	:	
	:	
Unemployment Compensation	:	
Board of Review,	:	No. 1489 C.D. 2010
Respondent	:	Submitted: December 30, 2010

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge  
          HONORABLE MARY HANNAH LEAVITT, Judge  
          HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY  
JUDGE BUTLER

FILED: February 1, 2011

Fairmont Supply Company (Employer) petitions for review of the July 2, 2010 order of the Unemployment Compensation Board of Review (UCBR) affirming the Referee’s decision granting unemployment compensation (UC) benefits to Gregory Leyda (Claimant). The issues in this case are: (1) whether the UCBR erred by finding that Claimant was not discharged for willful misconduct, and (2) whether the UCBR erred in finding that there were issues of credibility. For the reasons that follow, we affirm the decision of the UCBR.

Claimant was employed full time as an inventory control supervisor by Employer from December 11, 2006 through December 28, 2009, when his employment was terminated due to insubordination. On December 23, 2009, Claimant was scheduled to work at Employer’s Rice’s Landing facility, located approximately 45 minutes from its main facility in Washington, Pennsylvania,

between 7:00 a.m. and 3:30 p.m. At approximately 10:00 a.m., Claimant informed Employer's northern operations manager, Greg Eustis, that he was going to be leaving the Rice's Landing facility at 2:30 p.m. Mr. Eustis told Claimant that he could not leave at 2:30 because Bill Craig was unloading trucks and, due to safety concerns, Mr. Craig could not be left at the Rice's Landing facility by himself. Mr. Eustis left work at noon that day. At approximately 3:40 p.m., Claimant left the Rice's Landing facility, after Chuck Vaughn, a computer trainer from Employer's parent company on site that day, stated that he would remain at the facility while Mr. Craig completed his work. Claimant returned his company vehicle to the Washington facility at approximately 4:35 p.m. Based upon a call Mr. Eustis received from Mr. Craig, Employer discharged Claimant for disregarding Mr. Eustis' instruction to remain at the Rice's Landing facility.

Claimant filed for unemployment compensation (UC) benefits. The UC Service Center denied benefits pursuant to Section 402(e) of the Unemployment Compensation Law (Law)<sup>1</sup> and made a finding of non-fault overpayment. Claimant filed a timely appeal, and a hearing was held by a Referee on April 19, 2010, at which Mr. Eustis and Claimant testified. The Referee reversed the UC Service Center's denial of benefits on the basis that there was no first-hand evidence, other than Claimant's testimony, as to when he left the Rice's Landing facility on December 23, 2009 and, since Employer failed to establish that Claimant disregarded Mr. Eustis' instruction, Claimant was not insubordinate. The Referee also determined that, since Claimant is entitled to UC benefits, there was no overpayment. Employer appealed

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

to the UCBR, which affirmed the Referee's decision. Employer appealed to this Court.<sup>2</sup>

Under Section 402(e) of the Law, an employee is not eligible for benefits if "his unemployment is due to his discharge . . . for willful misconduct connected with his work . . . ."

Willful misconduct has been defined as (1) the wanton and willful disregard of the employer's interest; (2) the deliberate violation of rules; (3) the disregard of standards of behavior which an employer can rightfully expect from his employee; or (4) negligence which manifests culpability, wrongful intent, evil design or intentional and substantial disregard for the employer's interests or the employee's duties and obligations.

*Elser v. Unemployment Comp. Bd. of Review*, 967 A.2d 1064, 1069 n.7 (Pa. Cmwlth. 2009). "Whether a claimant's conduct constituted willful misconduct is a question of law subject to this Court's review. Further, the employer bears the burden of establishing that the claimant was discharged for willful misconduct on the job." *Roberts v. Unemployment Comp. Bd. of Review*, 977 A.2d 12, 16 (Pa. Cmwlth. 2009) (citation omitted). Under circumstances in which an employee is discharged for failing to follow an employer's directive, both the reasonableness of the directive and good cause for employee's actions must be weighed in light of all attendant circumstances. *See Dep't of Corrs. v. Unemployment Comp. Bd. of Review*, 943 A.2d 1011 (Pa. Cmwlth. 2008); *see also Dougherty v. Unemployment Comp. Bd. of Review*, 686 A.2d 53 (Pa. Cmwlth. 1996).

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<sup>2</sup> 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. *Brunswick Hotel & Conference Ctr., LLC v. Unemployment Comp. Bd. of Review*, 906 A.2d 657 (Pa. Cmwlth. 2006).

Employer's Employee Conduct Rules list "[i]nsubordination" as a type of behavior that violates reasonable standards of the employer-employee relationship. Reproduced Record (R.R.) at 21a-22a, 35a. The Employee Conduct Rules define insubordination as "refusal or failure . . . to comply with supervisory direction . . . ." R.R. at 35a. Claimant acknowledged that he read and understood the rule. Employer argues that the UCBR erred by failing to find that Claimant's actions constituted insubordination and, therefore, willful misconduct under circumstances in which Claimant left work on December 23, 2009 in reliance on Mr. Vaughn remaining with Mr. Craig, in violation of its directive. Employer also argues that the UCBR erred by finding that there were credibility issues. We disagree.

There is no question that Employer's directive that Mr. Craig not be left alone at the Rice's Landing facility was a matter of safety and was reasonable. At issue is whether Claimant violated Employer's directive. On that point, there was conflicting testimony. In support of Employer's case, Mr. Eustis testified that, in light of the potential safety hazard, his specific direction to Claimant was "[n]ot to leave [u]ntil [Bill Craig] was completed with his job." R.R. at 23a-24a, 32a. Mr. Eustis also testified that Mr. Vaughn did not have the authority to direct Employer's employees. Claimant, on the other hand, testified that Mr. Eustis' instruction to him was that he was "[n]ot to leave [Mr. Craig] alone," and when he left Employer's facility, Mr. Vaughn was still there. R.R. at 29a. Claimant also testified that he had taken instruction from Mr. Vaughn in the past. The UCBR resolved the conflicts in the testimony in Claimant's favor. "Since [c]redibility determinations are exclusively within the province of the [UCBR] as fact finder in unemployment cases," we will not disturb its determination here. *Melomed v. Unemployment Comp. Bd. of Review*, 972 A.2d 593, 595 (Pa. Cmwlth. 2009).

The UCBR held that Employer failed to establish that Claimant was discharged for willful misconduct, since it did not demonstrate that Claimant knew not to take direction from Mr. Vaughn, or that leaving Mr. Craig with Mr. Vaughn was an unacceptable means of complying with Employer's directive. Since the credited facts of this case support the UCBR's decision, we hold that the UCBR did not err. The UCBR's order is, therefore, affirmed.

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JOHNNY J. BUTLER, Judge

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ORDER

AND NOW, this 1<sup>st</sup> day of February, 2011, the July 2, 2010 order of the Unemployment Compensation Board of Review is affirmed.

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JOHNNY J. BUTLER, Judge