

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Ethel Lewis, :
 :
 : Petitioner :
 :
 : v. : No. 1504 C.D. 2009
 : SUBMITTED: January 15, 2010
 :
 : Unemployment Compensation :
 : Board of Review, :
 : Respondent :

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge**

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER**

FILED: March 11, 2010

Ethel Lewis petitions, *pro se*, for review of the order of the Unemployment Compensation Board of Review (Board), which denied her unemployment compensation benefits on the ground that she was discharged for willful misconduct. We affirm.

Lewis was employed as a pantry worker by Woods Services (Employer) until February 2009, when she was discharged following a verbal altercation with a client, in which she called the client ugly. Benefits were initially denied and a hearing before a Referee followed. Lewis failed to appear, although she did call and state that she would be late because she had gotten on the wrong bus. The Referee delayed the hearing twenty minutes and then, based upon the

testimony of Employer's witnesses, found that Lewis violated Employer's policy prohibiting verbal abuse of clients. Accordingly the Referee concluded Lewis' actions constituted willful misconduct, precluding the grant of benefits.

On appeal to the Board, Lewis argued both that the case should be remanded to the Referee for a hearing in which she could be present, and that the Referee's decision was based on incorrect facts. The Board denied the request for a remand and affirmed the Referee's decision. In doing so it adopted the Referee's findings and conclusions and noted the absence of evidence that Lewis had good cause for her actions. Lewis appealed to this court.

In her brief, Lewis argues that the Board should be reversed on the merits based on her version of the facts, and because the Referee held the hearing in her absence. However, in her petition for review to this court, she did not raise the issue of the hearing in her absence, and it is therefore waived. *Jimoh v. Unemployment Comp. Bd. of Review*, 902 A.2d 608 (Pa. Cmwlth. 2006). However, even if this issue were not waived, Lewis would not prevail, because a referee may hold a hearing in the absence of one party if that party has failed to appear without proper cause, after notice. 34 Pa. Code § 101.51. Here, Lewis makes no claim she did not receive notice of the hearing, and her negligence in getting on the wrong bus is not proper cause. *Kelly v. Unemployment Comp. Bd. of Review*, 747 A.2d 436 (Pa. Cmwlth. 2000).

To show willful misconduct based on a violation of the employer's rules, the employer must show that a reasonable rule existed and that the claimant knowingly violated it. *Roberts v. Unemployment Comp. Bd. of Review*, 977 A.2d 12 (Pa. Cmwlth. 2009). In this case, it is clear that the standard is met. Credited evidence demonstrates that Lewis received a copy of Employer's employee

handbook, and that it included a policy against verbal abuse of clients.¹ Testimony was presented that Lewis engaged in an oral altercation with a client, in which she called the client ugly, and was therefore discharged. In her brief, Lewis presents a number of explanations and justifications for her conduct, which we cannot consider because they contain facts not present on the record. However, even if we could consider Lewis' justifications, they would not alter the basic facts: Employer had a reasonable rule against the verbal abuse of clients, and Lewis was discharged for violating it.

For all the foregoing reasons, we affirm.

BONNIE BRIGANCE LEADBETTER,
President Judge

¹ The record is not clear on what Woods Services does, but it should be noted that their clients are children and/or young adults with “a variety of disabilities and . . . emotional problems.” Hearing of April 13, 2009, Notes of Testimony at 4.

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Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 11th day of March, 2010, the order of the Unemployment Compensation Board of Review in the above-captioned matter is hereby AFFIRMED.

BONNIE BRIGANCE LEADBETTER,
President Judge