IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Michael J. Reynolds, Petitioner	:	
v.	:	No. 1519 C.D. 2010
Unemployment Compensation Board of Review, Respondent	:	Submitted: December 17, 2010

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE P. KEVIN BROBSON, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE SIMPSON **FILED: January 27, 2011**

In this appeal, Michael J. Reynolds (Claimant) petitions for review from an order of the Unemployment Compensation Board of Review (Board) denying his claim for benefits under Section 402(e) of the Unemployment Compensation Law (Law) (relating to willful misconduct).[1] Claimant contends the Board erred in finding he engaged in willful misconduct because his employer did not meet its burden of proving he deliberately violated its policies. In his brief, Claimant also contends the Board's essential findings are not supported by substantial evidence. Upon review, we affirm.

Claimant worked for Printers Trade, Inc. (Employer) as a full-time pressman from November, 2006, until his last day of work on January 30, 2010.

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

With many years of experience in the printing industry, Claimant knew a pressman always works with a feeder operator and that one person cannot run a printing job alone. The feeder operator loads the paper into the press.

Claimant worked the 3:00 p.m. to 11:00 p.m. shift. On Friday, January 29, Employer told Claimant to come in on Saturday morning to finish a printing job. However, Claimant could not do so because he needed to deliver an item he sold on EBay. Employer then requested that Claimant stay late on Friday night to finish the job. That evening, Claimant worked on one press. Instead of finishing the job on that press and moving on to the next press, Claimant sent his feeder operator to run the job on the other press. The feeder operator did not properly do the job, which ruined a large number of magazine covers and cost Employer thousands of dollars.

Claimant's duties as a pressman included inspections for quality. He was responsible for the final product. On the morning of January 30, Employer inspected the printing job assigned to Claimant and discovered the botched magazine covers. The obvious poor quality of the job indicated Claimant did not inspect it. Employer discharged Claimant on January 30 for assigning a feeder operator to run a press by himself, and for Claimant's failure to inspect the job.

Thereafter, Claimant applied for unemployment compensation benefits, which the local service center denied under Section 402(e) (willful misconduct). The service center found Claimant's actions showed a willful disregard of Employer's interests.

Claimant appealed, and a referee's hearing followed. Employer's president and owner, Stuart Franks (Owner), testified for Employer. Claimant, represented by counsel, testified on his own behalf.

After hearing, the referee found Claimant ineligible for benefits under Section 402(e). The referee determined Claimant's conduct and his disregard of printing industry rules fell below the standards of behavior an employer may rightfully expect of an employee. Thus, the referee determined Claimant's actions constituted willful misconduct.

On appeal, the Board entered its own decision, and it affirmed. In denying benefits, it reasoned:

> [Claimant] was clearly in a hurry to leave on his last night of work. In his haste, he violated some of the cardinal rules of his position, causing a job to be ruined. That resulted in a loss of money and time to [Employer]. The Board does not find [Claimant] credible that he inspected the job before leaving the workplace. The ruined magazine covers, as described by [Owner], would not have escaped [Claimant's] notice had he done so. [Claimant] also knew that one employee should not have been running a press in any event. [Claimant's] actions went beyond negligence and amounted to an intentional disregard of [Employer's] interests. Benefits are denied under Section 402(e) of the Law.

Bd. Op. at 2. Claimant petitions for review.[2]

[2] Our review is limited to determining whether the necessary findings of fact were supported by substantial evidence, whether errors of law were committed, or whether constitutional rights were violated. Oliver v. Unemployment Comp. Bd. of Review, 5 A.3d 432 (Pa. Cmwlth. 2010). In addition, the Board is the ultimate finder of fact in unemployment cases.
(Footnote continued on next page…)

Issues

In his brief, Claimant addresses two assignments of error. He contends the Board erred in finding willful misconduct where Employer did not meet its burden of proving he deliberately violated its policies. Claimant also contends the Board's essential findings are not supported by substantial evidence.

Discussion

Section 402(e) of the Law states that an employee shall be ineligible for compensation for any week in which his unemployment is due to willful misconduct connected to his work. 43 P.S. §802(e). Willful misconduct within Section 402(e) is defined by the courts as: 1) a wanton and willful disregard of an employer's interests; 2) deliberate violation of rules; 3) disregard of the standards of behavior which an employer can rightfully expect from an employee; or 4) negligence showing an intentional disregard of the employer's interests or the employee's duties and obligations. Grieb v. Unemployment Comp. Bd. of Review, 573 Pa. 594, 827 A.2d 422 (2002); Myers v. Unemployment Comp. Bd. of Review, 533 Pa. 373, 625 A.2d 622 (1997). The employer bears the initial burden of establishing a claimant engaged in willful misconduct. Id. Whether a claimant's actions constitute willful misconduct is a question of law fully reviewable on appeal. Id.

(continued…)

Id. Thus, matters of credibility and the weight to be given conflicting testimony fall within the Board's province. Id.

When asserting discharge due to a violation of a reasonable work rule or policy, the employer must prove the existence of the rule or policy and its violation. Caterpillar, Inc. v. Unemployment Comp. Bd. of Review, 550 Pa. 115, 703 A.2d 452 (1997); Ductmate Indus., Inc. v. Unemployment Comp. Bd. of Review, 949 A.2d 338 (Pa. Cmwlth. 2008). The employer's rule or policy need not be written in order for a reviewing court to determine an employee's violation of the rule or policy constitutes willful misconduct. Graham v. Unemployment Comp. Bd. of Review, 840 A.2d 1054 (Pa. Cmwlth. 2004). An employer may deal with its employees on a non-written basis and expect that its rules or policies be followed. Id.

I.

In his brief, Claimant asserts that substantial evidence[3] does not support the following findings:

> 4. [Claimant] was aware that a pressman always works with a feeder operator and that one person is not to run a job alone.
>
> * * *
>
> 7. [Claimant] worked on one press and instead of finishing the job on that press and moving on to the next press, [Claimant] sent the Feeder Operator to do the job on another press.

[3] Substantial evidence is defined as evidence that a reasonable mind might accept as sufficient to support the conclusion reached. Bruce v. Unemployment Comp. Bd. of Review, 2 A.3d 667 (Pa. Cmwlth. 2010). Where substantial evidence supports the Board's findings, they are conclusive on appeal. Id. Further, it is irrelevant whether the record contains evidence supporting findings other than those made by the Board; the proper inquiry is whether the record supports the findings actually made. Id.

> 8. The Feeder Operator did not do the job properly and the cover pages of a magazine were ruined.
>
> * * *
>
> 11. The defect in the job was so obvious that [Claimant] could not have inspected it.

Bd. Op., Findings of Fact Nos. 4, 7, 8, 11.

Unfortunately, Claimant did not raise any challenge to factual findings in his petition for review; rather, he assigned error in the Board's conclusion that he engaged in willful misconduct. Accordingly, any challenge to the findings by the Board is waived.[4] See Jimoh v. Unemployment Comp. Bd. of Review, 902 A.2d 608 (Pa. Cmwlth. 2006) (where claimant fails to include an issue in his petition for review, but addresses the issue in his brief, this Court may decline to consider the issue because it was not raised in the stated objections in the petition for review, nor fairly comprised therein).

II.

Claimant also contends the Board erred in determining he engaged in willful misconduct. He argues Employer did not carry its burden of proving he

[4] Regardless of waiver, the substantial evidence challenge lacks merit. Testimony by Owner, together with inferences favorable to the party prevailing before the Board, was sufficient to support the findings in question. In reviewing the record to determine whether substantial evidence exists, we must view the record in the light most favorable to the party which prevailed before the Board, giving that party the benefit of all reasonable and logical inferences that can be drawn from the evidence. Ductmate Indus., Inc. v. Unemployment Comp. Bd. of Review, 949 A.2d 338 (Pa. Cmwlth. 2008).

deliberately violated Employer's policies. However, Claimant's argument relies on his version of the facts, not those found by the Board. The Board rejected Claimant's version of what happened. The fact that a party may view the testimony differently than the Board is not grounds for reversal, where, as here, substantial evidence supports the Board's findings. Ductmate; Daniels v. Unemployment Comp. Bd. of Review, 755 A.2d 729 (Pa. Cmwlth. 2000).

Nonetheless, Claimant argues Owner's testimony shows he did not engage in willful misconduct. Owner, Claimant asserts, believed his actions were negligent and unintentional. Mere negligence does not rise to the level of willful misconduct. Navickas v. Unemployment Comp. Bd. of Review, 567 Pa. 298, 787 A.2d 284 (2001). Only negligence of such a magnitude as to show an intentional disregard of an employer's interests will satisfy the willful misconduct standard. Id. Therefore, Claimant urges the Board erred in determining his actions constituted willful misconduct. Id.

We disagree. As noted, an employer's rule or policy need not be written; an employer may expect its employees to comply with its non-written directives. Graham. Here, Claimant violated Employer's policy prohibiting anyone from running a press alone. This safety policy is standard in the printing industry.

The Board did not err in determining Claimant's violation of Employer's policy rises to the level of willful misconduct. See e.g., Moran v. Unemployment Comp. Bd. of Review, 973 A.2d 1024 (Pa. Cmwlth. 2009) (failure

to follow employer's parking safety rules, which resulted in damage to property and equipment, constituted willful misconduct); Heitczman v. Unemployment Comp. Bd. of Review, 638 A.2d 461 (Pa. Cmwlth. 1994) (truck driver's violation of employer's policy requiring a driver to get out and walk around before backing up his truck, which resulted in damage to both the employer's vehicle and a light standard on the property, constituted willful misconduct).

In addition, Claimant directed his feeder operator, who is unqualified to operate a press, to run a print job. Claimant also failed to inspect that print job. The feeder operator botched the job, which cost Employer thousands of dollars. Employer's loss did not result from Claimant's mere negligence or inability to perform his duties, but rather from his deliberate disregard of Employer's interest in having a qualified pressman run the print job. Further, Claimant advanced no assertion of good cause for his conduct. Consequently, the Board did not err in holding Claimant's actions rose to the level of willful misconduct. See Grieb (willful misconduct includes conduct showing an intentional and substantial disregard of an employer's interest); Navickas (same); Myers (same).

For these reasons, we affirm the Board.

ROBERT SIMPSON, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Michael J. Reynolds, Petitioner	:	
v.	:	No. 1519 C.D. 2010
Unemployment Compensation Board of Review, Respondent	:	

O R D E R

AND NOW, this 27th day of January, 2011, the order of the Unemployment Compensation Board of Review is **AFFIRMED**.

ROBERT SIMPSON, Judge