

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Lancaster General Hospital, :  
Petitioner :  
 :  
v. : No. 1556 C.D. 2010  
 : Submitted: January 21, 2011  
Unemployment Compensation :  
Board of Review, :  
Respondent :

BEFORE: HONORABLE DAN PELLEGRINI, Judge  
HONORABLE MARY HANNAH LEAVITT, Judge  
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY JUDGE LEAVITT

FILED: August 10, 2011

Lancaster General Hospital (Employer) petitions for review of an adjudication of the Unemployment Compensation Board of Review (Board) granting Eva Stankard's (Claimant) claim for benefits. In doing so, the Board reversed the Referee's determination that Claimant was ineligible for benefits under Section 402(e) of the Unemployment Compensation Law (Law), 43 P.S. §802(e),<sup>1</sup> by reason of her willful misconduct. We reverse.

Claimant is a registered nurse (RN) employed by Employer from June 1, 1977, until December 29, 2009. During the final two and a half years of her

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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). It provides, in relevant part, that "[a]n employe shall be ineligible for compensation for any week ... [i]n which his unemployment is due to his discharge or temporary suspension from work for willful misconduct connected with his work." 43 P.S. §802(e).

employment, Claimant worked second shift, 3:00 p.m. to 11:00 p.m., in Employer's Mental Health Unit. One of Claimant's duties was to observe high-risk patients at 15-minute intervals to ensure that they were not engaged in inappropriate or harmful activity. Claimant was required to document these observations in the patients' medical records.

On December 16, 2009, Claimant's supervisor received a report from Claimant's co-worker that Claimant was not doing the 15-minute checks in the manner required. When Claimant's supervisor confronted Claimant, Claimant admitted that she had, at times, done the 15-minute checks of high risk patients without leaving the nurses' station. After an investigation, Employer discharged Claimant on December 29, 2009.

Claimant applied for unemployment compensation benefits. In the Employer Questionnaire submitted to the Altoona UC Service Center, Employer stated that Claimant was terminated for "falsifying medical records." Reproduced Record at 1a (R.R.\_\_\_\_). The UC Service Center determined that she was ineligible for benefits under Section 402(e) of Law. Claimant appealed, and a hearing was held before the Referee on March 25, 2010.

At the hearing, Employer presented the testimony of Gail DiBlasi, Nurse Manager of the Mental Health Unit. DiBlasi testified that the patients in the Mental Health Unit are adults, age 18 or older, and are at risk to themselves or to others. All patients are monitored hourly; however, the higher risk patients must be observed every 15 minutes and the observation must be recorded. Patients in their rooms could not be observed from the nurses' station. DiBlasi testified that on December 16, 2009, she was informed by an employee in the unit that Claimant was documenting 15-minute checks without doing them. DiBlasi asked Claimant

about the allegation, and Claimant responded that there had been a period of three hours when she did the 15-minute checks without leaving the nurses' station. Claimant claimed that other nurses did this as well, although DiBlasi could not confirm this claim.

DiBlasi testified that at a meeting with Employer's human resources department, Claimant explained that she could see the patients in the hallway from the nurses' station and considered them safe when she saw them enter their rooms. DiBlasi explained a patient must be physically checked "to ensure that they're safe." R.R. 18a. At this meeting, Claimant admitted that she had documented 15-minute checks without directly observing the patient.

Initially, DiBlasi suspended Claimant for 24 hours, and upon her return, DiBlasi placed her under supervision. Soon thereafter, however, DiBlasi and human resources decided that patient safety required Claimant's discharge. In connection with her discharge, Claimant signed a document acknowledging that she had "documented MD ordered every 15 minute checks when she had not done them." R.R. 3a.

Upon cross-examination, DiBlasi admitted that the Mental Health Unit's orientation program was weak when Claimant began to work there. To augment that program, DiBlasi placed Claimant with another RN on day shift for a period of time. DiBlasi stated that the patient must be in the RN's direct line of vision in order to properly perform the check, but she acknowledged that the patients frequently walk by the nurses' station.

On redirect-examination, DiBlasi stated that the requirement to personally observe the patient is "very basic," and that falsifying records is "a serious issue and practice" because it endangers the patients and staff. R.R. 25a.

Employer next presented the testimony of Elizabeth Miceli of Human Resources. Miceli testified about the December 23, 2009, meeting with Claimant. Miceli issued a written summary of the meeting. It stated, in relevant part, as follows:

[Claimant] was questioned on the accuracy of charting patients on the night of 12/10/09, specifically during the hours when patients were in their rooms. [Claimant] was asked if she went into the patient's rooms for 15 minute checks on 12/10/09 to observe the safety of the patients, per doctors orders (the reasons for 15 minute checks.)

*[Claimant] acknowledged that she did not go into [patients'] rooms for the 10:00 pm through 10:30 checks, when patients were restricted to their rooms, to observe patients per physician orders however she did document on the chart that patients were observed and safe.*

[Claimant] indicated that she has witnessed confusion over incomplete charts in the past and that "after the fact" documentation has occurred.

[Claimant] acknowledges that *as an experienced RN she understands the seriousness of proper documentation* and admits that on the night of 12/10/09 she did not properly document patient observation and therefore falsified the records of the patient assigned to her.

Employer Exhibit 2; R.R. 46a (emphasis added). Claimant signed the interview summary with the above-referenced statements.

Miceli explained that by writing down patient observations that were not actually done Claimant violated Employer's policy against falsifying patient records. That policy states:

**CATEGORY A: Due to the determined seriousness of the behaviors listed below, an employee may be subject to immediate and summary release.**

\* \* \*

A(2) Misrepresentation or unauthorized use of time record, willful disregard of payroll policy or falsifying time or payroll records. *Falsification of any records*, reports, resumes, applications, or other [Employer] documents.

Employer's Corrective Action and Discipline Policy, R.R. 48a (emphasis added). Miceli testified that this policy is posted on the internet and available to all employees.

Claimant testified that when she began working in the Mental Health Unit, DiBlasi was taking the place of a predecessor manager. The transition made for a "busy" time, and Claimant did not get a complete orientation. R.R. 31a. According to Claimant, the 15-minute checks were usually done by an LPN or by an aide, not an RN. Claimant testified that she was not aware of a written procedure for the 15-minute checks. Claimant stated that she did not realize that she was doing the 15-minute checks improperly until she met with DiBlasi and Miceli.

Claimant explained that she signed the document stating that she had falsified records because DiBlasi and Miceli said she had done so by not doing the patient checks correctly. The testimony was as follows:

C . . . according to how they say to do this, I did not do it in that, in that manner. And that was what I said at that meeting.

CL Do you believe that you falsified medical records?

C I guess I do now.

CL Based on what they told you?

C On what they told me, yes.

R.R. 33a.<sup>2</sup> Claimant testified that she did not record a 15-minute check without having at least observed the patient in the hall.

On cross-examination, Claimant reiterated her understanding that the 15-minute check required a notation of the whereabouts and status of the patient without actually having to see the patient at close range. Claimant explained that often, because the patients are agitated, they walk back and forth from their room to the hallway. Because she could not list everything that a patient did during a 15-minute period, Claimant would just write that the patient was in his room if he was there when she made the note. It did not mean the patient had been there the entire 15-minute period. Claimant stated that she learned how to do 15-minute checks by watching other employees.

The Referee held that Claimant's failure to do the 15-minute checks, but then recording them as done, was a serious breach of her responsibility for high risk patients in the Mental Health Unit. Claimant appealed, and the Board reversed. The Board found that Employer's evidence did not prove that Claimant knew that she was required to look at a patient up close, if, instead, she could see them from the nurses' station at some point during the 15-minute period. The Board credited Claimant's testimony that she believed that "checks" from the nurses' station were sufficient. The Board found, as fact, that patients in their rooms could not be seen from the nurses' station. The Board also found, as fact, that Claimant did not record any patient status updates without having observed the patient at some point in a 15-minute period. Employer now petitions for this Court's review.

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<sup>2</sup> "C" represents Claimant; "CL" represents Claimant's lawyer.

On appeal,<sup>3</sup> Employer presents one issue. Employer contends that Claimant, an RN with almost 33 years of experience, failed to show good cause for her admitted falsification of patient records. Employer challenges the Board's Finding of Fact No. 19, which states that Claimant "did not record any patient status updates without first observing the patient from some location within the unit," as not supported by substantial evidence. R.R. 61a. The Board counters that Finding of Fact No. 19 is supported by substantial evidence, namely, Claimant's testimony.

Section 402(e) of the Law makes a claimant ineligible for unemployment where his separation from employment was caused by his willful misconduct. Although the Law does not define willful misconduct, it has been construed as a violation of the employer's rules or a disregard of the standards of behavior an employer has the right to expect of an employee. *ATM Corp. of America v. Unemployment Compensation Board of Review*, 892 A.2d 859, 865 (Pa. Cmwlth. 2006). In the case of a work rule violation, the employer must prove that the claimant was aware that the work rule existed and that the claimant violated the rule. *Bishop Carroll High School v. Unemployment Compensation Board of Review*, 557 A.2d 1141, 1143 (Pa. Cmwlth. 1989). Once the employer meets its burden of showing willful misconduct, the burden shifts to the claimant to establish good cause for her actions. *Bruce v. Unemployment Compensation Board of Review*, 2 A.3d 667, 671 (Pa. Cmwlth.), *petition for allowance of appeal denied*, \_\_\_ Pa. \_\_\_, 12 A.3d 753 (2010).

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<sup>3</sup> This Court's scope of review in an unemployment compensation case is limited to determining whether constitutional rights were violated, whether an error of law has been committed, or whether necessary findings of fact are supported by substantial evidence. *Blue v. Unemployment Compensation Board of Review*, 616 A.2d 84, 86 n.4 (Pa. Cmwlth. 1992).

Whether a claimant has committed willful misconduct is a question of law subject to this Court's plenary review. *Glatfelter Barber Shop v. Unemployment Compensation Board of Review*, 957 A.2d 786, 792 (Pa. Cmwlth.), *petition for allowance of appeal denied*, 599 Pa. 712, 962 A.2d 1198 (2008). On the other hand, the Board is the ultimate finder of facts and, as such, has the discretion to make credibility determinations and resolve conflicts in the evidence. *City of Pittsburgh, Department of Public Safety v. Unemployment Compensation Board of Review*, 927 A.2d 675, 679 (Pa. Cmwlth. 2007). The Board's credibility determinations are binding on this Court. *Stringent v. Unemployment Compensation Board of Review*, 703 A.2d 1084, 1087 (Pa. Cmwlth. 1997).

Here, Claimant admitted in the interview summary, which she signed, that she did not enter her patients' rooms between 10:00 p.m. and 10:30 p.m., when they were restricted to their rooms. Claimant also acknowledged in that interview the seriousness of proper documentation. In arguing that Claimant's testimony refuted these admissions, the Board relies on the following exchange between Claimant and her counsel:

- CL Did you ever pick up a blank sheet and fill something in without having seen anybody or observed anything?
- C No. *Basically, what I was doing was looking at the person outside in the hall and up and, and going up and down the hall and what else they were doing.*

R.R. 33a-34a (emphasis added). Claimant gave a negative response to her lawyer's leading question. However, she then qualified that answer with the explanation that she saw patients as they walked the hall. She did not testify that she left the nurses' station to check on patients restricted to their rooms. She did not explain how, or whether, she checked patients who could not walk the hall



because they were restricted to their rooms. In short, she did not refute her written statement that “she did not go into [patients’] rooms for the 10:00 p.m. through 10:30 p.m. checks” when patients could not leave their room. R.R. 46a.

The Board’s credibility determinations are binding. The problem here is that the substance of Claimant’s testimony does not support the Board’s finding that she “did not record any patient status updates without first observing the patient from some location in the unit.” R.R. 61a. Claimant’s testimony does not account for the 30-minute period when patients could not leave their room, which is problematic in light of the Board’s factual finding that while in their rooms, patients could not be seen from the nurses’ station. The Board emphasized Claimant’s insufficient training, but Claimant did not require training on the need to have patient notes reflect what actually happened at a given date and time. Claimant’s notes for patient checks between 10:00 p.m. and 10:30 p.m. were not accurate and were not proven accurate by her testimony.

For the foregoing reasons, we reverse the Board’s order granting Claimant benefits.

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MARY HANNAH LEAVITT, Judge

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	:	
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**ORDER**

AND NOW, this 10<sup>th</sup> day of August, 2011, the order of the Unemployment Compensation Board of Review in the above-captioned matter, dated July 1, 2010, is hereby REVERSED.

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MARY HANNAH LEAVITT, Judge