

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Joshua J. Kuehler, :
Petitioner :
 :
v. : No. 1614 C.D. 2009
 : Submitted: December 31, 2009
Unemployment Compensation :
Board of Review, :
Respondent :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE BERNARD L. MCGINLEY, Judge
HONORABLE MARY HANNAH LEAVITT, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE LEAVITT

FILED: February 25, 2010

Joshua J. Kuehler (Claimant) petitions for review of an adjudication of the Unemployment Compensation Board of Review (Board) denying his request for a new hearing and holding that he was ineligible for benefits under Section 402(e) of the Pennsylvania Unemployment Compensation Law (Law).¹ Finding no error in the Board's decision, we affirm.

Claimant was employed by White Horse Village (Employer) as a full-time maintenance mechanic. On December 10, 2008, and December 11, 2008,

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §§751-914. Section 402(e) states that an employee is ineligible for unemployment 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).

Claimant was absent from work without notifying Employer.² On December 16, 2008, Employer terminated Claimant for violating Employer's unexcused absence policy. That policy is set forth in Employer's Employee Handbook as follows:

WHEN UNSCHEDULED ABSENCES FROM WORK OCCUR, TEAM MEMBERS MUST NOTIFY THEIR DIRECTOR/SUPERVISOR. IF THEY CANNOT REACH THEIR DIRECTOR/SUPERVISOR, THEY MUST CALL THE FRONT DESK (558-5000) AND GIVE THEIR NAME, DEPARTMENT AND REASON FOR ABSENCE. THE TEAM MEMBER MUST CALL IN EACH DAY THEY ARE ABSENT FROM WORK UNLESS THEY HAVE BEEN EXCUSED FROM DOING SO BY THEIR DIRECTOR/SUPERVISOR.

If a team member is absent 2 days without notifying their director/supervisor, they will be subject to disciplinary action up to and including termination

Certified Record, Item No. 3, Attachment to Employer Questionnaire (emphasis in original).

Claimant filed for unemployment benefits. His claim was denied by the UC Service Center. Claimant appealed and a hearing was scheduled for April 7, 2009, before a Referee. Claimant did not attend the hearing, and the Referee heard testimony from Employer's representative. Employer's witness verified that Claimant was absent on December 10 and 11, 2008, without notifying Employer. Employer testified that Claimant was discharged for violating Employer's policy prohibiting unscheduled, unexcused absences. Employer submitted an orientation checklist bearing Claimant's signature, which confirmed that he was aware of the policy.

² The record is unclear as to why Claimant was absent for two days.

On April 20, 2009, Claimant requested a new hearing. Claimant claimed that he missed the first hearing because he listed the wrong date in his date book. The Board denied his request, and on June 23, 2009, issued a decision denying Claimant unemployment benefits under Section 402(e) of the Law, 43 P.S. §802(e). Claimant filed a request for reconsideration with the Board, which was denied on July 9, 2009. Claimant now petitions for this Court’s review.

On appeal,³ Claimant’s sole issue is that the Board denied him due process of law by failing to remand the case to the Referee for a new hearing.⁴ Claimant’s claim lacks merit.

If a party fails to appear at the Referee’s hearing, the Board may remand “only where the Board has made an independent determination that the reasons set forth by the party for its failure to appear constitute proper cause.” *Sanders v. Unemployment Compensation Board of Review*, 524 A.2d 1031, 1032 (Pa. Cmwlth. 1987) (citing *McNeill v. Unemployment Compensation Board of Review*, 510 Pa. 574, 578, 511 A.2d 167, 169 (1986)). Proper cause does not include the party’s own negligence. For instance, in *Savage v. Unemployment Compensation Board of Review*, the claimant attributed his absence from the Referee’s hearing to “misreading the date on the notice.” *Savage*, 491 A.2d 947, 949-950 (Pa. Cmwlth. 1985). This Court held that “a claimant’s own negligence is insufficient ‘proper cause,’ as a matter

³ Our review in unemployment compensation cases is limited to determining whether constitutional rights were violated, whether errors of law were committed, or whether findings of fact are supported by substantial evidence. *Sheets v. Unemployment Compensation Board of Review*, 708 A.2d 884, 885 n.3 (Pa. Cmwlth. 1998).

⁴ Claimant’s petition for review states that the Board’s decision “should be reversed because I was unable to represent myself on the scheduled date and give facts in my case. I believe that they have reached a decision based only upon my previous employers [sic] testimony.” Claimant’s Petition for Review filed August 20, 2009. This is another way of saying that Claimant believed the Board should have remanded the matter for a new hearing so that he could present his case.

of law, to justify his failure to appear at a referee's hearing and warrant a new hearing." *Id.* at 950. Accordingly, we held that the claimant's proffered excuse did not constitute proper cause.

The present case is controlled by *Savage*. Claimant missed the Referee's hearing due to his own negligence in recording the incorrect date in his date book. The Board committed no error in denying his request for a remand, nor did it violate Claimant's constitutional rights.

Accordingly, the order of the Board is affirmed.

MARY HANNAH LEAVITT, Judge

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ORDER

AND NOW, this 25th day of February, 2010, the order of the Unemployment Compensation Board of Review dated June 23, 2009, in the above-captioned matter is hereby AFFIRMED.

MARY HANNAH LEAVITT, Judge