

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Uolanda Bailey,	:	
Petitioner	:	
v.	:	No. 162 C.D. 2011
	:	Submitted: July 8, 2011
Unemployment Compensation Board of Review,	:	
Respondent	:	

**BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge**

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE BROBSON**

FILED: September 13, 2011

Petitioner Uolanda Bailey (Claimant) petitions for review of an order of the Unemployment Compensation Board of Review (Board), which reversed a Referee’s decision, finding that Claimant was not ineligible under Section 402(e) of the Unemployment Compensation Law (Law)¹ (relating to willful misconduct) and awarding benefits. For the reasons set forth below, we affirm the Board.

Claimant applied for unemployment compensation benefits after being discharged from her employment as a residential program worker for The Alliance (Employer). The Duquesne UC Service Center (Service Center) found her ineligible under Section 402(e) of the Law. Claimant appealed the Service

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. § 802(e). Section 402(e) of the Law provides, in part, that an employee 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.”

Center's determination, and a hearing was held before a Referee. Following the hearing, the Referee issued a decision, in which she reversed the Service Center's determination and awarded Claimant benefits.

Employer appealed the Referee's determination to the Board. On December 13, 2010, the Board reversed the Referee's decision, concluding that Claimant had engaged in disqualifying willful misconduct. The Board made the following factual findings:

1. The claimant was last employed as a residential program worker by the Alliance from July 8, 2005, at a final rate of \$8.52 per hour and her last day of work was May 9, 2010.
2. The claimant's work entails caring for residents in group homes.
3. On May 9, 2010, the claimant volunteered to work overtime under the contingency that she not be scheduled by herself.
4. The claimant's request was due to her previous recent experience in that particular group home where a new resident would often act out physically.
5. The claimant believed her safety would be in jeopardy if the same behavior was displayed while the claimant was working by herself.
6. The claimant was scheduled to work 3:00 p.m. to 11:00 p.m.
7. Upon reporting for her shift, the claimant realized no one else was scheduled to work.
8. The claimant contacted her supervisor to find out (sic) why another residential program worker was not there and was told that one would not be coming. The claimant requested the supervisor to assist her but the supervisor refused.
9. The claimant continued to call her supervisor but her supervisor hung up on her when she called.

10. The claimant was able to tell her supervisor that she was going to move her residents to the other group home, but was told by her supervisor that was not going to happen.
11. The claimant concluded that it was not safe for her to be in the home alone with the four residents, and she moved them to another home up the street that had two residential program workers and only two residents.
12. The minimum ratio is one residential program worker to every four residents.
13. The claimant did not stay and assist with caring for the six residents but left and went home.
14. The claimant had received prior disciplinary warnings and was or should have been aware that her job was in jeopardy.
15. The claimant was discharged for moving the residents without permission and for leaving the other group home and going home without permission.

(Board's Decision & Order at 1-2, attached to Claimant's Br.) In reversing the Referee and denying benefits, the Board reasoned:

The claimant may have good cause for moving the residents to the other group home without permission due to her safety concern. However, the claimant has not established that she had good cause for not staying at the other group home to help care for the residents. She had agreed to work that shift caring for the residents and she has not established that she had a reasonable concern for her safety after moving the residents. The claimant has not established that she had good cause for going home without permission whether or not the ratios were acceptable if she left. *Accordingly, the Board concludes that the claimant's conduct of leaving work without permission rises to the level of disqualifying willful misconduct.*

(*Id.* at 3 (emphasis added).)

Claimant raises two challenges to the Board's decision.² First, she argues that the Board erred in concluding that Claimant engaged in willful misconduct when she moved the residents in her care to another group home. (Claimant Br. at 11-13.) The Board, however, reached no such conclusion. To the contrary, as noted above, the Board held that Claimant may have had good cause for moving the residents. The Board concluded that her decision to leave work before the end of her shift without permission, however, constituted disqualifying willful misconduct. Accordingly, we reject Claimant's first assignment of error.

Claimant's second argument is that the Board's conclusion that Claimant's decision to leave work before the end of her shift constituted disqualifying willful misconduct is not supported by substantial evidence.³ Alternatively, Claimant, citing *Treon v. Unemployment Compensation Board of Review*, 499 Pa. 455, 453 A.2d 969 (1982), argues that the Board failed to credit the factual findings of the Referee based on uncontradicted evidence or, alternatively, failed to justify its decision to not adopt the Referee's findings.⁴

² This Court's standard of review is limited to determining whether constitutional rights were violated, whether an error of law was committed, or whether necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. § 704.

³ Substantial evidence is defined as relevant evidence upon which a reasonable mind could base a conclusion. *Johnson v. Unemployment Comp. Bd. of Review*, 502 A.2d 738, 740 (Pa. Cmwlth. 1986). In determining whether there is substantial evidence to support the Board's findings, this Court must examine the testimony in the light most favorable to the prevailing party, giving that party the benefit of any inferences that can logically and reasonably be drawn from the evidence. *Id.*

⁴ In *Treon*, the Pennsylvania Supreme Court held that while the Board is the ultimate finder of fact, it may not disregard findings of a referee that are based upon consistent and uncontradicted evidence without providing the reasons for its reversal. *Treon*, 499 Pa. at 461, 453 A.2d at 962.

We note that Claimant does not dispute that she left work before the end of her shift without a supervisor's permission. Instead, Claimant argues that enough workers were present at the home to which she moved the residents in her charge to satisfy the minimum staff-to-patient ratio even with the addition of her residents, thus she had no reason to stay. We agree with the Board, however, that Claimant's focus on the suitability of the staff-to-resident ratio at the time she unilaterally chose to leave work before her shift ended misses the mark. "This Court has consistently held that leaving work early without the employer's permission constitutes willful misconduct unless motivated by good cause or such conduct has been permitted by the employer in the past." *Grispino v. Unemployment Comp. Bd. of Review*, 472 A.2d 288, 289 (Pa. Cmwlth. 1984) (footnotes omitted).

Claimant agreed to work from 3:00 p.m. to 11:00 p.m. so long as she was not left alone with the residents (one in particular). When she realized Employer had scheduled her to work that shift by herself, she took steps to remedy the situation by contacting her supervisor. When those efforts failed, she took the residents in her charge to another home with additional workers, thus addressing her concerns about working alone. Having addressed her concern about being alone with the residents, Claimant should have finished her scheduled shift. She did not. Instead, she left without her supervisor's consent. There is no evidence of record that Employer has permitted its workers to end their scheduled shifts prematurely where they determine that doing so would not adversely affect the staff-to-resident ratio. Accordingly, on the facts found by the Board, which we find are supported by substantial record evidence, the Board appropriately

concluded as a matter of law that Claimant engaged in disqualifying willful misconduct by unilaterally leaving work without good cause to do so.

Finally, we reject Claimant's argument under *Treon*. Claimant fails to cite to a specific finding by the Referee that the Board ignored or to which the Board issued a contrary finding. Accordingly, *Treon* does not apply. We also note that had the Board simply adopted the Referee's factual findings, we would still affirm the Board's legal conclusion that Claimant engaged in disqualifying willful misconduct for the reasons set forth above.

P. KEVIN BROBSON, Judge

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	:	
Respondent	:	

ORDER

AND NOW, this 13th day of September, 2011, the order of the Unemployment Compensation Board of Review is **AFFIRMED**.

P. KEVIN BROBSON, Judge