

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Christopher Sorace,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1673 C.D. 2010
	:	
Unemployment Compensation	:	Submitted: December 30, 2010
Board of Review,	:	
	:	
Respondent	:	

OPINION NOT REPORTED

**MEMORANDUM OPINION  
PER CURIAM**

**FILED: March 10, 2011**

Christopher Sorace (Claimant), pro se, petitions for review from the order of the Unemployment Compensation Board of Review (Board) reversing the decision of the Unemployment Compensation Referee (Referee). The Board found that Claimant is ineligible for unemployment benefits pursuant to Section 402(e) of the Pennsylvania Unemployment Compensation Law due to willful misconduct connected with his work.<sup>1</sup> Claimant argues that the Board’s finding that Claimant threatened his coworkers and employer is not supported by substantial evidence and that his behavior did not rise to the level of willful misconduct. For the reasons that follow, we affirm the Board’s order.

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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).

Claimant filed for unemployment compensation benefits on December 10, 2009, and the Unemployment Compensation Service Center found Claimant ineligible for benefits on January 8, 2010, pursuant to Section 402(e). Claimant appealed and the Referee subsequently reversed on February 22, 2010, finding Claimant eligible for benefits. Meineke Car Care Center (Employer) thereafter filed an appeal of the Referee's determination, which the Board reversed. In determining that Claimant was ineligible for benefits, the Board made the following findings of fact:

1. The claimant was last employed as a manager by Meineke Car Care Center for approximately six months until July 28, 2009, at a final weekly salary of \$500 plus commissions.
2. On five or six occasions, the owner verbally warned the claimant about his allegedly volatile and intimidating behavior toward coworkers and customers.
3. The claimant once told the owner that the mechanics were "worthless pieces of s\*\*\*" and often blamed the mechanics and other coworkers as the reason for his violent outbursts.
4. On at least one occasion, the owner informed the claimant that continued threats toward coworkers and episodes of violent rage could result in termination.
5. On July 28, 2009, the claimant worked from 8 a.m. until approximately 5 p.m.
6. The owner had received complaints from employees that day, which led him to believe that the claimant was continuing to intimidate his coworkers with threats and other violent behavior.
7. Toward the end of the claimant's shift, the owner asked the claimant if they could speak in the owner's office.
8. Before the owner could begin the conversation, the claimant said, "Well I guess I'm f\*\*\*ing fired. Is that what you're f\*\*\*ing doing?"

9. The claimant then told the owner, “I’m going to burn this place down and you’re not going to recognize this place.”

10. The employer discharged the claimant for making threats and engaging in inappropriate workplace behavior.

11. After the claimant left the workplace, the employer reported the incident to police.

12. The employer did not request further police involvement following the initial investigation and report.

(Board Decision and Order, Findings of Fact (FOF) ¶¶ 1-12.) The Board resolved all conflicts in favor of Employer and, therefore, denied benefits based on Claimant’s willful misconduct. Claimant now petitions this Court for review of the order of the Board.<sup>2</sup>

Claimant argues that: (1) the Board’s finding of willful misconduct under Section 402(e) is not supported by substantial evidence; (2) his conduct did not rise to the level of willful misconduct; and (3) the Board erred in reversing the Referee’s credibility determination concerning whether Employer lied about wages and bonuses paid to Claimant.

We first address Claimant’s argument that the Board’s finding of willful misconduct under Section 402(e) is not supported by substantial evidence. Courts define substantial evidence as “such relevant evidence [that] a reasonable mind

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<sup>2</sup> This Court’s review “is limited to determining whether constitutional rights were violated, whether an error of law was committed, whether a practice or procedure of the Board was not followed or whether the findings of fact are supported by substantial evidence in the record.” Bruce v. Unemployment Compensation Board of Review, 2 A.3d 667, 670 n.3 (Pa. Cmwlth. 2010).

might accept as adequate to support a conclusion.” Pearson v. Unemployment Compensation Board of Review, 954 A.2d 1260, 1264 (Pa. Cmwlth. 2008). Furthermore, the Board is the ultimate finder of fact and is “empowered to resolve conflicts in the evidence, to determine the credibility of witnesses, and to determine the weight to be accorded to the evidence.” Stop-N-Go of Western Pennsylvania, Inc. v. Unemployment Compensation Board of Review, 707 A.2d 560, 562 (Pa. Cmwlth. 1998). This Court is bound by the Board’s determinations of fact where there is substantial evidence. Ductmate Industries, Inc. v. Unemployment Compensation Board of Review, 949 A.2d 338, 342 (Pa. Cmwlth. 2008).

The Board found that Claimant engaged in willful misconduct by intimidating his coworkers with threats and other violent behavior, culminating with Claimant telling Employer, “I’m going to burn this place down and you’re not going to recognize this place.” (FOF ¶¶ 6, 9; Referee Hr’g Tr. at 6.) The Employer then discharged Claimant for “making threats and engaging in inappropriate workplace behavior.” (FOF ¶¶ 9, 10; Referee Hr’g Tr. at 5-6.) The Board found that Employer credibly testified as to these facts and that the Claimant’s final threat of violence was the primary reason for his discharge. (Board Decision and Order at 3.) Employer’s credible testimony is substantial evidence which supports the Board’s factual findings. Therefore, the Board’s finding of fact that Claimant made threats is supported by substantial evidence.

We next address Claimant’s argument that his conduct did not rise to the level of willful misconduct. Pursuant to Section 402(e), 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.” Courts have defined “willful misconduct” as:

- a) wanton or willful disregard for an employer's interests; b) deliberate violation of an employer's rules; c) disregard for standards of behavior which an employer can rightfully expect of an employee; or d) negligence indicating an intentional disregard of the employer's interest or an employee's duties or obligations.

Caterpillar, Inc. v. Unemployment Compensation Board of Review, 550 Pa. 115, 123, 703 A.2d 452, 456 (1997). The employer bears the burden of proving that the employee engaged in willful misconduct. Dickey v. Unemployment Compensation Board of Review, 466 A.2d 1106, 1107 (Pa. Cmwlth. 1983). Whether that employee's actions rise to the level of willful misconduct is a question of law and subject to review by this Court. Stop-N-Go, 707 A.2d at 562. This Court has found threatening behavior by an employee sufficient to constitute willful misconduct that disregards the standards of behavior which an employer can rightfully expect from an employee. Unemployment Compensation Board of Review v. Lee, 340 A.2d 586, 588 (Pa. Cmwlth. 1975).<sup>3</sup> Therefore, Claimant's threats and inappropriate workplace behavior constitutes willful misconduct under

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<sup>3</sup> In Lee, the claimant was involved in a dispute in which he demanded his supervisor punch his time card for overtime. The supervisor refused and the claimant became angry, threatened his supervisor with bodily harm, and was thereafter suspended for 5 days. Subsequently, the claimant's suspension was expanded to 30 days, during which time the claimant filed for unemployment benefits. The Board held that the claimant was ineligible for benefits because he had been suspended for willful misconduct, specifically concluding that the claimant's threatening behavior constituted willful misconduct. This Court affirmed the Board's decision, holding that the Board's finding concerning the claimant's threat was supported by substantial evidence.

Section 402(e) as threatening behavior which disregards the standards of behavior an employer can rightfully expect from an employee.

Finally, we address Claimant's argument that the Board erred in reversing the Referee's credibility determination concerning whether Employer lied about wages and bonuses paid to Claimant.<sup>4</sup> By statute, the Board, as the ultimate finder of fact, is entitled to reverse the credibility determination of a referee. Section 504 of the Law, 43 P.S. § 824. The Board may reverse a referee's credibility determination where there is substantial evidence and enough detail to allow meaningful appellate review. McLean v. Unemployment Compensation Board of Review, 686 A.2d 908, 909 (Pa. Cmwlth. 1996). Here, the Board did not credit Claimant's testimony that Employer lied about wages and bonuses. Moreover, the Board did not find this argument relevant to Claimant's discharge or to the issue of whether Claimant committed willful misconduct. (Board Decision and Order at 3.) We agree that Employer's credible testimony explained that Claimant had a misunderstanding regarding a "bonus," which, in any event, is not relevant to whether Claimant's threatening behavior constituted willful misconduct. Because the Board is entitled to reverse the referee's credibility determination, and had

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<sup>4</sup> Although Claimant does not explicitly raise an argument regarding the Board's credibility determinations, Claimant's argument concerning the differences between his testimony and Employer's testimony regarding whether Claimant received a bonus is an apparent attempt to impeach the Employer's credibility concerning the reason for Claimant's termination. Claimant argues that the bonus consisted of Employer paying for hunting rifle scopes at Cabela's in May 2009 as a reward for Claimant's work performance. (Referee Hr'g Tr. at 13-14.) Employer credibly testified that Claimant did not receive a bonus, only received a standard pay increase upon assuming the position of store manager in March 2009, and that the rifle scopes were unrelated to his employment.

substantial evidence and enough detail to allow for meaningful appellate review, Claimant's argument is without merit.

Accordingly, because the Board's findings are supported by substantial evidence and Claimant's threatening behavior rises to the level of willful misconduct connected with his work under Section 402(e), Claimant is ineligible for unemployment compensation. For these reasons, we affirm the Board's order.

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Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

**PER CURIAM**

**ORDER**

**NOW**, March 10, 2011, the Order of the Unemployment Compensation Board of Review in the above-captioned matter is hereby **AFFIRMED**.