

digits of their social security number and registering their fingerprint.

3. The claimant refused to comply with the policy alleging that the policy was a violation of her privacy.

4. The employer provided the claimant with information to establish that there was no right to privacy with the claimant's fingerprint and that the company directive did not violate her rights.

5. The claimant reiterated her refusal to comply with the policy.

6. The employer discharged the claimant for failure to follow a company directive.

7. The claimant was not discharged because she had filed a sexual harassment complaint against her co-workers.

Board Opinion, December 24, 2009, (Opinion), Findings of Fact (F.F.) Nos. 1-7 at 1-2; Reproduced Record (R.R.) at 1A-2A.

The Board determined:

The employer credibly established the reasonableness of its directive which implemented a time clock system to record arrival and departure times of employees. The system required that employees punch in with the last four digits of their social security number along with their fingerprint. The employer also established that the claimant refused to comply with the policy alleging that the system violated her rights. The employer presented the claimant with information to establish that the claimant's rights were not being violated but the claimant refused anyway. The Board finds that the employer's request for employees to comply with the time clock system was reasonable. The claimant's response was not reasonable. Under these circumstances, the employer has

met its burden to prove that the claimant's refusal constitutes willful misconduct under Section 402(e)

Opinion at 3; R.R. at 3A.

Claimant contends that the Board erred when it concluded that her actions constituted willful misconduct.³ Essentially, Claimant avers that the Board's findings of fact, specifically Nos. 3-7, are not supported by substantial evidence and that the Board committed an error of law in determining that Claimant engaged in willful misconduct.

I. The Board's Findings of Fact

Claimant contends that the Board's findings of fact, specifically Nos. 3-7, were not supported by substantial evidence. However, when asked by the referee during the October hearing if she in fact refused to comply with the policy, Claimant indicated that she *did* refuse to comply with the policy. Claimant testified, "That's right... I never actually gave my fingerprints." Notes of Testimony, October 6, 2009 (N.T. 10/6/09) at 22; R.R. at 26A.

Here, Employer established that Claimant refused to follow a company policy regarding a new time clock system, which required *all* employees to electronically record their arrival and departure times by entering the last four digits of their social security number and placing their fingerprint on a reader to be

³ This Court's review in an unemployment compensation case is limited to a determination of whether constitutional rights were violated, errors of law were committed, or findings of fact were not supported by substantial evidence. Lee Hospital v. Unemployment Compensation Board of Review, 637 A.2d 695 (Pa. Cmwlth. 1994).

registered. Robert Nelson (Nelson), Philadelphia Opportunities Industrialization Center (Employer) President and CEO, testified:

From the very beginning... Eva [Claimant] refused to comply with that process^[4]... [I]t was a policy of the organization that everybody needed to comply including myself... I met with her, look this is what you're required to do and then saying to me if you are not going to comply with the policy. She said yes. I repeated it about three times and then I call in Kevin [Cafferky, Employer's Controller] and I said to her I want Kevin to witness this primarily because I don't [want it] to [e]volve into a he said, she said. Kevin came in and I repeated the same question. Are you now telling me, as the president of this organization, that you do not intend to comply with the new policy in this organization? And she said yes.

Notes of Testimony, July 15, 2009 (N.T. 7/15/09) at 4; R.R. at 43A.

Regarding Claimant's assertion that she was fired because she filed a sexual harassment claim against co-workers, she testified that she believed the true cause of her termination was due to "something based on the tense relationship that

⁴ Nelson described the process:

We instituted a new time clock system. For many [sic] number of years we've been using these paper sign-in sheets which got to be cumbersome and not terribly transparent. So, what we did we instituted a new time clock system where as people who would come into the building would literally clock in and the way they would clock in was there was a code that everyone had individually which is the last four digits of their Social Security Number and there was a sensor on top of the clock which basically was just your fingerprint. Everybody that works at 1231 North Broad Street was required to sign-in in that regard.

N.T. 7/15/09 at 4; R.R. at 43A.

has been established from me reporting discriminated sexual harassment to management.” N.T. 10/6/09 at 29; R.R. at 33A. In opposition, Nelson testified, “There’s absolutely no correlation between the two things whatsoever.” N.T. 10/16/09 at 30; R.R. at 34A. The “two things” Nelson referenced were, one, Claimant being fired as a result of her refusal to comply with policy and, two, a separate incident involving Claimant’s report of alleged sexual harassment to management, which Claimant believed was the actual reason for her termination.

The Board was free to find Claimant’s testimony credible but did not. In unemployment compensation proceedings, the Board is the ultimate fact-finding body empowered to resolve conflicts in evidence, to determine the credibility of witnesses, and to determine the weight to be accorded evidence. Unemployment Compensation Board of Review v. Wright, 347 A.2d 328 (Pa. Cmwlth. 1975). Findings of fact are conclusive upon review provided that the record, taken as a whole, provides substantial evidence to support the findings. Taylor v. Unemployment Compensation Board of Review, 474 Pa. 351, 378 A.2d 829 (1977). This Court determines that the findings of fact challenged by Claimant were clearly supported by substantial evidence.

II. Did the Board Commit an Error of Law?

Claimant argues that the Board committed an error of law by finding she committed willful misconduct. Claimant asserts that Employer did not carry its burden to prove she deliberately violated organizational policy. In addition, Claimant contends that even assuming *arguendo* that she did commit willful misconduct, she had just cause for doing so because she was concerned about the

manner in which her social security number and fingerprint would be stored and secured.

Whether a Claimant's conduct rises to the level of willful misconduct is a question of law subject to this Court's review. Lee Hospital v. Unemployment Compensation Board of Review, 589 A.2d 297 (Pa. Cmwlth. 1991). Willful misconduct is defined as conduct that represents a wanton and willful disregard of an Employer's interest, deliberate violation of rules, disregard of standards of behavior which an Employer can rightfully expect from the employee, or negligence which manifests culpability, wrongful intent, evil design, or intentional and substantial disregard for the Employer's interest or employee's duties and obligations. Frick v. Unemployment Compensation Board of Review, 375 A.2d 879 (Pa. Cmwlth. 1977). The Employer bears the burden of proving that it discharged an employee for willful misconduct. City of Beaver Falls v. Unemployment Compensation Board of Review, 441 A.2d 510 (Pa. Cmwlth. 1982). The Employer bears the burden of proving the existence of the work rule and its violation. Once the Employer establishes that, the burden then shifts to the Claimant to prove that the violation was for good cause. Peak v. Unemployment Compensation Board of Review, 509 Pa. 267, 501 A.2d 1383 (1985).

Nelson credibly testified that Employer established a mandatory policy regarding the new time clock system. It is undisputed that Claimant was aware of the policy. Claimant admitted she refused to comply with the policy. Clearly, Employer established the existence of the work rule and its violation.

Claimant attempted to establish just cause for her failure to comply:

I was uncomfortable giving my private information, sending in my fingerprints without information on how it was going to be so secure. No training on anything was given to me and I asked for information on the system. And those questions was [sic] never addressed and that just really added, I was a little bit more apprehensive when my questions wasn't [sic] addressed.

N.T. 10/6/09 at 10; R.R. at 14A.

Nelson testified that Claimant's fears had no merit:

She [Claimant] then raised an issue which she continued to raise throughout that period of time in terms of she considered that an invasion of privacy or it was illegal, it violated levels of confidentiality [sic]. I said it doesn't do any of that. It's just – fingerprint doesn't go anywhere. It's just an identification of [sic] vehicle for us.

N.T. 7/15/09 at 4; R.R. at 43A.

The Board accepted Employer's testimony that the information needed for the new time clock system was reasonable and would not compromise Claimant's expectation of privacy. Once again, the Board was the fact finder. Claimant failed to establish just cause for her refusal. Claimant's repeated refusals constituted willful misconduct.

Accordingly, this Court affirms.

BERNARD L. MCGINLEY, Judge

