

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Brenda Knox, :
 :
 Petitioner :
 :
 :
 v. : No. 177 C.D. 2010
 : Submitted: December 10, 2010
 :
 Unemployment Compensation Board of :
 Review, :
 :
 Respondent :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE DAN PELLEGRINI, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FRIEDMAN

FILED: January 24, 2011

Brenda Knox (Claimant) petitions for review of the January 28, 2010, order of the Unemployment Compensation Board of Review (UCBR), which affirmed the decision of a referee to deny Claimant unemployment benefits pursuant to section 402(e) of the Unemployment Compensation Law (Law).¹ We affirm.

Claimant worked for Intercontinental Hotels Group (Employer) as a full-time laundry assistant. Employer has a policy against the inappropriate disposal of linens, which provides that: (1) stained linens are to be committed to the rag system rather than thrown away; (2) any disposal of stained linens requires approval from the

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 states that a claimant shall be ineligible for unemployment compensation for any week in which his or her unemployment is due to discharge or suspension from work for willful misconduct connected with his or her work. 43 P.S. §802(e).

Director of Housekeeping; and (3) an employee can be terminated for a violation of the policy. Claimant was aware of the policy. (Referee’s Findings of Fact, Nos. 1-5.)

On September 8, 2009, Claimant disposed of three large trash bags of linens without proper approval. Employer discharged Claimant for violation of the policy requiring appropriate authorization to dispose of the linens. (Referee’s Findings of Fact, Nos. 6-8.)

Claimant applied for unemployment benefits, and the local service center determined that Claimant was eligible for benefits. Employer filed an appeal, and a hearing was held before a referee. At the hearing, Claimant testified that she had forgotten the rule and that Employer had an abundance of linens. The referee found Claimant ineligible for benefits, stating that the law “does not recognize forgetting rules as good cause for violating them.” (Referee’s Op. at 2.) Claimant appealed to the UCBR, which adopted the referee’s findings and conclusions and affirmed. Claimant now petitions this court for review.²

Claimant raises one issue in her statement of questions involved, i.e., whether the UCBR committed an error of law because its “findings of fact are not supported by the required substantial evidence.” (Claimant’s Brief at 4.) However, in the argument portion of her brief, Claimant presents an entirely different issue, i.e.,

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

whether the UCBR erred in concluding that her *de minimis* violation of Employer’s policy constituted willful misconduct. (Claimant’s Brief at 14-15.)

Under Pa. R.A.P. 2116(a), this court will consider no question unless it is stated in the statement of questions involved or is fairly suggested thereby. Under Pa. R.A.P. 2119(a), the argument portion of a brief shall contain as many parts as there are questions to be argued, and each part shall contain the particular point followed by such discussion and citation of authorities as are deemed pertinent. Here, because Claimant does not raise the *de minimis* issue in her statement of questions involved, the issue will not be considered. Because Claimant does not discuss whether the record lacks substantial evidence to support the UCBR’s findings in the argument portion of her brief, that issue is also waived.

Accordingly, we affirm.³

ROCHELLE S. FRIEDMAN, Senior Judge

³ The *de minimis* rule is that a single dereliction of a minor, casual or insignificant nature will not constitute willful misconduct. *Loder v. Unemployment Compensation Board of Review*, 296 A.2d 297, 300 (Pa. Cmwlth. 1972). We note, however, that Employer presented evidence to show that Claimant had other “write-ups.” (See Claimant’s Brief at 6, citing N.T. at 5.) Thus, although Claimant asserts in making her *de minimis* argument that her work record was otherwise “spotless,” (Claimant’s Brief at 14), the record does not support that assertion.

We also note that, under *General Electric Company v. Unemployment Compensation Board of Review*, 411 A.2d 578, 580 (Pa. Cmwlth. 1980), the *de minimis* argument has no place in cases involving a deliberate violation of an employer’s rules. Claimant testified that she violated the policy because she forgot, suggesting that the violation was not intentional. However, Claimant also testified that she violated the policy because Employer had an abundance of linens, suggesting that the violation was intentional. (See Claimant’s Brief at 8, citing N.T. at 7-8.)

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

| | | |
|------------------------------------|---|-------------------|
| Brenda Knox, | : | |
| | : | |
| Petitioner | : | |
| | : | |
| v. | : | No. 177 C.D. 2010 |
| | : | |
| Unemployment Compensation Board of | : | |
| Review, | : | |
| | : | |
| Respondent | : | |

ORDER

AND NOW, this 24th day of January, 2011, the order of the Unemployment Compensation Board of Review, dated January 28, 2010, is hereby affirmed.

ROCHELLE S. FRIEDMAN, Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Brenda Knox, :
Petitioner :
 :
v. : No. 177 C.D. 2010
 : Submitted: December 10, 2010
Unemployment Compensation :
Board of Review, :
Respondent :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE DAN PELLEGRINI, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

CONCURRING OPINION
BY JUDGE PELLEGRINI

FILED: January 24, 2011

Because Brenda Knox's (Claimant) brief makes out a clear, if inartfully-headed, argument that the Unemployment Compensation Board of Review's (Board) findings of fact were not supported by substantial evidence, I disagree with the majority's decision to dismiss the appeal on procedural grounds but will instead address the merits of the case.

The majority dismisses the appeal on procedural grounds stating that Claimant raises the issue of whether the Board's findings of fact are supported by substantial evidence but then never addresses this contention in the "argument" section on her brief, which instead presents the entirely different issue of whether her violation of Intercontinental Hotels Group's (Employer) work rule was *de minimis*. However, Claimant did make out a substantial evidence argument in her brief, although part of it was in the argument section and part of it was in the section

entitled “summary of the case.” Between both sections, though, the argument was fully made. Furthermore, the *de minimis* violation contention that Claimant also made represents only a small portion of Claimant’s argument.

Because the appeal is capable of judicial review, we should address Claimant’s argument that there was not substantial evidence to support a finding that she should be denied benefits because of her willful misconduct. Adopting the Referee’s findings, the Board found that Employer had a policy making the disposal of linens terminable without approval from the Director of Housekeeping and that Claimant was aware of the policy. Before the Referee, Bob Williamson, the Director of Housekeeping, testified that Employer has a “no discard” policy for stained linens and that he told Claimant and other laundry workers about this policy several months before Claimant’s discharge due to some prior issues with this rule. (Certified Record, Transcript, p. 7). Claimant testified that she had been aware of the policy, but had forgotten it on the day in question. (Certified Record, Transcript, p. 8). The Referee credited Williamson’s testimony, finding that Claimant was aware of the policy and violated it. Because there was substantial evidence supporting this finding,⁴ I would affirm on the merits.

DAN PELLEGRINI, JUDGE

⁴ Substantial evidence is relevant evidence that a reasonable mind might consider adequate to support a conclusion. *Popoleo v. Unemployment Compensation Board of Review*, 777 A.2d 1252, 1255 (Pa. Cmwlth. 2001).