

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Edith D. Tyler,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
Unemployment Compensation Board	:	
of Review,	:	No. 186 C.D. 2010
	:	
Respondent	:	Submitted: August 20, 2010

BEFORE: HONORABLE DAN PELLEGRINI, Judge  
HONORABLE PATRICIA A. McCULLOUGH, Judge  
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY  
JUDGE BUTLER

FILED: September 30, 2010

Edith D. Tyler (Claimant) petitions for review of the January 6, 2010 order of the Unemployment Compensation Board of Review (UCBR) reversing the Referee's grant of benefits. The issue before this Court is whether the UCBR erred in determining that Transport U, LLC (Employer) met its burden of proving willful misconduct.<sup>1</sup> For the reasons that follow, we affirm the UCBR.

Claimant was a full-time driver for Employer from September of 2008 until July 21, 2009. Due to mechanical problems with her usual van, Claimant was assigned to drive Van 210 on July 17, 2009. While using Van 210, Claimant heard a noise coming from one of the wheels and discovered that the parking brake did not

---

<sup>1</sup> The UCBR raised the issue of waiver based on its contention that Claimant failed to specifically challenge any of the UCBR's findings. However, since Claimant's amended petition for review clearly raised the specific reasons for her appeal, the waiver issue will not be discussed herein.

operate. Employer's mechanic checked out the van and determined it was safe to drive. On July 21, 2009, at the end of her shift, Claimant was told that she would be assigned to Van 210 on July 22, 2010. She advised Employer that she would not drive Van 210 because she felt the vehicle was unsafe. Employer's mechanic checked out the van again and declared it safe to drive. Claimant requested another van but there were none available. On July 22, 2009, Claimant reported for work and was told that there was no work available for her because she would not drive Van 210. Employer discharged her for refusing to drive her assigned van.

Claimant filed for unemployment compensation (UC) benefits, and the UC Service Center denied her application pursuant to Section 402(b) of the Unemployment Compensation Law (Law).<sup>2</sup> Claimant appealed, and a hearing was held before the Referee. The Referee reversed the decision of the UC Service Center and granted Claimant benefits pursuant to Section 402(b) of the Law. Employer filed an appeal with the UCBR. The UCBR issued an order, dated January 6, 2010, reversing the Referee's order and denying Claimant's benefits pursuant to Section 402(e) of the Law.<sup>3</sup> Claimant appealed to this Court.<sup>4</sup>

Claimant argues that she never refused to work; instead, she simply wanted a safe van to drive. In addition, she claims that all of the vans were already assigned when she reported to work on July 22, 2009. Further, Claimant argues that there was no substantial evidence to show that Employer's policy was reasonable.

---

<sup>2</sup> Act of December 5, 1936, Second Ex.Sess., P.L. (1937) 2897, *as amended*, 43 P.S. § 802(b).

<sup>3</sup> 43 P.S. § 802(e). The UCBR stated in its order that the parties were advised through the hearing notice that both Sections 402(b) and 402(e) of the Law would be at issue in this case. UCBR Order at 2.

<sup>4</sup> This Court's review is limited to determining whether the findings of fact were supported by substantial evidence, whether constitutional rights were violated, or whether errors of law were committed. *Johnson v. Unemployment Comp. Bd. of Review*, 869 A.2d 1095 (Pa. Cmwlth. 2005).

“Whether a claimant’s conduct constituted willful misconduct is a question of law subject to this Court’s review. Further, the employer bears the burden of establishing that the claimant was discharged for willful misconduct on the job.” *Roberts v. Unemployment Comp. Bd. of Review*, 977 A.2d 12, 16 (Pa. Cmwlth. 2009) (citation omitted).

For behavior to constitute willful misconduct, the employee’s behavior must evidence (1) the wanton and willful disregard of the employer’s interest; (2) the deliberate violation of work rules; (3) the disregard of standards of behavior which an employer can rightfully expect from his employee; or (4) negligence which manifests culpability or wrongful disregard of the employer’s interests, or obligations.

*Zimmerman v. Unemployment Comp. Bd. of Review*, 836 A.2d 1074, 1078-79 (Pa. Cmwlth. 2003). An employer “must present evidence indicating that the conduct was of an intentional and deliberate nature” in order to prove willful misconduct. *Grieb v. Unemployment Comp. Bd. of Review*, 573 Pa. 594, 600, 827 A.2d 422, 426 (2003). “Where an employee is discharged for refusing or failing to follow an employer’s directive, both the reasonableness of the demand and the reasonableness of the employee’s refusal must be examined.” *Dougherty v. Unemployment Comp. Bd. of Review*, 686 A.2d 53, 54 (Pa. Cmwlth. 1996).

Claimant complained of a safety issue related to Van 210’s parking brake. Employer’s mechanic inspected the van and declared it safe to drive on July 21, 2009. Notes of Testimony, 10/21/2009, Item 10 (N.T.) at 20. Claimant was told that she would be assigned to Van 210 on July 22, 2009 because that was the only vehicle that was available and, if she did not accept her assignment, Employer would consider her refusal as voluntarily quitting her job. N.T. at 11, 15-16. Claimant continued to refuse to drive Van 210.

Clearly, Claimant was given a directive from her Employer which was reasonable, since Employer's mechanic checked the vehicle and found that it was safe to drive. Claimant's refusal to drive after the mechanic inspected the van and declared it to be safe was unreasonable. Therefore, Employer met its burden of proving that Claimant committed willful misconduct.

For these reasons, the order of the UCBR is affirmed.

---

JOHNNY J. BUTLER, Judge

Judge McCullough dissents.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Edith D. Tyler,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
Unemployment Compensation Board	:	
of Review,	:	No. 186 C.D. 2010
	:	
Respondent	:	

ORDER

AND NOW, this 30<sup>th</sup> day of September, 2010, the January 6, 2010 order of the Unemployment Compensation Board of Review is affirmed.

---

JOHNNY J. BUTLER, Judge