

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Thomas R. Joyce,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
Unemployment Compensation	:	
Board of Review,	:	No. 1883 C.D. 2010
	:	
Respondent	:	Submitted: February 25, 2011

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER

FILED: April 13, 2011

Thomas R. Joyce (Claimant) petitions this Court for review of the July 13, 2010 order of the Unemployment Compensation Board of Review (UCBR) affirming the decision of a Referee and denying benefits. Essentially there are two issues before the Court: (1) whether the UCBR's decision was supported by substantial evidence and (2) whether the UCBR capriciously disregarded relevant evidence. For the reasons that follow, we affirm the UCBR's order.

Claimant was hired by New Castle Candy (Employer) as an account manager beginning March 26, 2009 and ending December 23, 2009. On December 23, 2009 a temporary employee had been issued a paycheck from Career Advantage, a temporary employment agency, for a lesser amount than what was due in compensation for services rendered to Employer. Career Advantage then arranged for Employer to pay the temporary employee the difference between what was due and what was paid, with the understanding that the discrepancy would be worked out

between Employer and Career Advantage at a later date. Accordingly, Employer directed Claimant to write a check to the temporary worker for the amount he was underpaid. Claimant refused. Employer then terminated Claimant for failure to follow a directive.

Claimant subsequently applied for Unemployment Compensation (UC) benefits. On February 19, 2010 the Duquesne UC Service Center mailed a notice of determination denying benefits under Section 402(e) of the Unemployment Compensation Law (Law).¹ Claimant appealed and a hearing was held by a Referee. On April 28, 2010, the Referee mailed his decision affirming the determination of the UC Service Center. Claimant appealed to the UCBR. The UCBR affirmed the decision of the Referee. Claimant appealed to this Court.²

Claimant argues that the UCBR erred in affirming the Referee's decision. Specifically, Claimant contends the UCBR's determination that Employer discharged him for willful misconduct was not supported by substantial evidence. We disagree.

"Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *City of Pittsburgh, Dep't of Pub. Safety v. Unemployment Comp. Bd. of Review*, 927 A.2d 675, 676 n.1 (Pa. Cmwlth. 2007) (quotation marks omitted). Claimant was found ineligible for benefits on the basis of willful misconduct.

Section 402(e) of the Law provides that an employee is ineligible for unemployment compensation benefits when his unemployment is due to discharge from work for willful

¹ Act of December 5, 1936, Second Ex.Sess., P.L. (1937) 2897, *as amended*, 43 P.S. § 802(e).

² 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).

misconduct connected to his work. The employer bears the burden of proving willful misconduct in an unemployment compensation case. Willful misconduct has been defined as (1) an act of wanton or willful disregard of the employer's interest; (2) a deliberate violation of the employer's rules; (3) a disregard of standards of behavior which the employer has a right to expect of an employee; or (4) negligence indicating an intentional disregard of the employer's interest or a disregard of the employee's duties and obligations to the employer.

Dep't of Transp. v. Unemployment Comp. Bd. of Review, 755 A.2d 744, 747 n.4 (Pa. Cmwlth. 2000) (citation omitted).

At the hearing before the Referee, Tom Joseph, Employer's president, testified as follows:

We asked [Claimant] to cut the check for the [temp employee]. [Claimant] explained that he had a personal problem with the temp employee and that he didn't want to write the check. And when I insisted that he write the check he still insisted that he wouldn't. And it went back and forth a couple times and finally my son told [Claimant] are you aware that you're being insubordinate and that you – you're paid to do this job. When we ask you to write a check you write the check, it's not personal. At that point [Claimant] said you got to do what you got to do. And my son again warned him in my presence, are you sure you don't want to just write this check because it's going to cost you your job if you don't do this. And he said you got to do what you got to do, if that's what you got to do go ahead. So my son said okay then, you're fired.

Original Record (O.R.), Item No. 15 at 5. Clearly, this is relevant evidence that a reasonable mind might accept as adequate to support the conclusion that Claimant's actions demonstrated a disregard for Employer's interests, departed from standards of conduct that Employer had the right to expect of Claimant, and were taken in disregard of Claimant's duties and obligations to Employer. Accordingly, the UCBR's decision was supported by substantial evidence.

Claimant next argues that the UCBR capriciously disregarded relevant evidence. Claimant contends the Employer admitted that Claimant was terminated from his employment for refusing to issue a *payroll* check to a non-employee. Given that he was directed to issue a *payroll* check to someone who was not on the company payroll, Claimant argues the directive was unreasonable, and Claimant's refusal was reasonable. Specifically, Claimant contends Employer made the admission in Claimant's Employer Questionnaire when it wrote that Claimant was discharged because he refused to write a paycheck. We disagree.

We recognize that where a claimant has good cause to refuse a reasonable work assignment, he is not guilty of willful misconduct. *Eckenrode v. Unemployment Comp. Bd. of Review*, 533 A.2d 833 (Pa. Cmwlth. 1987). However, the UCBR as fact finder found that Employer directed Claimant to write "a check" and Claimant unreasonably refused. According to Employer, Claimant did so citing only his personal problem with the temporary worker. The UCBR concluded that Claimant "presented no competent evidence to substantiate that the check that the employer directed the claimant to write was indeed a payroll check." O.R., Item No. 20. The fact that Claimant testified he did not write the check because he thought it was a payroll check, and it was illegal to write a payroll check to a non-employee is of no consequence because the UCBR chose to accept Employer's testimony and reject Claimant's testimony. "To accord greater credibility to one witness' testimony than to that presented by others is simply a manifestation of the [UCBR's] fact-finding role and does not constitute a capricious disregard of evidence." *Borough of Tyrone v. Unemployment Comp. Bd. of Review*, 415 A.2d 146, 148 (Pa. Cmwlth. 1980). Accordingly, we conclude that the UCBR did not capriciously disregard relevant evidence.

For all of the above reasons, the order of the UCBR is affirmed.

JOHNNY J. BUTLER, Judge

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ORDER

AND NOW, this 13th day of April, 2011, the July 13, 2010 order of the Unemployment Compensation Board of Review is affirmed.

JOHNNY J. BUTLER, Judge