IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Nathan Brown,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1895 C.D. 2009
	:	Submitted: February 12, 2010
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FLAHERTY FILED: April 22, 2010

Nathan Brown (Claimant) petitions for review of the order of the Unemployment Compensation Board of Review (Board), which reversed the referee's decision and disqualified Claimant from receiving unemployment benefits under Section 402(e) of the Unemployment Compensation Law (Law).[1] We affirm.

[1] Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. §802(e). This court has defined willful misconduct under Section 402(e) of the Law as:

> [A] wanton and willful disregard of an employer's interest, a deliberate violation of rules, a disregard of standards of behavior which the employer can rightfully expect from its employee, or negligence which manifests culpability, wrongful intent, evil design, or intentional and

Footnote continued on next page…

The Claimant was employed by G C Fire Protection Systems (Employer) as a sprinkler-fitter from August 11, 2008 through March 25, 2009. He was paid a flat rate of fifteen ($15.00) dollars per hour. The Board made the following findings of fact:

> 2. The employer had a project at a customer's facility in Hazleton, PA that required parts in order to bring the customer's fire protection system back into operation.
>
> 3. The claimant had been to the customer's facility on March 24, 2009, to assess the job, and was aware that the parts were ordered for the job.
>
> 4. On March 25, 2009, the claimant was working at another location when the parts for the Hazleton job were delivered to him.
>
> 5. The delivery person informed the claimant that the claimant's supervisor had directed the claimant to take the parts to the Hazleton location and complete the repair.
>
> 6. The claimant responded that his supervisor could "go f**k himself because he [the claimant] was not driving to Hazleton two days in a row."
>
> 7. The delivery person relayed the claimant's response back to the supervisor.
>
> 8. The claimant had previously expressed his displeasure with driving to Hazleton due to the mileage.

> substantial disregard for the employer's interests or the employee's duties and obligations.

Brady v. Unemployment Compensation Board of Review, 544 A.2d 1085, 1086 (Pa. Cmwlth. 1988).

> 9. The claimant did not leave with the parts for the Hazleton location until directed by another foreman to do so several hours later.
>
> 10. The delay caused bad relations with the employer's customer.
>
> 11. The claimant was discharged for refusing to immediately report to the Hazleton location with the required parts, and for disrespecting his supervisor.

Board's Decision, September 2, 2009, Findings of Fact Nos. 2-11, at 1-2.

The Board determined in pertinent part as follows:

> The Board credits the testimony of the employer's witness that he did pass along the directive from the claimant's supervisor when the parts were delivered that the claimant was to report to the Hazleton location with the parts and make the repair. The claimant denied that the delivery driver provided such directive and asserted that he was not aware he was required to report to the Hazleton location until directed by another foreman to do so. The Board discredits the claimant's testimony. Of particular note is the information the claimant supplied to the Department when initially applying for benefits. The claimant indicated that his supervisor "never personally called and told me to report to the another [sic] new different job site at the Residence Inn in Hazleton on 3/24." (initial Internet Claims Form) This response suggests an admission that the claimant received the directive, albeit not directly from the supervisor. The Board further credits the delivery person's testimony as to the claimant's response to the directive. The claimant clearly was aware that he was required to immediately report to the other location and make the necessary repair to a customer's fire protection system, but simply refused to do so until later

> directed by another foreman. The claimant has not established good cause for his refusal to comply with the employer's reasonable directive, nor has he shown good cause for his insubordinate response to the directive. The employer has met its burden of proving willful misconduct in connection with the claimant's discharge. The record shows that the parties had the opportunity for a full and fair hearing. The record is sufficiently complete to enable the Board to reach its decision. The appellant has not advanced good cause for the granting of a remand hearing. Therefore, the appellant's request for a remand hearing is denied.

Board's Decision at 3. The Board found Claimant ineligible for benefits pursuant to Section 402(e) of the Law. Claimant petitioned this court for review.[2]

Claimant contends that the Board erred in determining that Employer's appeal was timely and in reversing the referee's decision. Specifically, Claimant contends that Employer's letter of appeal, dated June 25, 2009 and post-marked by a private postage meter that same date, does not have a form PS 3817 to evidence the date of mailing and that a private postage meter mark is not acceptable proof of mailing. Additionally, Claimant maintains that he did not commit willful misconduct.

First, we will address Claimant's issue regarding the timeliness of Employer's appeal to the Board. We note that in accordance with Section 501 of the Act, 43 P.S. §821, a Claimant or an Employer has fifteen days

[2] Our review is limited to a determination of whether constitutional rights have been violated, errors of law committed, or whether essential findings of fact are supported by substantial evidence. Brady v. Unemployment Compensation Board of Review, 544 A.2d 1085 (Pa. Cmwlth. 1988).

following notice of an unemployment compensation determination within which to file an appeal. The referee's decision was mailed on June 10, 2009 and stated that the final date to appeal the decision was June 25, 2009. Employer's appeal was dated June 25, 2009 and was mailed in an envelope bearing only a private postage meter mark dated June 25, 2009.

Section 101.82(b)(1)(ii) of the Board's regulations provides that "[i]f there is no official United States Postal Service postmark, United States Postal Service Form 3817 or United States Postal Service certified mail receipt," then the date of the appeal's filing will be "the date of a postage meter mark on the envelope containing the appeal." 34 Pa. Code § 101.82(b)(1)(ii). Here, as Employer's appeal was mailed in an envelope bearing a postage meter mark dated June 25, 2009, the final day of Employer's appeal period, it was timely per Section 101.82(b)(1)(ii). See, Moran v. Unemployment Compensation Board of Review, 973 A.2d 1024 (Pa. Cmwlth. 2009)(Employer's appeal was timely based upon envelope bearing a postage meter mark).

Claimant further contends that he did not commit willful misconduct. Claimant argues that he was at the Dallas job site at the direction of his superintendant, that a foreman called him from Hazleton to go to the Hazelton job site and that he complied. Claimant stated that he completed the Hazelton job as well as another job that same date. He clearly completed the tasks requested, there were no complaints about his work quality and he had stayed late the day before to work on the Hazleton job. Claimant stated that the only negative testimony was from a current

employee of Employer, and as such, should be suspect by the nature of his ongoing employment.

An employer has the burden of proving that willful misconduct was committed by an employee. Hartley v. Unemployment Compensation Board of Review, 379 A.2d 477 (Pa. Cmwlth. 1979). In Orend v. Unemployment Compensation Board of Review, 821 A.2d 659 (Pa. Cmwlth. 2003), our Court determined that willful misconduct includes a disregard of standards of behavior that the employer has a right to expect from an employee. Where an employee has been discharged for refusal or failure to follow a specific directive of the employer, both the reasonableness of the employer's request and the reasonableness of the employee's refusal must be examined. Frumento v. Unemployment Compensation Board of Review, 466 Pa. 81, 351 A.2d 631 (1976).

Employer established that Claimant's supervisor requested that Claimant travel to another location with the parts necessary to repair a customer's fire protection system. Claimant responded by telling the person who told him of the supervisor's directive that the supervisor could "go f**k himself" and did not leave with the parts until several hours later, after being directed to do so again by another foreman. The delay caused bad relations between Employer and the customer. Thus, Employer established willful misconduct.

Once Employer established willful misconduct, the burden shifted to Claimant to show "just cause" for his actions. Mulqueen v. Unemployment Compensation Board of Review, 543 A.2d 1286 (Pa. Cmwlth. 1988). Claimant stated that he had conflicting orders and was

unhappy about traveling to this other location two days in a row. The Board found Claimant's testimony not credible. The Board found Employer and Employer's witness' testimony credible. All credibility determinations are made by the Board. The weight given the evidence is within the discretion of the factfinder. Fitzpatrick v. Unemployment Compensation Board of Review, 499 Pa. 455, 453 A.2d 960 (1982). The Board determined that Claimant was directed by Employer to go to another location with parts and repair their fire system, that Claimant refused and disrespected his supervisor. The Board's determination that Claimant was discharged for willful misconduct was supported by substantial evidence.

Accordingly, we affirm.

JIM FLAHERTY, Senior Judge

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	:	
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O R D E R

AND NOW, this 22nd day of April, 2010, the order of the Unemployment Compensation Board of Review in the above captioned case, is affirmed.

JIM FLAHERTY, Senior Judge