

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Pittsburgh Transportation Group/	:	
Yellow Cab Company of Pittsburgh,	:	
Petitioner	:	
	:	
v.	:	No. 1915 C.D. 2010
	:	Submitted: February 11, 2011
Unemployment Compensation Board of	:	
Review,	:	
Respondent	:	

BEFORE: HONORABLE BERNARD L. MCGINLEY, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FRIEDMAN

FILED: March 17, 2011

Pittsburgh Transportation Group/Yellow Cab Company of Pittsburgh (Employer) petitions for review of the August 20, 2010, order of the Unemployment Compensation Board of Review (UCBR), which reversed the decision of a referee to deny unemployment compensation benefits to Margaret Rusnak (Claimant) pursuant to section 402(e) of the Unemployment Compensation Law (Law).¹ We affirm.

Employer is a bus company that provides transportation services at the Allegheny County Airport. Claimant worked for Employer as an operations manager

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §802(e). Under section 402(e) of the Law, a claimant is not entitled to benefits for any week in which his unemployment is due to discharge for willful misconduct connected with his work.

and was required to provide information to Dawn Romitz, a contract administrator for the airport. If Romitz asked Claimant for information, Claimant was required to investigate the matter and provide honest answers. Romitz had considerable authority at the airport and was capable of finding out whether Claimant was being dishonest. Romitz also had the ability to impose fines on Employer and to discipline Claimant. Thus, Employer directed Claimant to be friendly with Romitz, and Claimant followed that direction. (UCBR's Findings of Fact, Nos. 1-9.)

In the performance of her job duties, Claimant would use the phone at Employer's desk at the airport to obtain transportation for customers. Because of the location of the desk, persons around Claimant could hear her discussions on the phone. Airport employees often reported to Romitz any issues that arose from the private conversations between Claimant and Employer. Employer directed Claimant not to disclose information to airport employees, so Claimant attempted to keep conversations private and instructed her subordinates to do likewise. (UCBR's Findings of Fact, Nos. 10-13.)

One day, Employer had a problem obtaining a wheelchair for a customer. Employer subsequently received a letter from the airport about the incident. As a result, Employer accused Claimant of revealing company information to Romitz. In addition, Employer learned that Claimant was sending emails to Romitz without sending a copy to Employer and that Claimant had suggested to Romitz that Employer was lying about its compliance with the law in providing transportation to persons in wheelchairs. Consequently, Employer discharged Claimant for disloyalty, i.e., for providing

company information to airport employees and for making statements to airport employees against the interest of Employer. (UCBR's Findings of Fact, Nos. 14-19.)

Claimant filed an application for unemployment benefits, which was granted. Employer appealed, and a hearing was held before a referee. The referee denied Claimant benefits, concluding that Claimant had acted against Employer's interest by suggesting to Romitz that Employer was lying about its compliance with the law in providing transportation to persons in wheelchairs. The referee explained that this was against Employer's interest because Romitz had the authority to fine Employer.

Claimant filed an appeal with the UCBR, which reversed the decision of the referee. The UCBR explained:

[T]he claimant credibly testified that, as part of her job requirements and even a request from the employer, the claimant was to have a good relationship with Ms. Romitz and to be honest with her in answering any questions that Ms. Romitz asked her.

(UCBR's Op. at 3-4.) In other words, the UCBR concluded that, by telling Romitz that Employer was lying about its compliance with the law, Claimant was following Employer's instruction to be honest with Romitz. Employer now petitions this court for review.²

² Our scope of review is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with the law and whether the necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

Employer contends that the UCBR erred in concluding that Claimant did not engage in willful misconduct.³ Employer asserts that Claimant acted against the interest of Employer by sending emails to Romitz without sending a copy to Employer. However, Employer presented no evidence regarding the content of the emails and did not present the emails themselves as evidence. Thus, there is no basis for concluding that Claimant acted against the interest of Employer when she sent emails to Romitz, but not to Employer.

Employer also asserts that Claimant acted against the interest of Employer by suggesting to Romitz that Employer was lying about its compliance with the law in providing transportation for persons in wheelchairs. Employer states that Claimant should have discussed the compliance issue with Employer before speaking with Romitz about the matter.

A determination of whether an action constitutes willful misconduct requires a consideration of all the circumstances, including the reasons for the employee's conduct. *Grieb v. Unemployment Compensation Board of Review*, 573 Pa. 594, 600, 827 A.2d 422, 426 (2003). Moreover, to prove willful misconduct, an employer must present evidence indicating that the conduct was of an intentional and deliberate nature. *Id.* Here, Claimant credibly testified that Employer required her to be honest with Romitz, and Claimant believed she was complying with that directive

³ Willful misconduct includes: (1) the wanton or willful disregard of an employer's interests; (2) deliberate violation of an employer's rules; (3) disregard for standards of behavior that an employer can rightfully expect of an employee; or (4) negligence indicating an intentional disregard of the employer's interest or an employee's duties or obligations. *Grieb v. Unemployment Compensation Board of Review*, 573 Pa. 594, 600, 827 A.2d 422, 425 (2003).

from Employer when she gave her opinion to Romitz about Employer's compliance with the law. To the extent Claimant's conduct may have been against Employer's interest, Claimant thought she was doing what Employer directed her to do. Thus, Claimant's conduct was not wanton or willful.

Accordingly, we affirm.

ROCHELLE S. FRIEDMAN, Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Pittsburgh Transportation Group/	:	
Yellow Cab Company of Pittsburgh,	:	
Petitioner	:	
	:	
v.	:	No. 1915 C.D. 2010
	:	
Unemployment Compensation Board of	:	
Review,	:	
Respondent	:	

ORDER

AND NOW, this 17th day of March, 2011, the order of the Unemployment Compensation Board of Review, dated August 20, 2010, is hereby affirmed.

ROCHELLE S. FRIEDMAN, Senior Judge