

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Kermit R. Bonner, Jr.,	:	
Petitioner	:	
	:	
v.	:	No. 1918 C.D. 2010
	:	SUBMITTED: March 4, 2011
Unemployment Compensation	:	
Board of Review,	:	
Respondent	:	

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

**OPINION NOT REPORTED**

**MEMORANDUM OPINION BY  
PRESIDENT JUDGE LEADBETTER**

**FILED: May 3, 2011**

Claimant Kermit R. Bonner, Jr., petitions for review of the order of the Unemployment Compensation Board of Review (Board) that denied him benefits pursuant to Section 402(e) of the Unemployment Compensation Law (Law)<sup>1</sup> on the ground that he engaged in willful misconduct. We affirm.

Prior to setting forth the referee's pertinent findings, which the Board adopted, we note as background information that Bonner was employed as a full-

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<sup>1</sup> Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. § 802(e). Section 402(e) provides, in pertinent part, that an employee shall be ineligible for benefits for any week in which his unemployment is due to discharge from work for willful misconduct connected with his work.

time local truck driver for J B Hunt Transport. On February 9, 2010, Bonner was assigned a trip from the Harrisburg area to Wilkes-Barre; Bonner was scheduled to make two stops in Wilkes-Barre. On the morning of that trip, the weather forecast apparently involved the chance of snow, impacting road and travel conditions. As a consequence, Bonner was advised to keep in touch with employer. In addition, it should be noted that Bonner was driving a truck equipped with a Qualcomm messaging system that allowed drivers to communicate with employer in a manner similar to email. However, a driver cannot view his messages when the truck is moving and he is prohibited from using his cell phone while driving.

The critical factual findings<sup>2</sup> establish that Bonner was instructed to give his operations manager a call after he made his second stop in Wilkes-Barre. Bonner was also sent a message informing him that it “looked like” it was going to be necessary for him to “shut down” (*i.e.*, find a safe place to wait for the weather to clear) when he reached Wilkes-Barre but that order was changed after Bonner talked to his operations manager on the telephone when he reached Wilkes-Barre. After Bonner began his trip back to Harrisburg, he was sent a message asking him where he would be shutting down. The operations manager and the area risk manager then sent Bonner several other messages over the course of several hours indicating the need for him to shut down, that troopers were ticketing drivers on the roads and that employer had issued a mandatory shut down in that area. Bonner did not receive these messages until he reached mile marker 119 because he had not stopped driving until that time. Bonner could not shut down as ordered,

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<sup>2</sup> Bonner and two witnesses for employer testified before the referee; one of employer’s witnesses participated in the hearing by telephone.

however, because the exits were blocked. Since Bonner could not find a rest stop or an open exit, he continued to drive towards Harrisburg.<sup>3</sup>

When Bonner reached Exit 69, he could have pulled off and stopped until directed by employer to continue on his way but instead continued on to the next exit, Exit 67, where he exited the roadway, drove to the rail yard and then on to the terminal where he picked up his car and drove home.<sup>4</sup> Bonner was discharged the following day for insubordination for failing to follow the order to shut down as soon as he came to a safe area. Based upon the above findings, the referee concluded that employer's request to shut down was reasonable and that Bonner lacked good cause for failing to shut down his truck as soon as he found a safe place to do so and, therefore, his actions constituted willful misconduct disqualifying him from the receipt of benefits.<sup>5</sup>

Adopting the referee's findings and conclusions, the Board affirmed on appeal. In doing so, the Board noted that it resolved any conflicts in testimony

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<sup>3</sup> According to the testimony, Bonner drove approximately another 60 miles after being told to shut down because he could not find a place to pull off the road.

<sup>4</sup> Apparently, the two exits are only one mile apart. However, according to the testimony, the distance from Exit 69 to Bonner's final destination was a total of approximately fourteen miles. The testimony also demonstrated that Bonner drove over 14 hours that day.

<sup>5</sup> To further elucidate the circumstances, Bonner testified that by the time he reached Exit 69 where it became possible to pullover and shut down, the roads were clear and wet. He also testified that he thought he was doing "what was safest for myself, the public, and the vehicle, and that was not stop on the road where I could be in danger. And that's why I continued to do what I did. It was for safety. It wasn't . . . because I wanted to get home or anything, because I would have stayed in a hotel." Notes of Testimony (N.T.) at 45.

On the other hand, employer's witness testified that when questioned after his return, Bonner indicated that he could not find a safe place until he reached Exit 69 and since the load was terminating at the rail yard off of Exit 67, he "felt that he could just go the other two miles and then head back to the tractor yard instead of shutting down." N.T. at 19. According to that same witness, when questioned the next day, Bonner also explained that he wanted to get home; he felt that he was close enough that he could safely get home. *Id.* at 20.

in favor of employer. The Board further stated: “It was not for the claimant to decide whether the road conditions were sufficient to drive past exit 67,<sup>[6]</sup> which he admitted was safe; the employer issued a reasonable mandatory shutdown which the claimant chose to ignore without good cause.” Board’s order (mailed August 12, 2010) (footnote added). The present appeal followed.

We begin with Bonner’s contention that Finding of Fact 18 (that Bonner admitted that Exit 69 presented a safe place to pull off and stop) lacks evidentiary support. According to Bonner, he testified only that, “the ramp was clear at Exit 69,” *see* Bonner’s brief at 15. We reject this argument for several reasons. First, Bonner appears to concede in his brief that Exit 69 presented a safe place to pull off the interstate. Specifically, he states: “In the case at bar, claimant attempted to comply with the mandatory shutdown of Employer and pull off of the interstate; however, he could not safely do so until Exit 69.” Bonner’s brief at 21. Second, Bonner’s testimony supports this finding. In response to questions from his counsel, Bonner testified as follows:

[Q]: [W]hen was the first time you saw a ramp where you could actually exit - - where the ramp was clear – the exit ramp?

[A]: Yeah, that would have been exit 69.

.....  
[Q]: Were the roads safe between exit 69 and exit 67 . . . .

[A]: Yes, they were.

[Q]: Were they passable and safe?

[A]: They were clear and wet.

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<sup>6</sup> Presumably, the Board meant to refer to Exit 69.

Notes of Testimony (N.T.) at 44. As the fact-finder, it is the Board's role to assess credibility, weigh conflicts in evidence and draw reasonable inferences from the credited evidence. *Platz v. Unemployment Comp. Bd. of Review*, 709 A.2d 450 (Pa. Cmwlth. 1998). Thus, while it is true that Bonner testified only that he could have exited the interstate at Exit 69, the quoted testimony above supports the reasonable inference that Exit 69 also presented a safe place to stop or pull over. Accordingly, we conclude that substantial evidence of record supports Finding 18 and it is conclusive on appeal. *See generally Ductmate Indus., Inc. v. Unemployment Comp. Bd. of Review*, 949 A.2d 338 (Pa. Cmwlth. 2008).<sup>7</sup>

The second issue on appeal is whether Bonner had good cause for his failure to obey employer's directive to pull off the road and shutdown when he reached Exit 69, which presented a safe place to stop.<sup>8</sup> There is no question that failure to follow an employer's directive constitutes willful misconduct as it is a disregard of the standards of behavior an employer has the right to expect from an employee. Nor is there any dispute here that employer's directive to Bonner to shut down when he found a safe place was reasonable. Bonner contends, however, that his actions do not constitute willful misconduct because they were justifiable or reasonable under the circumstances. *See generally Rebel v. Unemployment Comp.*

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<sup>7</sup> Bonner raises several other issues on appeal regarding the Board's evidentiary findings, namely that: (1) findings of fact 4, 6, 13 and 20 are not supported by substantial evidence of record; (2) the Board capriciously disregarded Bonner's testimony in adopting the referee's findings because Bonner had actual knowledge of the road conditions; and (3) the Board failed to make critical findings of fact, such as Bonner was not driving a cab that could be slept in, that the roads were wet and clear once Bonner reached Exit 69 and that Bonner had a clean driving record. While our review of these issues reveals that they are lacking in merit, because they are not dispositive of the outcome of this matter we find it unnecessary to discuss them in detail.

<sup>8</sup> There does not appear to be any dispute that while employer issued the directive to shut down earlier in the day, after Bonner learned of the order he did not have a safe place to do so until Exit 69, which was close to the end of his destination.

*Bd. of Review*, 555 Pa. 114, 117, 723 A.2d 156, 158 (1998) (stating, “If the conduct was justifiable or reasonable under the circumstances, it was not willful misconduct because it was not in disregard of standards that the employer had a right to expect.”) (internal quotations and citation omitted).

In support of his argument that his actions were reasonable, Bonner argues:

In the case at bar, Claimant attempted to comply with the mandatory shutdown . . . and pull off of the interstate; however, he could not safely do so until Exit 69 . . . . At that point Claimant had already driven miles and hours in the snow; he made a judgment call that he could safely go the one mile to his final destination and get off at Exit 67. This was reasonable in light of what Claimant had been through that day. Perhaps in hindsight it was poor judgment on his part. Perhaps he should have gotten off at Exit 69 and got a hotel room one mile from his final destination. However, it is easy for the Employer, the Referee, the Board, and this Court to play Monday morning quarterback when they were not driving in the truck that day. . . . [I]t is reasonable after driving over approximately all day in the snow and not being able to get off at various exits due to those exits being blocked by cars, trucks, snow plows, etc., to drive the one more mile to your final destination.

Bonner’s brief at 21-22. Bonner further asserts that he was motivated by safety and did not want to stop on the road where he could be in danger.

On the other hand, Mark Rhodes, employer’s Regional Operations Manager testified that even if a driver was only one mile from his final destination, a driver would be expected to shut down if weather required that action. He further testified: “The most dangerous mile we can drive is always the next one, and this is the reason we put the shut-down order in place.” N.T. at 31. According to Rhodes,

he did not have any confirmation that the roads were clear to Bonner's final destination.

We conclude the Board did not err in holding that Bonner lacked good cause for his failure to obey the shut down order. Bonner received numerous messages throughout the day directing him to shut down and requesting that he inform employer where he was going to shut down. Moreover, he discussed staying in a hotel room with employer. It is clear from Bonner's testimony and the number of hours that he was on the road that driving conditions were poor and dangerous. Bonner acted unreasonably in failing to pull off the road when he reached Exit 69. Moreover, he did not testify that he would be in danger if he pulled off at that location. If he felt that it was safe to drive the remainder of the trip and he was reluctant to stop due to a long day, it would have been reasonable to pull off as directed and contact employer for further directions or permission to proceed. Contrary to Bonner's argument, the testimony establishes that he was not only one mile from his final destination. Rather, he was at least 14 miles away and no evidence was offered that the roadways off the interstate were clear and wet as well. Accordingly, Bonner lacked good cause for failing to follow employer's directive and, therefore, his actions constituted willful misconduct.

The Board's order is affirmed.

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**BONNIE BRIGANCE LEADBETTER,**  
President Judge

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**ORDER**

AND NOW, this 3rd day of May, 2011, the order of the Unemployment Compensation Board of Review is affirmed.

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**BONNIE BRIGANCE LEADBETTER,**  
President Judge