

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Rashien A. Phillips,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 2086 C.D. 2009
	:	SUBMITTED: January 29, 2010
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

BEFORE: **HONORABLE BONNIE BRIGANCE LEADBETTER**, President Judge
 HONORABLE ROBERT SIMPSON, Judge
 HONORABLE PATRICIA A. McCULLOUGH, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER**

FILED: March 22, 2010

Rashien A. Phillips petitions, *pro se*, for review of the order of the Unemployment Compensation Board of Review (Board), which denied him unemployment compensation benefits on the ground that he was discharged for willful misconduct. We affirm.

Phillips was initially granted benefits, but after a hearing, the Referee reversed, denying benefits. The Board affirmed the Referee’s decision. In this appeal, Phillips does not challenge the Board’s findings of fact, so they are conclusive on review. *Hessou v. Unemployment Comp. Bd. of Review*, 942 A.2d 194 (Pa. Cmwlth. 2008).

Phillips began working for Country Wide Staffing (Employer) on November 24, 2008 and was terminated the next day, November 25. He had been informed before hiring that mandatory overtime was a part of the job, and had indicated that he was able to work overtime. On his first day of work, Phillips worked all the hours assigned to him, but on the second day, he was asked to report an hour and a half earlier for mandatory overtime. He did not do so, instead reporting at his normal starting time. Employer called Phillips that night and asked why he did not report at the earlier starting time, and he replied that to get to work at the required time he would have to wake up at 3:30 AM. Phillips was terminated at that time.

The Board found that Phillips was terminated for two reasons, each of which was sufficient to justify denying benefits: first, for refusing to work mandatory overtime; and second, for reporting to work late without following the call-off policy, which requires employees to call ahead if they are going to be absent or late. On appeal, Phillips argues he was fired only for violating the call-off policy, and that Employer failed to follow its own procedures in doing so.

First, it is clear that Phillips was terminated both for failure to follow the call-off policy and refusal to work mandatory overtime. Phillips points to portions of Employer's testimony where the call-off policy was discussed, but ignores Employer's testimony that failure to work overtime was also a reason for the firing. Hearing of May 20, 2009, Notes of Testimony at 7. Refusal to work mandatory overtime without good cause when an employee knows it is required constitutes willful misconduct. *Waltz v. Unemployment Comp. Bd. of Review*, 533 A.2d 199 (Pa. Cmwlth. 1987). The Board was correct to find that unwillingness to wake up early is not good cause. This alone is sufficient to justify a denial of

benefits, but Phillips's arguments about the call-off policy will be addressed as well.

Phillips argues that he was wrongly terminated for violating Employer's call-off policy. The policy required that any employee who would be late or absent call at least an hour in advance. The policy clearly states that failure to call may result in termination. Phillips was late to work on November 25, but did not call. He was clearly in violation of the rule, and therefore could be terminated. Phillips argues Employer did not follow its own procedure, but the rules he points to are unrelated to his situation. The rules Phillips cites address less serious violations of the rule, such as employees who are late, but have called in, or who have called in less than an hour before their shift is to start. These rules have no application to Phillips, who was late without calling in. The Board was correct to find that Phillips was properly discharged for violation of the call-off rule.

For all the foregoing reasons, we affirm.

BONNIE BRIGANCE LEADBETTER,
President Judge

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Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 22nd day of March, 2010, the order of the Unemployment Compensation Board of Review in the above-captioned matter is hereby AFFIRMED.

BONNIE BRIGANCE LEADBETTER,
President Judge