

approximately nine months. Employer recently had disciplined Claimant,² and Claimant believed it was due to a co-worker who told falsehoods about her. On February 17, 2009, while the co-worker was relieving Claimant at the end of her shift, Claimant yelled at the co-worker and accused her of being a tattletale. The co-worker made it clear that she did not want to discuss the situation and walked away, but Claimant followed the co-worker and continued to yell at her. The co-worker never yelled at Claimant, but repeatedly indicated that she did not want to discuss the matter and did not appreciate Claimant's behavior. Even so, Claimant continued the offensive behavior for approximately fifteen minutes. The co-worker felt very intimidated by Claimant's actions and complained to Employer's manager, Denise Schneider. Employer has various policies, of which Claimant was aware, requiring employees to treat one another courteously. Employer does not tolerate "conduct by any employee that harasses, disrupts, or interferes with another's work performance or that creates an intimidating, offensive or hostile environment."³ Discipline for violation of these policies can include discharge. Employer initially suspended, and subsequently discharged, Claimant for violating its policies set forth above. (UCBR's Findings of Fact, Nos. 1-15.)

² Claimant testified that this discipline was for "[e]xcessive socializing and being on the cell phone all the time and not doing your work when you're supposed to...." (Certified Record, C.R., Item #14, Notes of Testimony, N.T., at 29.)

³ (C.R., Item #4, Ex. #16.) Claimant objected to this document containing portions of Employer's personnel policies on grounds of lack of authentication, but the referee overruled the objection. Denise Schneider, who holds a managerial position with Employer, thereafter testified to certain of Employer's policies set forth therein. (C.R., Item #14, N.T. at 9-10.)

Claimant applied for unemployment compensation benefits, which the local job center denied. Claimant appealed, and a hearing was held before the referee, during which Claimant testified that she was not loud or hostile to her co-worker. Claimant's co-worker testified to the contrary, and Claimant's supervisor testified as to Employer's policies, of which Claimant was aware. Based on the evidence, the referee concluded that Claimant was not given a warning that her conduct rose to the level of what Employer considered willful misconduct and awarded Claimant benefits. On further appeal by Employer, the UCBR reversed the referee's decision, rendering its own findings of fact, and determining, based on Employer's credible testimony, that Claimant's actions constituted disqualifying willful misconduct. In doing so, the UCBR reasoned that "following a co-worker around the employer's facility for about 15 minutes, yelling at her and accusing her of being a 'tattletale' clearly are violative of the employer's reasonable policies. The employer did have the right under its policies to discipline the claimant up to discharge." (UCBR's op. at 3.)⁴ Claimant filed a request for reconsideration, which the UCBR denied. Claimant then filed a petition for review with this court.⁵

An employer has the burden of proving willful misconduct, the occurrence of which is a question of law for us to determine. *Dincher v.*

⁴ Although Claimant testified that, as far as she knew, Employer never had fired any other employee for a disagreement of this type, (C.R., Item #14, N.T. at 32), the UCBR made no findings in regard to disparate treatment. Claimant does not challenge the absence of such findings here.

⁵ Our scope of review is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with the law and whether necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

Unemployment Compensation Board of Review, 502 A.2d 797 (Pa. Cmwlth. 1986). The violation of an employer's work rules and policies may constitute willful misconduct. *Lausch v. Unemployment Compensation Board of Review*, 679 A.2d 1385, 1392 (Pa. Cmwlth. 1996), *appeal denied*, 547 Pa. 745, 690 A.2d 1164 (1997). In order to prove willful misconduct, an employer must establish the existence of the work rule and the fact of its violation; once the employer does so, the burden then shifts to the claimant to prove that she had good cause for her conduct. *Id.*

First, Claimant argues that she is not ineligible for benefits because Employer's rules against harassment are vague, leading her unintentionally to violate them. However, the language in Employer's policies demanding courtesy between co-workers and prohibiting offensive, intimidating or harassing behavior is not so vague that it would not inform an employee of acceptable work place conduct. Claimant's assertion to the contrary rests on her own assessment of her behavior, specifically, her claim that she approached the matter of her previous discipline with her co-worker in a civil manner. Nevertheless, the UCBR found that Claimant's behavior was offensive and that her continued conduct, despite her co-worker's attempts to walk away, intimidated her co-worker, who then reported her. Because such conduct clearly violates Employer's reasonable policies, we reject Claimant's argument in this regard.

Claimant next argues that the interaction with her co-worker, resulting in Claimant's termination, did not rise to the level of willful misconduct because she was initially provoked by her co-worker, and, therefore, her conduct was reasonable and justified under the circumstances. We disagree.

Here, based on the credible testimony of Employer's witnesses, the UCBR found that Claimant engaged her co-worker in a confrontation, yelling at the co-worker and following her around for approximately fifteen minutes, despite the co-worker's repeated requests that Claimant stop. The UCBR also found that Claimant's co-worker, who did nothing to escalate the situation, was intimidated and called Employer to complain. We are bound by the UCBR's credibility determination on appeal. *See Swope v. Unemployment Compensation Board of Review*, 497 A.2d 289 (Pa. Cmwlth. 1985). Thus, while Claimant may have felt that her co-worker's actions justified such a response, the UCBR found, based on substantial, credible evidence, that Claimant violated Employer's rule but did not find good cause for Claimant having done so. We therefore reject Claimant's assertion that her behavior was reasonable and justified in this situation.

Claimant also argues that her conduct was so insignificant as to be *de minimis* in nature and, thus, warranted a warning rather than termination. We disagree. This court has recognized the legal principle that "[t]he *de minimis* argument has no place in cases involving deliberate violation of employer's rules." *General Electric Company v. Unemployment Compensation Board of Review*, 411 A.2d 578, 580 (Pa. Cmwlth. 1980). Moreover, as Claimant acknowledges, even a single violation of an employer's work rule can result in termination for willful misconduct. *Roberts v. Unemployment Compensation Board of Review*, 436 A.2d 1052 (Pa. Cmwlth. 1981). There is no serious contention that Claimant was unaware of Employer's rules; therefore, she should have known that following her co-worker around while yelling at her, despite her co-worker's attempts to defuse the situation,

clearly violated Employer's policy against harassment and created an intimidating, offensive or hostile environment. Thus, the UCBR did not err in concluding that Employer had the right to discharge Claimant for such behavior.

Finally, Claimant argues that Employer offered no competent evidence to establish the reason for her discharge, and the person who actually decided to fire her never testified at the referee's hearing regarding the cause for Claimant's termination. According to Claimant, she properly objected to hearsay in the form of documentary evidence offered to show she was, in fact, discharged for the claimed willful conduct.⁶ *See generally Walker v. Unemployment Compensation Board of Review*, 367 A.2d 366 (Pa. Cmwlth. 1976). However, Claimant herself acknowledged harassment as a reason that she was fired. (C.R., Item #14, N.T. at 35.) Moreover, Schneider properly testified that Claimant was discharged for creating a hostile work environment. (C.R., Item #14, N.T. at 7, 17.) Therefore, we reject Claimant's contention that the record does not sufficiently establish the reason for her involuntary discharge.

Accordingly, we affirm.

ROCHELLE S. FRIEDMAN, Senior Judge

⁶ These documents were pages one and two of the Employer Questionnaire, the Termination Report, the Performance Improvement Plan and certain pages from Employer's Policy Manual.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Melissa D. Minus,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 2138 C.D. 2009
	:	
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 19th day of May, 2010, the order of the Unemployment Compensation Board of Review, dated October 2, 2009, is hereby affirmed.

ROCHELLE S. FRIEDMAN, Senior Judge