

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Donald R. Ballje, :  
Petitioner :  
 :  
v. : No. 2139 C.D. 2010  
 : Submitted: April 1, 2011  
Unemployment Compensation :  
Board of Review, :  
Respondent :

BEFORE: HONORABLE BERNARD L. MCGINLEY, Judge  
HONORABLE MARY HANNAH LEAVITT, Judge  
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY JUDGE LEAVITT

FILED: June 15, 2011

Donald R. Ballje (Claimant) petitions, *pro se*, for review of an adjudication of the Unemployment Compensation Board of Review denying his claim for benefits under the Unemployment Compensation Law (Law).<sup>1</sup> In doing so, the Board affirmed the Referee's determination that Claimant was ineligible for benefits under Section 402(e) of the Law, 43 P.S. §802(e),<sup>2</sup> by reason of his willful misconduct. The record demonstrates that Claimant used profane and threatening language at work without good cause, and under our precedent we must affirm.

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<sup>1</sup> Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §§751-914.

<sup>2</sup> Section 402(e) provides, in relevant part, that "[a]n employe shall be ineligible for compensation for any week ... [i]n which his unemployment is due to his discharge or temporary suspension from work for willful misconduct connected with his work." 43 P.S. §802(e).

Claimant worked for Canon Business Solutions, Inc. (Employer) as a technical support specialist from 1998 until he was discharged on January 26, 2010. Claimant was terminated for engaging in “misconduct [and] inappropriate behavior” following a meeting with a supervisor and one of Employer’s Employee Relations Specialists. Certified Record, Item No. 3, at 1 (C.R. \_\_\_). Specifically, Employer alleged that Claimant “used foul language” and “exhibited threatening behavior [that] made others uncomfortable.” *Id.* at 2. Claimant applied for unemployment compensation benefits, which were denied by the UC Service Center. Claimant appealed, and the Referee conducted a hearing.

Testifying first for Employer was Laura Walton, the Employee Relations Specialist who was in the meeting with Claimant on January 26, 2010, that preceded his outburst. Walton testified that she met with Claimant and a supervisor, Doug Young, to discuss the move of Claimant’s division from Employer’s Conshohocken office to a new location in Lake Success, New York. Claimant was given the option of relocating or accepting a severance package. He asked for a firm date for the relocation, which Walton was not able to provide. Claimant then inquired about reimbursement for relocation expenses, which Walton informed him would not be available. Walton testified that, at that point, Claimant abruptly gathered his belongings and exited the conference room.

After Claimant left the conference room, Walton heard “loud yelling, foul language, and slamming.” Notes of Testimony, May 6, 2010, at 5 (N.T. \_\_\_). She heard Claimant utter the words “fuck” and “asshole” several times. N.T. 7-8. Walton testified that Doug Young and another employee, Scott Periello, advised her to remain in the conference room because they heard Claimant shouting “HR asshole” and “Canon bitch.” N.T. 6. Walton stated that she “was pretty disturbed

by hearing that language referred to me.” *Id.* From her vantage point, Walton observed Claimant kick a blue waste can and heard him say repeatedly in a loud angry voice, “[m]anage this f’ing project.” *Id.* Claimant then left the premises. Walton testified that several employees came to her and expressed fear and concern for their safety if Claimant returned to the office either later that day or the next day and engaged in the same behavior. Following a discussion with her supervisors about Claimant’s conduct and the hostile environment he had created for his coworkers, Walton decided that Claimant should not return to work.

Scott Periello, a witness to the incident whose cubicle is just outside the conference room, testified for Employer. Periello observed a visibly angry Claimant storm out of the conference room and then pace back and forth between the lunch room and his cubicle area. Periello heard Claimant loudly say, “[t]he dumbest thing I ever did moving to Pennsylvania,” “[f]uck” repeatedly, “[e]leven fucking years and this is what I get,” “HR asshole,” and “HR bitch.” N.T. 9. Periello heard loud noises from the common area, which he later determined was Claimant kicking waste cans. Periello recalled feeling tense and afraid. He was also concerned that Claimant was shouting obscenities in an area where Employer receives telephone calls from customers. According to Periello, the entire incident lasted approximately five minutes.

Claimant testified on his own behalf. He acknowledged that he was frustrated during the meeting with Walton and Young because of Employer’s refusal to provide him with a firm date for the relocation or to reimburse him for moving expenses. Claimant admitted that he became “extremely upset” and used the words “fuck” and “asshole.” N.T. 12. Claimant downplayed the disruptiveness of his outburst because it occurred primarily in unoccupied areas of

the office. Claimant also testified that he stopped in the middle of his rant to assist a salesperson, without incident. Claimant asserted that he had caused similar disturbances in the past but had never been reprimanded.

The Referee found that Claimant's behavior on January 26 was inimical to Employer's best interests. The Referee further found that Claimant did not establish good cause for his actions. Accordingly, the Referee held that Claimant's willful misconduct rendered him ineligible for benefits under Section 402(e) of the Law, 43 P.S. §802(e). Claimant appealed. The Board credited Employer's testimony and affirmed on the basis of the Referee's findings and conclusions.<sup>3</sup> Claimant now petitions for this Court's review.

On appeal,<sup>4</sup> Claimant argues that the Board erred in finding that he failed to establish good cause for his conduct. Claimant maintains that his outburst was an isolated incident in an otherwise exemplary work history, and that cursing was normal in his stressful work environment. Claimant also contends that his behavior was not disruptive because he went to a vacant part of the office and, furthermore, stopped his tirade to assist a sales person.

We begin with a review of the legal principles applicable to a denial of unemployment benefits because of willful misconduct. Although the Law does not define the term "willful misconduct," it has been judicially defined as follows:

- a) wanton or willful disregard for an employer's interests;
- b) deliberate violation of an employer's rules;
- c) disregard for standards of behavior which an employer can rightfully expect

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<sup>3</sup> The Board also denied a request by Claimant to remand the record for additional testimony.

<sup>4</sup> This Court's scope of review in an unemployment compensation case is limited to determining whether an error of law has been committed, or whether necessary findings of fact are supported by substantial evidence. *Blue v. Unemployment Compensation Board of Review*, 616 A.2d 84, 86 n.4 (Pa. Cmwlth. 1992).

of an employee; or d) negligence indicating an intentional disregard of the employer's interest or an employee's duties or obligations.

*Bruce v. Unemployment Compensation Board of Review*, 2 A.3d 667, 671 (Pa. Cmwlth. 2010). Whether an employee's conduct constitutes willful misconduct is a question of law for our review. *Dodson v. Unemployment Compensation Board of Review*, 437 A.2d 1080, 1082 (Pa. Cmwlth. 1981). An employee's use of abusive, vulgar or offensive language evidences a disregard of standards that an employer can rightfully expect of its employees. *Leone v. Unemployment Compensation Board of Review*, 885 A.2d 76, 81 (Pa. Cmwlth. 2005). Even a single instance of vulgarity may constitute willful misconduct where it is unjustified, unprovoked, unnecessary or uncalled for under the circumstances. *Dodson*, 437 A.2d at 1082.

Once the employer meets its burden of showing willful misconduct, the burden shifts to the claimant to establish good cause for his actions. *Bruce*, 2 A.3d at 671. A claimant has good cause if his actions are "justifiable and reasonable under the circumstances." *Id.*

Claimant's arguments that he had good cause for his misconduct are unavailing. His contention that the outburst was an isolated incident in an otherwise exemplary work history is beside the point. As stated above, even a single instance of vulgarity may constitute disqualifying willful misconduct. *Dodson*, 437 A.2d at 1082. It makes no difference whether, as Claimant contends, his coworkers frequently cursed in Employer's stressful work environment. He offered no evidence that lengthy obscenity-ridden diatribes were common. Also unavailing are Claimant's assertions that he issued his tirade in a vacant part of the office and stopped at one point to assist a salesperson. Even assuming these

statements are true, two of Claimant's coworkers credibly testified that they felt tense and afraid during the incident. According to Laura Walton, others in the office were equally concerned for their safety. In short, Claimant's conduct, found to be vulgar and threatening conduct, evidenced a disregard of the standards Employer could rightfully expect of its employees, and Claimant lacked good cause for this display.

For all of the foregoing reasons, we affirm the Board's order.

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MARY HANNAH LEAVITT, Judge

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**ORDER**

AND NOW, this 15<sup>th</sup> day of June, 2011, the order of the Unemployment Compensation Board of Review in the above-captioned matter, dated August 9, 2010, is AFFIRMED.

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MARY HANNAH LEAVITT, Judge