

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Gloria L. Miller,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
Unemployment Compensation	:	
Board of Review,	:	No. 2175 C.D. 2009
	:	
Respondent	:	Submitted: May 28, 2010

BEFORE: HONORABLE BERNARD L. MCGINLEY, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER

FILED: June 30, 2010

Gloria Miller (Claimant) petitions this Court for review of the October 8, 2009 order of the Unemployment Compensation Board of Review (UCBR) affirming the decision of the Referee holding Claimant ineligible for benefits under Section 402(e) of the Unemployment Compensation Law (Law).¹ Claimant raises two issues before this Court: (1) whether the UCBR's findings of fact are supported by substantial evidence, and (2) whether the UCBR erred in finding that Claimant committed willful misconduct. For reasons that follow, we affirm the UCBR's order.

Claimant worked for Walgreens (Employer) in the cosmetics department beginning September of 2000 and ending May 1, 2009. On March 31, 2009, Employer discovered a discrepancy in a routine inventory reconciliation. Claimant

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. § 802(e).

had taken an item from the photo department on March 24, 2009. Upon Employer's investigation, Claimant repeatedly gave conflicting explanations. Claimant subsequently provided a receipt for the date in question, stating she had purchased the item. The missing item, however, was not paid for or charged on the receipt. Thereafter, Claimant was terminated for removal of property from the store without paying.

Claimant subsequently applied for Unemployment Compensation (UC) benefits. On May 20, 2009 the Allentown UC Service Center mailed a notice of determination denying benefits under Section 402(e) of the Law. Claimant appealed and a hearing was held before a Referee. On July 22, 2009, the Referee mailed his decision affirming the decision of the UC Service Center. Claimant appealed to the UCBR, and the UCBR affirmed the decision of the Referee. Claimant appealed to this Court.²

Claimant argues that the UCBR's findings of fact are not supported by substantial evidence. Specifically, Claimant contends finding of fact number three, wherein the Referee states: the investigation was complicated by "the claimant's repeated, conflicting explanations for the missing item" is not supported by substantial evidence. Original Record, Item No. 11. We disagree.

"Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *City of Pittsburgh, Dep't of Pub. Safety v. Unemployment Comp. Bd. of Review*, 927 A.2d 675, 676 n.1 (Pa. Cmwlth. 2007) (quotation marks omitted).

² This Court's review is limited to determining whether the findings of fact were supported by substantial evidence, whether constitutional rights were violated, or whether errors of law were committed. *Johnson v. Unemployment Comp. Bd. of Review*, 869 A.2d 1095 (Pa. Cmwlth. 2005).

At the hearing Jeff Triffo, the store manager, testified as follows. Tina Wilson, the head photo specialist, while doing an inventory reconciliation, noticed that Claimant's name was on a report as having a photo order, but that the photo order was not present in the store. When Ms. Wilson questioned Claimant about it Claimant said she purchased the item, and that Ms. Wilson rang it up. Ms. Wilson said she did not ring up the item, and there was no documentation to support that she did. Ms. Wilson reported the situation to Mr. Triffo who questioned Claimant about it. Claimant implied that Claimant rung it up herself, but then said she was not sure. When Mr. Triffo asked if she had the receipt, she said she did but was afraid it would be too badly damaged to be legible. Claimant subsequently said she did have the receipt because she is very organized. During Claimant's next shift, Mr. Triffo asked if she had the receipt and she said she could not find it. Then she said she knew where it was. Mr. Triffo asked her again to bring it in. Claimant subsequently said she found the receipt and she owed Employer a dollar. Mr. Triffo asked to see the receipt, and she said she left it in the car. Mr. Triffo told her to go to the car and get it. She left and came back and said it was not in the car. At that point, Mr. Triffo turned the matter over to the store's loss prevention department. O.R., Item No. 10 at 4-6.

Clearly, the above testimony is relevant evidence that a reasonable mind might accept as adequate to support the conclusion that Claimant repeatedly gave conflicting explanations concerning the missing item. Accordingly, as the UCBR adopted the Referee's findings, the UCBR's findings of fact are supported by substantial evidence.

Claimant next argues the UCBR erred in finding that Claimant committed willful misconduct. Specifically, Claimant claims it was a mutual mistake

that she left with the photo order without paying for it, and therefore it is not willful misconduct. We disagree.

“Willful misconduct has been defined as the (a) wanton and 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 of an employee, or (d) negligence indicating an intentional disregard of the employer’s interests or an employee’s duties and obligations.” *On Line Inc. v. Unemployment Comp. Bd. of Review*, 941 A.2d 786, 789 (Pa. Cmwlth. 2008) (quotation marks omitted). “An employee’s theft from an employer is willful misconduct. An act of theft disregards the employer’s interests and the standards of behavior that the employer has a right to expect of an employee.” *Id.* at 790.

In the instant case, although Claimant testified she did not know she was not charged for the photo at the time she left with it, the UCBR is the ultimate fact finder and has the final say as to witness credibility. *Williams v. Unemployment Comp. Bd. of Review*, 926 A.2d 568 (Pa. Cmwlth. 2007). Clearly, the UCBR chose not to accept Claimant’s version of the facts. The fact that Claimant first contended that Ms. Wilson rang up her item and then claimed she rung the item up herself, coupled with her reluctance to produce the receipt, is sufficient for the UCBR to find that she was trying to hide the fact that she left the store without paying for the photo. As such, her action is considered theft and thus, willful misconduct. Accordingly, the UCBR did not err in finding that Claimant committed willful misconduct.

This Court notes that Claimant contends Mr. Triffo’s testimony contains uncorroborated hearsay and therefore cannot be relied upon to establish substantial evidence. Notwithstanding the alleged hearsay statements, Mr. Triffo’s testimony included the fact that Claimant was in possession of a missing photo and had no valid

explanation; hence, Mr. Triffo confronted Claimant himself and was given different responses from Claimant. Thus, even disregarding the portion of testimony that Claimant considers hearsay, there is substantial evidence to find that Claimant committed willful misconduct.

For all of the above reasons, the order of the UCBR is affirmed.

JOHNNY J. BUTLER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Gloria L. Miller,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
Unemployment Compensation	:	
Board of Review,	:	No. 2175 C.D. 2009
	:	
Respondent	:	

ORDER

AND NOW, this 30th day of June, 2010, the October 8, 2009 order of the Unemployment Compensation Board of Review is affirmed.

JOHNNY J. BUTLER, Judge