

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Housing Authority of The County of :
Lawrence, :
 Petitioner :
 :
 v. :
 :
Unemployment Compensation Board of :
Review, :
 Respondent :

No. 2175 C.D. 2010
Submitted: March 11, 2011

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
 HONORABLE P. KEVIN BROBSON, Judge
 HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FRIEDMAN

FILED: April 25, 2011

The Housing Authority of The County of Lawrence (Employer) petitions for review of a September 13, 2010, order of the Unemployment Compensation Board of Review (UCBR), which determined that Camron Reid (Claimant) is not ineligible for benefits under section 3 of the Unemployment Compensation Law (Law)¹ or under section 402(e) of the

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §752. Section 3 of the Law declares as a matter of public policy that the public good and general welfare of the Commonwealth's citizenry require the "setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own." 43 P.S. §752. We have long held this section "to be a substantive and determinative provision" of the Law. *Unemployment Compensation Board of Review v. Derk*, 353 A.2d 915, 917, n.1 (Pa. Cmwlth. 1976).

Law.² We affirm.

Claimant worked part-time for Employer as a laborer from April 6, 2009, through March 10, 2010. (UCBR's Findings of Fact, No. 1.) Claimant's job duties included garbage removal and grounds work. (UCBR's Findings of Fact, No. 2.) Employer has a drug-free work policy, providing that "employees of the housing authority convicted for violating a criminal drug statute, whether the events which led to said conviction were employment related or not, shall notify their immediate supervisor no later than five (5) days after such conviction. Failure to do so will result in instant dismissal." (UCBR's Findings of Fact, No. 3.)

On March 3, 2010, Claimant was riding in the back seat of a friend's car when it was pulled over by a police officer. (UCBR's Findings of Fact, Nos. 4-5.) The officer searched the car, finding a crumpled cigarillo wrapping and a small amount of marijuana contained in a baggie, neither of which belonged to Claimant. (UCBR's Findings of Fact, Nos. 6-7.) Claimant was not told that he was being charged with a crime, and he did not sign any citation at the time of the incident. (UCBR's Findings of Fact, No. 8.) However, on March 5, 2010, one of Claimant's friends told him that his name appeared in the paper, indicating that Claimant was charged with possession of marijuana and possession of drug paraphernalia. (UCBR's Findings of Fact, No. 9.) Employer confronted Claimant with this information on March 10, 2010. (UCBR's Findings of Fact, No. 10.) Employer

² 43 P.S. §802(e). Section 402(e) of the Law provides that a claimant shall be ineligible for unemployment compensation for any week in which his or her unemployment is due to discharge or suspension from work for willful misconduct connected with his or her work.

explained to Claimant that he may return to work if not convicted of possession of marijuana and suspended Claimant pending the outcome of the charges. (UCBR's Findings of Fact, Nos. 12-13.)

Relying on Employer's statement that, if he was not convicted of possession of marijuana, he could return to work, Claimant entered a plea bargain for possession of drug paraphernalia. (UCBR's Findings of Fact, Nos. 14-15.) Claimant showed Employer his plea bargain agreement on April 13, 2010. (UCBR's Findings of Fact, No. 17.)³ Employer then discharged Claimant for failing to inform it of the charges within five days, in violation of the drug-free work policy. (UCBR's Findings of Fact, No. 18.) However, Claimant did not violate the policy's five-day requirement, and he pled guilty to the charge of possessing drug paraphernalia due to the information he obtained from Employer. (UCBR's Findings of Fact, No. 19.)

After his discharge, Claimant applied for unemployment compensation benefits. The local job center found Claimant eligible under section 3 of the Law. Employer appealed, and the referee affirmed the job center's determination. On further appeal by Employer, the UCBR affirmed the referee's decision, with the modification that Claimant was not ineligible for benefits under either section 3 or section 402(e) of the Law.⁴

³ We note that the UCBR did not specifically find on what date Claimant entered his plea bargain.

⁴ The UCBR focused its analysis on section 3, reasoning that Employer did not show that Claimant was unemployed through his own fault. (UCBR's Decision and Order, at 3.) The UCBR also noted in pertinent part: "Should Section 402(e) be brought to bear as a rule violation case, the same result obtains as the claimant's actions do not rise to the level of willful misconduct. The **(Footnote continued on next page...)**

Employer's petition for review to this court followed.⁵

On appeal, Employer raises one issue for our consideration, *viz.*, whether the UCBR erred in deciding that Claimant's failure to timely inform Employer of his pending drug charges did not rise to the level of willful misconduct under section 402(e) of the Law.

Employer argues that, rather than focusing on section 3 of the Law, the UCBR should have concentrated its analysis on section 402(e) because Claimant engaged in willful misconduct by failing to inform Employer of his pending drug charges pursuant to Employer's drug-free work policy.⁶ However, the work rule that Employer contends Claimant violated provides as follows:

Employees of the Housing Authority **convicted** for violating a criminal drug statute, whether the events which led to said **conviction** were employment related or not, shall notify their immediate supervisors no later than five (5)

(continued...)

claimant complied or was not permitted to comply with the five (5) day notice requirement.” (*Id.* at 4.)

⁵ Our scope of review is limited to determining whether constitutional rights were violated, whether an error of law was committed or whether necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

⁶ We explained in *Maskerines v. Unemployment Compensation Board of Review*, 13 A.3d 553, 558 (Pa. Cmwlth. 2011), that the fact that a claimant's undesirable conduct occurred off of the premises does not, in and of itself, determine whether section 3 of the Law or section 402(e) of the Law is applicable.

business days after such **conviction**. Failure to do so will result in instant dismissal.

(C.R., Employer's Personnel Policy at 10-11; emphasis added.)

Clearly, this rule did not require Claimant to timely inform Employer of any drug charges **pending** against him, but, rather, required Claimant to timely inform Employer of his **conviction** of a violation of the criminal drug statute. Nor does Employer assert that Claimant failed to inform it of any such conviction within five business days. Thus, Employer's argument that Claimant committed willful misconduct by violating this rule fails.⁷

Accordingly, we affirm.

ROCHELLE S. FRIEDMAN, Senior Judge

⁷ Moreover, Claimant testified that he informed Employer of his conviction for possession of drug paraphernalia the same day that it occurred. (N.T., 6/18/10, at 15, 22.)

