IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Kathleen Ragsdale, Petitioner	:	
v.	:	No. 2236 C.D. 2009
	:	Submitted: March 12, 2010
Unemployment Compensation Board of Review, Respondent	:	

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE BROBSON **FILED:** May 26, 2010

Kathleen D. Ragsdale (Claimant) petitions *pro se* for review of an order of the Unemployment Compensation Board of Review (Board). The Board reversed a Referee's decision, granting Claimant benefits under Section 402(e) of the Unemployment Compensation Law (Law).[1] Claimant argues that the Board erred in determining that Claimant's conduct rose to the level of willful misconduct. For the reasons set forth below, we affirm.

Claimant applied for unemployment compensation benefits after being discharged from her employment with Macungie Animal Hospital (Employer). The Scranton UC Service Center (Service Center) issued a

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

determination, finding Claimant was ineligible for unemployment benefits under Section 402(e) of the Law.

Claimant appealed the Service Center's determination, and a hearing was held before a Referee. During the hearing, Claimant testified on her own behalf, and Employer presented the testimony of one of its receptionists, Jeanne Schwiep, and its practice manager, Tara Houser. Following the hearing, the Referee issued a decision in which he reversed the Service Center's determination and found Claimant eligible for unemployment compensation benefits. The Referee found Claimant did not directly disobey an order from her Employer, and, therefore, he concluded that her actions did not rise to the level of willful misconduct under Section 402(e) of the Law.

Employer appealed the Referee's order to the Board, which reversed the Referee's decision. The Board specifically found:

> 1. The claimant was last employed as a part-time receptionist/biller by Macungie Animal Hospital for May 27, 2009, at a final rate of $11.25 per hour. She worked approximately 30 hours per week and her last day of work was June 3, 2009.
>
> 2. The claimant discovered that one of the employer's clients, with whom she had previously worked, was scheduled for an upcoming appointment.
>
> 3. The claimant was concerned about encountering the client because of past conflicts between them.
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> 4. The claimant discussed her concerns with the practice manager and another receptionist. She was told not to make the reminder call to the client and that when the client came in, she could wait in the back until the client left.

> 5. The claimant later learned from a friend that the client had already found out that the claimant worked there and was upset by it.
>
> 6. The claimant sent two text messages to the client's cell phone allegedly informing her that she was working there and that she did not want a disruption.
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> 7. The client became upset and complained to the employer. She also left the practice.
>
> 8. The employer terminated the claimant's employment for contacting the client after being told to avoid the situation.

(Certified Record (C.R.), Item No. 12.) The Board concluded that Claimant failed to establish good cause for her behavior and that her actions constituted willful misconduct under Section 402(e) of the Law. Claimant now petitions this Court for review of the Board's order. On appeal,[2] Claimant argues that the Board erred in determining that Employer had sustained its burden of proving that Claimant's conduct rose to the level of willful misconduct under Section 402(e) of the Law.

The burden is on an employer to prove that a discharged employee was guilty of willful misconduct.[3] *Gillins v. Unemployment Comp. Bd. of Review*, 534 Pa. 590, 597, 633 A.2d 1150, 1154 (1993). Section 402(e) of the Law provides, in part, that an employee shall be ineligible for compensation for any

[2] This Court's standard 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. 2 Pa. C.S. § 704. Substantial evidence is relevant evidence that a reasonable mind might consider adequate to support a conclusion. *Hercules, Inc. v. Unemployment Comp. Bd. of Review*, 604 A.2d 1159 (Pa. Cmwlth. 1992).

[3] Whether or not an employee's actions amount to willful misconduct is a question of law subject to review by this Court. *Nolan v. Unemployment Comp. Bd. of Review*, 425 A.2d 1203 (Pa. Cmwlth. 1981).

week "[i]n which his unemployment is due to his discharge or temporary suspension from work for willful misconduct connected with his work." The term "willful misconduct" is not defined by statute. The courts have defined "willful misconduct" as follows:

> (a) wanton or willful disregard of 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 interest or an employee's duties or obligations.

Grieb v. Unemployment Comp. Bd. of Review, 573 Pa. 594, 600, 827 A.2d 422, 425 (2003).

The courts have held that willful misconduct includes an employee's deliberate violation of an employer's rule and an employee's disregard of the standard of behavior expected by an employer. *Kentucky Fried Chicken of Altoona, Inc. v. Unemployment Comp. Bd. of Review*, 309 A.2d 165, 168 (Pa. Cmwlth. 1973). All pertinent circumstances are considered in determining whether an employee's actions constituted willful misconduct. *Rebel v. Unemployment Comp. Bd. of Review*, 555 Pa. 114, 117, 723 A.2d 156, 158 (1998). An employee who ignores clear and simple instructions from her employer without establishing good cause engages in willful misconduct. *Hartman v. Unemployment Comp. Bd. of Review*, 455 A.2d 756, 630 (Pa. Cmwlth 1983). A single incident of misconduct may support a denial of benefits. *Jones v. Unemployment Comp. Bd. of Review*, 373 A.2d 791, 792 (Pa. Cmwlth. 1977).

Claimant argues that Employer failed to establish that she engaged in willful misconduct because there is no evidence that Employer specifically gave her a direct order not to contact the client. Claimant contends that Employer only gave her a suggestion regarding the situation. This Court must examine the

evidence in the light most favorable to the party who prevailed before the Board and give that party the benefit of all inferences that can be logically and reasonably drawn from the testimony. *Taylor v. Unemployment Comp. Bd. of Review*, 474 Pa. 351, 355, 378 A.2d 829, 831 (1977). Our review of the record supports the Board's conclusion that Employer sustained its burden to establish a *prima facie* case of willful misconduct.

Specifically, Employer's witnesses testified that Employer developed a plan to avoid any conflict with the client. (C.R., Item No. 8, p. 5.) The plan consisted of clear and simple instructions that Claimant was not to make the appointment reminder call to the client and that Claimant was to leave the front desk area at the time of client's appointment. The plan clearly made an arrangement for Claimant to avoid any contact with the client and avert any potential conflict at the Macungie Animal Hospital. (*Id*. at p. 6.) Instead, Claimant substituted her own judgment for Employer's plan when she sent two text messages to the client. (*Id*. at p. 13.) Ms. Houser testified that she did not issue a direct order to Claimant not to text message the client. (*Id*. at p. 7.) Instead, she established a plan that was reasonable and acceptable, and Claimant chose not to follow the plan when she sent a text message to the client. (*Id*.) According to Ms. Houser, Claimant's actions led to her termination. (*Id*. at pp. 13-14.) As a result of Claimant's actions, the client became upset, complained to Employer, and left the practice. (*Id*. at pp. 5-6.) The Board found this testimony to be credible. Having found that testimony to be credible, the Board did not err in concluding that Employer met its burden of proving Claimant's actions rose to the level of willful misconduct.

Because Employer established a *prima facie* case for willful misconduct, the burden shifted to Claimant to establish good cause that her actions in sending text messages to the client. While the employer bears the burden of proving that a claimant's behavior constitutes willful misconduct, it is the claimant who bears the burden of proving good cause for his actions. *Kelly v. Unemployment Comp. Bd. of Review*, 747 A.2d 436, 439 (Pa. Cmwlth. 2000). To prove "good cause," the claimant must demonstrate that her actions were justifiable and reasonable under the circumstances. *Id.* Non-compliance of an employer's rule may be justified by lack of knowledge of the rule. *Williams v. Unemployment Comp. Bd. of Review*, 380 A.2d 932, 935 (Pa. Cmwlth. 1977). Noncompliance may also be justified by the vagueness of a rule. *Unemployment Comp. Bd. of Review v. Bacon,* 361 A.2d 505, 586 (Pa. Cmwlth. 1976).

Claimant argues that she had good cause to disobey Employer's established plan because she had a long history with the client and she wanted to dilute the potential for conflict and protect Employer. Claimant argues that following Employer's plan would have affected her ability to perform her duties and could have been construed as her disregarding her responsibility to Employer. The Board may either accept or reject a witness's testimony, whether or not it is corroborated by other evidence of record. *Peak v. Unemployment Comp. Bd. of Review*, 509 Pa. 267, 276, 501 A.2d 1383, 1388 (1985). Here, the Board found Claimant's testimony not credible and concluded that Claimant failed to establish good cause for contacting the client to inform her that she worked for Employer, given that the client was already aware Claimant was working for Employer. (C.R., Item No. 12.) Based on the facts here and in view of the relevant case law, we find Claimant failed to justify contacting the client after Employer had

established a plan to avoid potential conflict. Employer did not want Claimant to have contact with the client. Though Claimant was aware of Employer's decision, she intentionally disregarded it when she contacted the client via text message. The Board, therefore, properly concluded Claimant failed to establish good cause for her actions because her text messages to the client were not justified or reasonable in light of Employer's plan for diffusing the situation.

Claimant also asserts that the decision to contact the client was a personal decision, and Employer should have given her a warning because Claimant's actions were not grounds for termination. Ms. Houser testified that Employer had lost two or three clients because of her own interactions with the clients when they were not happy with the answers that she gave them. (C.R., Item No. 8, p. 5.) She also testified that the mere loss of clients is "not grounds for termination at our hospital." *Id.* We reject Claimant's argument. Employer terminated Claimant for ignoring Employer's plan and for exercising poor judgment in sending the text message to the client, not because the client left Employer's practice. *Id*. Claimant's conduct demonstrated a willful disregard of the standard of behavior expected by Employer. Employer's standard of behavior was evidenced by the clear and simple plan to avoid conflict with the client. Claimant's deviation from the plan by sending text messages to the client, therefore, constituted willful misconduct under Section 402(e) of the Law.

Accordingly, the order of the Board is affirmed.

P. KEVIN BROBSON, Judge

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O R D E R

AND NOW, this 26th day of May, 2010, the order of the Unemployment Compensation Board of Review is AFFIRMED.

P. KEVIN BROBSON, Judge