IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Felicia Hill, Petitioner	:	
v.	:	
Unemployment Compensation Board of Review, Respondent	:	No. 2245 C.D. 2009
	:	Submitted: August 6, 2010

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY FILED: September 14, 2010

Felicia Hill (Claimant) petitions, *pro se*, for review from the order of the Unemployment Compensation Board of Review (Board) which affirmed the referee's denial of benefits under Section 402(e) of the Unemployment Compensation Law (Law).[1]

The facts, as initially found by the referee and confirmed by the Board, are as follows:

> 1. Felicia Hill ('claimant') was employed by Albert Einstein Medical Center ('employer') beginning in June 2004 and her last date of work was May 5, 2009. Her final position was as a full time medical clerk at the Willow Terrace Long Term Care Facility.

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

2. At some point, the claimant requested to use leave under the Family and Medical Leave Act (FMLA)[2] on an intermittent basis; the employer approved such leave and the claimant was using it on a regular basis for some time.

3. The employer requested that the claimant submit a re-certification for FMLA leave regarding her mother's health condition.

4. On April 30, 2009, the claimant gave the employer a Certification of Healthcare Provider form ('certification') purportedly completed by her mother's doctor on April 24, 2009 and stating that her mother needed care on an intermittent basis '. . .8-3 hour(s) per day; three days per week' with physical therapy and medical appointments and daily activities at home.

5. On May 1, 2009, the human resources specialist noticed that the '8' on the certification looked as if it had been altered, and she asked the doctor's office to send a copy of the original page of the certification.

6. The doctor's office sent a copy via facsimile of the page of the certification asking the number of hours of care per day, and it said '2-3 hour(s) per day'.

7. On May 5, 2009, the employer informed the claimant she was suspended pending an investigation of whether she altered the certification.

8. The same day she was suspended, she obtained from the doctor's office another certification form stating that care was required '2-8 hours per day'.

9. The employer discharged the claimant because it considered her to have altered the April 24, 2009 certification for the purpose of obtaining longer levels of FMLA leave.

---

[2] 29 U.S.C. §§2601-2654.

Referee's Decision (Decision), August 4, 2009, Findings of Fact Nos. 1-9 at 1-2.

> The referee determined:
>
> In this case, because the employer presented evidence that the April 24, 2009 certification form had been altered and because the claimant did not provide the employer an explanation as to how, nor did she appear at the appeal hearing to establish that the alteration was a reason other than deliberate falsification, her separation must be considered disqualifying under Section 402(e).

Decision at 2.

Claimant appealed to the Board. In addition to her appeal, Claimant requested another hearing date:

> I missed my hearing on Tuesday, 08/04/09. I had my days mixed up. I thought the hearing was on Friday, 08/07/09. I apologize for this missed [sic] understanding on my behave [sic]. Although I had made three attempts to confirm the hearing date. I had left two voicemails on Ms. Betti phone to confirm the date of Friday, 08/07/09. I know due to the high demands of one [sic] job duties my call, it may be impossible to return all call[s] in a timely matter [sic]. So when I didn't received [sic] a phone call back, I called early morning on Friday, 08/07/09, in [sic] spoke with a woman. She inform [sic] me that I missed my hearing on Tuesday, 08/04/09, and I should wait until I received the decision from the hearing then appeal it for a new hearing date, if I don't agree.

Claimant's Request for a New Hearing, August 12, 2009, at 1.

The Board affirmed. The Board also denied Claimant's request that the record be reopened for additional testimony: "The claimant's request that the record be reopened for additional testimony is denied. The claimant failed to

appear at the hearing because she got the dates mixed up. Such reason is not good cause for . . . a remand hearing. Therefore, the claimant's request for a remand hearing is denied." Board Opinion, September 24, 2009, at 1.[3]

Claimant contends that the Board erred when it determined that there was sufficient evidence to support the determination that she falsified the April 24, 2009, certification form and concluded Claimant was ineligible for benefits due to willful misconduct.[4]

Initially, Claimant asserts that her mother's healthcare provider completed another set of certification forms which would "clear up the modication [sic] that was made . . . on the first set of forms" and explained the discrepancy found by Albert Einstein Medical Center (Employer), but she did not have the opportunity to present this evidence because she failed to attend the hearing. Claimant's Brief at 9 Claimant asserts that she subsequently made the referee aware of the evidence but was denied a chance for a fair hearing.

Had Claimant attended the hearing she could have presented this evidence. Claimant's excuse that she did not attend because she got the hearing date "mixed up," was not a valid reason for a remand hearing even if the Board believed her. The Board has discretion under its regulation, 34 Pa. Code

---

[3] After the Board issued its decision, Claimant requested reconsideration which the Board denied on October 26, 2009.

[4] This Court's review in an unemployment compensation case is limited to a determination of whether constitutional rights were violated, errors of law were committed, or findings of fact were not supported by substantial evidence. Lee Hospital v. Unemployment Compensation Board of Review, 637 A.2d 695 (Pa. Cmwlth. 1994).

§101.24(a),[5] to decide whether a remand is necessary. The denial of an application for remand will be reversed only for a clear abuse of discretion. Flores v. Unemployment Compensation Board of Review, 686 A.2d 66 (Pa. Cmwlth. 1996). This Court has held that a claimant's own negligence is not "proper cause" to justify the failure to appear at a referee's hearing. Savage v. Unemployment Compensation Board of Review, 491 A.2d 947 (Pa. Cmwlth. 1985).[6] Clearly, it was Claimant's own negligence that prevented her from attending the hearing.

Claimant next contends that the Board erred when it determined she was ineligible for benefits on the basis of willful misconduct.

Whether a Claimant's conduct rises to the level of willful misconduct is a question of law subject to this Court's review. Lee Hospital v. Unemployment Compensation Board of Review, 589 A.2d 297 (Pa. Cmwlth. 1991). Willful misconduct is defined as conduct that represents a wanton and willful disregard of

---

[5] 34 Pa. Code §101.24(a) provides in pertinent part:

> If any party who did not attend a scheduled hearing subsequently gives written notice, which is received by the tribunal prior to the release of a decision, and it is determined by the tribunal that his failure to attend the hearing was for reasons which constitute 'proper cause,' the case shall be reopened. Any and all requests for reopening, whether made to the referee or the Board shall be in writing; shall give the reasons believed to constitute 'proper cause' for not appearing; and they shall be delivered or mailed – preferably to the tribunal at the address shown on the notice of hearing or to the Unemployment Compensation Board of Review, . . . , or to the local employment office where the appeal was filed.

[6] In Savage, David L. Savage did not attend the hearing "due to his misreading the date on the notice whereby he thought the referee's hearing was to be held on March 25, 1982 rather than on March 17, 1982." Savage, 491 A.2d at 949-950.

an Employer's interest, deliberate violation of rules, disregard of standards of behavior which an Employer can rightfully expect from the employee, or negligence which manifests culpability, wrongful intent, evil design, or intentional and substantial disregard for the Employer's interest or employee's duties and obligations. Frick v. Unemployment Compensation Board of Review, 375 A.2d 879 (Pa. Cmwlth. 1977). The Employer bears the burden of proving that it discharged an employee for willful misconduct. City of Beaver Falls v. Unemployment Compensation Board of Review, 441 A.2d 510 (Pa. Cmwlth. 1982). The Employer bears the burden of proving the existence of the work rule and its violation. Once the Employer establishes that, the burden then shifts to the Claimant to prove that the violation was for good cause. Peak v. Unemployment Compensation Board of Review, 509 Pa. 267, 501 A.2d 1383 (1985).

Maureen Delaney (Delaney), Employer's human resources services specialist, testified that Claimant submitted the certification of health care provider for Family and Medical Leave Act purposes and that Question #6 on page 4 was falsified. Notes of Testimony, August 4, 2009, (N.T.) at 3. At Question #6, in the space provided to indicate the number of hours of care the patient would need per day, "8-3" hours per day, three days per week appeared. Certification of Health Care Provider for Family Member's Serious Health Condition (Family Medical Leave Act), April 24, 2009, at 4.

When Delaney received the form, she "saw that it did not look correct." N.T. at 3. She contacted the physician's office and requested the office for a fax of this page. On the faxed page, the number of hours was "2-3" hours per

day, three days a week. N.T. at 3. Delaney submitted both the form she received from Claimant and the form from the physician's office into evidence. The Board accepted Delaney's testimony as credible. In unemployment compensation proceedings, the Board is the ultimate fact-finding body empowered to resolve conflicts in evidence, to determine the credibility of witnesses, and to determine the weight to be accorded evidence. Unemployment Compensation Board of Review v. Wright, 347 A.2d 328 (Pa. Cmwlth. 1975). Findings of fact are conclusive upon review provided that the record, taken as a whole, provides substantial evidence to support the findings. Taylor v. Unemployment Compensation Board of Review, 474 Pa. 351, 378 A.2d 829 (1977).

Here, Employer established that Claimant falsified the form in order to get more time off from work. When an employee deliberately lies or misleads his employer as to matters which affect the employee's work, such actions may constitute willful misconduct, as that is a departure from the conduct an employer can rightfully expect from an employee. Zelonis v. Unemployment Compensation Board of Review, 395 A.2d 712 (Pa. Cmwlth. 1979). Further, a deliberate attempt to mislead an employer constitutes willful misconduct. Houser v. Unemployment Compensation Board of Review, 426 A.2d 1279 (Pa. Cmwlth. 1981). Claimant's conduct clearly constituted willful misconduct. Also, she did not provide good cause for her action.

Accordingly, this Court affirms.

BERNARD L. McGINLEY, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Felicia Hill,	:	
Petitioner	:	
	:	
v.	:	
	:	
Unemployment Compensation	:	
Board of Review,	:	No. 2245 C.D. 2009
Respondent	:	

O R D E R

AND NOW, this 14th day of September, 2010, the order of the Unemployment Compensation Board of Review in the above-captioned matter is affirmed.

_____

BERNARD L. McGINLEY, Judge