IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Ingrid J. McMahon, Petitioner	:	
v.	:	No. 2261 C.D. 2010
	:	Submitted: February 4, 2011
Unemployment Compensation Board of Review, Respondent	:	

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: March 3, 2011

Ingrid J. McMahon (Claimant) petitions for review, *pro se*, of the September 21, 2010, order of the Unemployment Compensation Board of Review (UCBR), which affirmed a referee's decision to deny her claim for unemployment compensation benefits. The UCBR determined that Claimant was ineligible for benefits because her discharge was the result of willful misconduct under section 402(e) of the Unemployment Compensation Law (Law).[1] We affirm.

Claimant worked as a full-time supervisor at Great Wolf Lodge (Employer) from October 11, 2005, through her termination on April 7, 2010.

[1] Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §802(e). Section 402(e) of the Law provides that an employee shall be ineligible for compensation for any week in which his unemployment is due to his discharge for willful misconduct connected with his work. 43 P.S. §802(e).

(UCBR's Findings of Fact, No. 1.)[2] On April 5, 2010, Claimant posted a handwritten note on an employee bulletin board that stated, "Kevin – once again please empty the f[---]ing vacuum @ the end of the night." (N.T., 7/20/10, Ex. E-1; UCBR's Findings of Fact, No. 2.) When questioned about the note, Claimant admitted that she had written it and said that she did so because she was upset that her co-worker was not fulfilling his tasks. (UCBR's Findings of Fact, Nos. 3-4.) Employer had counseled Claimant in the past for using profane language in the workplace and for speaking inappropriately to her co-workers. (UCBR's Findings of Fact, No. 5.) Employer does not accept the use of profanity in the workplace and had disciplined other employees for using profane language. (UCBR's Findings of Fact, No. 8.)[3] On April 7, 2010, Employer discharged Claimant for her use of profane language in the April 5, 2010, note. (UCBR's Findings of Fact, No. 6.)

Claimant filed a claim for unemployment compensation benefits, which was denied by the local service center. Claimant timely appealed to the referee, who held an evidentiary hearing on July 20, 2010. Although Claimant testified that profanity was commonly used by her fellow employees in the workplace, Employer testified that it prohibited the use of profanity and that it had disciplined other

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[2] More specifically, at the time of her termination, Claimant was a supervisor at the Starbucks Coffee restaurant located on Employer's premises, but she was still an employee of Great Wolf Lodge. (N.T., 7/20/10, at 4.)

[3] The UCBR acknowledges in its brief that Finding of Fact Number 8 contains a typographical error. That finding states, "The employer does accept the use of vulgarity at the workplace and has disciplined other employees for using profanity." (UCBR's Findings of Fact, No. 8.) According to the UCBR, the word "not" was inadvertently omitted, and the finding should have read, "The employer does **not** accept the use of vulgarity . . . ." (*See* UCBR's Brief at 8 n.5.) We agree with the UCBR that this typographical error was harmless, as the UCBR's intent can be easily discerned from the remainder of its decision and order.

employees for using profane language in the past. (N.T., 7/20/10, at 14-15, 20-21.) Employer also testified that Claimant had been disciplined previously for using vulgar language and for treating her fellow employees inappropriately. (*Id.* at 9-10.) On a February 8, 2008, disciplinary form, Employer stated that "[i]f the issue with [Claimant's] temper or using profanities happens again then it will lead to [i]mmediate termination." (N.T., 7/20/10, Ex. E-3.)[4]

The referee disbelieved Claimant's testimony and found that Claimant's use of vulgar language in the April 5, 2010, note evidenced a disregard of the standards of behavior that an employer has the right to expect of its employees. Therefore, the referee concluded that Claimant was discharged for willful misconduct under section 402(e) of the Law.

Claimant timely appealed to the UCBR, which affirmed. Claimant now petitions for review of that decision, asserting that the evidence was insufficient to support the UCBR's willful misconduct determination.[5] We disagree.

"Willful misconduct" is defined as: (1) wanton and willful disregard of the employer's interests; (2) deliberate violation of the employer's rules; (3) disregard of the standards of behavior that an employer rightfully can expect from its employees; or (4) negligence that manifests culpability, wrongful intent, evil design,

[4] Although Claimant refused to sign the form, she did not deny that she was disciplined for using profanity in the workplace in February 2008. (*See* N.T., 7/20/10, at 14-15.) The form was also admitted into evidence without objection. (*Id.* at 9.)

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

or intentional or substantial disregard for the employer's interests or the employee's duties and obligations. *Andrews v. Unemployment Compensation Board of Review*, 633 A.2d 1261, 1262 (Pa. Cmwlth. 1993). When an employee is discharged for violating a work rule, the employer has the burden of proving that the employee knew of the existence of the work rule and that he or she violated the rule. *Roberts v. Unemployment Compensation Board of Review*, 977 A.2d 12, 16 (Pa. Cmwlth. 2009). The burden then shifts to the employee to establish that he or she had good cause for the violation or that the rule itself was unreasonable. *Id.*

Here, the UCBR found that Employer had a policy prohibiting the use of vulgar language in the workplace and that Claimant knew of that policy, particularly because she had been reprimanded for similar conduct in the past. Moreover, despite her assertion that the use of profanity was widely accepted in the workplace, Claimant admitted that "it's common knowledge" that the use of vulgar language is inappropriate and that employees "shouldn't be cursing." (N.T., 7/20/10, at 19.)

The UCBR resolved the conflicts in the evidence in Employer's favor and specifically disbelieved Claimant's testimony that employees' use of vulgarity was common and accepted in the workplace. Issues of witness credibility and evidentiary weight are within the sole discretion of the UCBR, which is the ultimate factfinder. *Walsh v. Unemployment Compensation Board of Review*, 943 A.2d 363, 368 (Pa. Cmwlth. 2008). Therefore, the testimony credited by the UCBR provides substantial evidence to support the finding that Claimant deliberately violated Employer's policy. *See Brandt v. Unemployment Compensation Board of Review*, 537 Pa. 267, 271, 643 A.2d 78, 80 (1994).

Even if Claimant had not violated a work policy, her act of posting a note containing offensive language on an employee bulletin board was beneath the standards of behavior that an employer has a right to expect from its employees. *See Garza v. Unemployment Compensation Board of Review*, 669 A.2d 445, 446 (Pa. Cmwlth. 1995) (claimant's admission to using profane language at work demonstrated a disregard of the standards of behavior that an employer has the right to expect of its employees). Thus, we agree with the UCBR's conclusion that Claimant's discharge was the result of willful misconduct under section 402(e) of the Law.

Accordingly, we affirm.

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ROCHELLE S. FRIEDMAN, Senior Judge

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O R D E R

AND NOW, this 3rd day of March, 2011, we hereby affirm the September 21, 2010, order of the Unemployment Compensation Board of Review.

ROCHELLE S. FRIEDMAN, Senior Judge