

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Mark T. Lynn, :
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 Petitioner :
 :
 :
 v. : No. 2285 C.D. 2009
 : Submitted: July 2, 2010
 :
 Unemployment Compensation :
 Board of Review, :
 :
 Respondent :

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FRIEDMAN

FILED: July 26, 2010

Mark T. Lynn (Claimant) petitions for review of the September 17, 2009, order of the Unemployment Compensation Board of Review (UCBR) denying him benefits because of willful misconduct pursuant to section 402(e) of the Unemployment Compensation Law (Law).¹ We affirm.

Claimant was employed as a building and maintenance worker at Rosemont School of the Holy Child (Employer). Claimant's last day of employment was December 12, 2008, following an incident in the school's gymnasium. The local job center denied Claimant's request for benefits, concluding that Claimant had

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §802(e). Under section 402(e) of the Law, an employee is ineligible for unemployment compensation benefits when his or her unemployment is due to discharge from work for willful misconduct connected with his or her work.

voluntarily left work without a “necessitous and compelling reason,” (R.R. at 19a), and, therefore, was ineligible for benefits pursuant to section 402(b) of the Law.²

Claimant appealed, and the referee held a hearing on the matter. At the hearing, Claimant testified on his own behalf, and Sister Mary Broderick, head of the school, and the facilities manager testified for Employer. All parties agreed that, following an argument in the school gymnasium between Claimant and the facilities manager, Sister Broderick approached Claimant in the gymnasium requesting that he meet with her. However, Sister Broderick and Claimant provided conflicting accounts of the subsequent events.

Sister Broderick testified that she told Claimant that they needed to meet and Claimant refused. She insisted two more times, but Claimant continued to refuse to meet. Finally, Sister Broderick told Claimant that, if he was not willing to meet, then he needed to turn in his keys and leave. Claimant then handed in his keys and jacket and left the building. On his way out, Claimant said that he would be consulting his lawyer, to which Sister Broderick expressed that she would be happy to talk to him. (R.R. at 5a.)

Claimant testified that Sister Broderick requested that he meet with her in order to make a statement regarding the earlier incident. He responded that he wanted to have his attorney present when making a statement. Sister Broderick then

² Under section 402(b) of the Law, an employee is ineligible for unemployment compensation benefits when his or her unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature.

responded by terminating him, demanding that he turn in his keys and leave. (R.R. at 14a – 15a.)

Crediting Sister Broderick’s testimony, the referee affirmed the job center’s determination that Claimant was ineligible for benefits under section 402(b).

Upon Claimant’s appeal, the UCBR affirmed the referee’s decision. However, in doing so, the UCBR applied section 402(e), finding that Claimant did not leave voluntarily but, rather, was “discharged ... for refusing Sister Broderick’s directive to meet regarding the incident with the facilities director.” (Findings of Fact, No. 25.) The UCBR concluded that Claimant’s failure to comply with Sister Broderick’s directive constituted willful misconduct, thereby making him ineligible for benefits. Claimant now petitions this court for review of the UCBR’s decision.³

Claimant argues that the UCBR erred in ruling that he was ineligible for unemployment compensation.⁴ First, Claimant maintains that the record does not contain substantial evidence to support the UCBR’s Findings of Fact, No. 25 that Claimant was discharged for refusing to meet with Sister Broderick regarding the

³ Our scope of review is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with law or whether the necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

⁴ We note that the issues that Claimant argues in his brief were not preserved in his petition for review pursuant to Pa. R.A.P. 2119. *See also Tyler v. Unemployment Compensation Board of Review*, 591 A.2d 1164 (Pa. Cmwlth. 1991). Nevertheless, because Employer failed to move to quash the appeal, we will address the issues.

incident with the facilities director.⁵ Claimant bases his argument on the contention that Sister Broderick's testimony is inconsistent and, therefore, should be rejected in favor of his own testimony. In advocating his preferred version of the facts, Claimant simply challenges the UCBR's determinations regarding the credibility of the witnesses and the weight accorded the evidence. However, questions of credibility are within the sound discretion of the UCBR, and are not subject to re-evaluation on judicial review. *Peak v. Unemployment Compensation Board of Review*, 509 Pa. 267, 501 A.2d 1383 (1985). Because Sister Broderick credibly testified that Claimant had been discharged for refusing to meet with her, and this is ample evidence to support the UCBR's finding, Claimant's first argument fails.

Alternatively, Claimant argues that, even accepting the UCBR's findings regarding the reason for termination, his actions did not rise to the level of willful misconduct.⁶ We disagree.⁷ An employee's failure to comply with a supervisor's

⁵ Claimant does not explicitly state which findings of fact lack evidentiary support in the record. However, we may reasonably infer from his argument that Claimant challenges Finding of Fact, 25. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Ruiz v. Unemployment Compensation Board of Review*, 887 A.2d 804 (Pa. Cmwlth. 2005).

⁶ Willful misconduct has been judicially defined as: (1) an act of wanton or willful disregard of the employer's interests; (2) a deliberate violation of the employer's rules; (3) a disregard of standards of behavior which the employer has a right to expect of an employee; or (4) negligence indicating an intentional disregard of the employer's interest or of the employee's duties and obligations to the employer. *Lausch v. Unemployment Compensation Board of Review*, 679 A.2d 1385 (Pa. Cmwlth. 1996), *appeal denied*, 547 Pa. 745, 690 A.2d 1164 (1997). The employer bears the burden of proving willful misconduct in an unemployment compensation case. *Id.*

⁷ In so arguing, Claimant cites *Parlavechio v. Unemployment Compensation Board of Review*, 427 A.2d 316 (Pa. Cmwlth. 1981), and *Houff Transfer, Inc. v. Unemployment Compensation Board of Review*, 397 A.2d 42 (Pa. Cmwlth. 1979), where employees' extremely **(Footnote continued on next page...)**

directive constitutes willful misconduct as long as the directive was reasonable and the failure to comply was not reasonable. *Hager v. Unemployment Compensation Board of Review*, 482 A.2d 1368 (Pa. Cmwlth. 1984). Here, the UCBR determined that Sister Broderick's insistence on meeting was reasonable and that Claimant's refusal to meet was not reasonable. (UCBR op. at 4.) Therefore, the UCBR did not err in determining that Claimant was ineligible for benefits due to his willful misconduct.

Accordingly, we affirm.

ROCHELLE S. FRIEDMAN, Senior Judge

(continued...)

reprehensible actions were deemed to constitute willful misconduct. Claimant then distinguishes his own actions as being less extreme and, therefore, not willful misconduct. However, an employee's conduct may still constitute willful misconduct even if it is not as severe as conduct deemed willful misconduct in another case.

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Board of Review,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 26th day of July, 2010, the order of the Unemployment Compensation Board of Review, dated September 17, 2009, is hereby affirmed.

ROCHELLE S. FRIEDMAN, Senior Judge