

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Bruce R. Taylor,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 2294 C.D. 2009
	:	
Unemployment Compensation	:	Submitted: May 28, 2010
Board of Review,	:	
	:	
Respondent	:	

BEFORE: HONORABLE DAN PELLEGRINI, Judge  
HONORABLE ROBERT SIMPSON, Judge  
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION  
BY JUDGE SIMPSON**

**FILED: July 29, 2010**

Bruce R. Taylor (Claimant), representing himself, petitions for review from an order of the Unemployment Compensation Board of Review (Board) that denied him benefits under Section 402(e) of the Unemployment Compensation Law (Law) (relating to willful misconduct).<sup>1</sup> Claimant argues the Board erred in finding him ineligible for benefits because his conduct was not willful. Upon review, we affirm.

Claimant worked for G.W. Becker, Inc. (Employer) as a laborer. Employer discharged Claimant after an incident involving damage to a lathe,

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<sup>1</sup> Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. §802(e).

which fell off a fork truck, commonly referred to as a forklift, operated by Claimant.

Claimant filed an application for unemployment benefits, which was initially denied. Claimant appealed. After hearing, a referee reversed the initial denial of benefits. Although the referee found Claimant did not follow proper procedures, the referee determined that Claimant's actions were not deliberate and that the loss of the lathe was an accident. Employer appealed to the Board.

The Board made the following factual findings (with emphasis added):

1. The claimant was last employed as a full-time general laborer by GW Becker Incorporated for approximately three years at a final rate of \$8.50 per hour and his last day of work was May 8, 2009.
2. The claimant was trained on proper ways to lift items using the employer's fork truck.
3. The claimant loaded/unloaded trucks for the employer and had experience using the employer's fork truck.
4. The claimant was present when a lathe was loaded at the employer's Grove City facility for transporting to Hermitage.
5. The claimant was aware that slings were used to attach the lathe to the forks of the fork truck that was used to lift the lathe onto a truck.
6. The claimant was or should have been aware that the lathe was balanced for lifting.

7. The claimant was also aware that the lathe was loaded onto the truck on the employer's concrete pad located at the back of its facility.
8. The employer specifically used a concrete pad [sic] for loading/unloading items so that they would be not [sic] subjected to traveling on the rough terrain that surrounded the employer's facility.
9. On May 8, 2009, the lathe was returned from Hermitage to the employer's Grove City facility via a truck.
10. The truck driver parked the truck in front of the employer's facility and did not move it to the back of the facility where the employer's concrete pad was located in order for the lathe to be unloaded.
11. The truck driver indicated to the claimant that he was in a hurry to leave.
12. The claimant unloaded the lathe on rough terrain and admittedly failed to use slings to secure the lathe to the forks of the fork truck when unloading it.
13. The lathe became unbalanced on the forks, causing the lathe to fall off of the fork truck and become damaged beyond repair.
14. The lathe cost approximately \$3,750.
15. The employer discharged the claimant for failing to secure the lathe, which resulted in irreversible damage to the employer's equipment.
16. The claimant alleges that he was not properly trained on how to lift the lathe because he had previously been employed at Lowe's and the Home Depot so the employer waived the claimant from its standard forklift training.

Bd. Op., 10/26/09, Findings of Fact Nos. 1-16.

In its decision, the Board stated (with emphasis added):

The claimant asserts that he was not properly trained . . . The Board does not find the claimant's testimony to be credible. As the claimant was admittedly aware that the lathe should have been secured using slings, the claimant has not established good cause for his actions. The claimant's failure to use the slings was intentional. The employer has met its burden of establishing that the claimant's discharge was attributable to willful misconduct in connection with his work.

Bd. Op. at 3. Thus, the Board denied Claimant benefits. Claimant now petitions for review.

As fact finder, the Board determines the weight assigned to the evidence. Tapco, Inc. v. Unemployment Comp. Bd. of Review, 650 A.2d 1106 (Pa. Cmwlth. 1994). Credibility determinations are exclusively within the province of the Board in unemployment cases. Melomed v. Unemployment Comp. Bd. of Review, 972 A.2d 593 (Pa. Cmwlth. 2009).

Further, unchallenged findings of fact are conclusive on appeal. Campbell v. Unemployment Comp. Bd. of Review, 694 A.2d 1167 (Pa. Cmwlth. 1997). In addition, the Board's findings are conclusive on review if supported by substantial evidence in the record, taken as a whole. Tapco, Inc. Substantial evidence is evidence that a reasonable mind might accept as sufficient to support the conclusion reached. Id.

On appeal,<sup>2</sup> Claimant asserts he did not deliberately damage Employer's property, and the damage to the property was an accident due to Employer's failure to provide Claimant proper training on forklift operation. Employer argues Claimant's failure to follow Employer's established procedure for moving heavy equipment on a forklift, which caused irreparable damage to the equipment, amounted to willful misconduct.

"Willful misconduct" is behavior evidencing "a) wanton or willful disregard for an 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." Caterpillar, Inc. v. Unemployment Comp. Bd. of Review, 550 Pa. 115, 123, 703 A.2d 452, 456 (1997). Whether a claimant's conduct rises to the level of willful misconduct is a question of law fully reviewable on appeal. Dep't of Corr. v. Unemployment Comp. Bd. of Review, 943 A.2d 1011 (Pa. Cmwlth. 2008).

Proving a claimant engaged in willful misconduct for purposes of determining eligibility for unemployment benefits is the employer's burden. Id. Willful misconduct may be established by a claimant's failure to follow the procedures of the employer. Cassatt v. Unemployment Comp. Bd. of Review, 642 A.2d 657 (Pa. Cmwlth. 1994). Once an employer establishes willful misconduct,

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<sup>2</sup> Our review is limited to determining whether necessary findings of fact were supported by substantial evidence, whether errors of law were committed, or whether constitutional rights were violated. Ductmate Indus., Inc. v. Unemployment Comp. Bd. of Review, 949 A.2d 338 (Pa. Cmwlth. 2008).

the burden shifts to the claimant to prove his actions were justified or reasonable under the circumstances. Dep't of Corr. Whether a claimant established good cause is a question of law, subject to our review. Id.

Here, the Board submits Heitzman v. Unemployment Compensation Board of Review, 638 A.2d 461 (Pa. Cmwlth. 1994) is controlling. We agree. In Heitzman, the issue was whether the claimant, a truck driver, committed willful misconduct when he backed his employer's truck into a light standard, which fell on the roof of the truck. There, the employer had a policy, of which claimant was aware, requiring the driver to exit the vehicle and walk completely around it before backing up. The claimant argued "his conduct did not constitute willful misconduct because he did not make a deliberate decision to back up the truck improperly." Heitzman, 638 A.2d at 463. The claimant's position was that, at most, his conduct was negligent. This Court ultimately held the claimant's conduct was not negligence, but rather disobedience of a direct instruction, and we affirmed the Board's denial of benefits for willful misconduct. See also Moran v. Unemployment Comp. Bd. of Review, 973 A.2d 1024 (Pa. Cmwlth. 2009) (finding the claimant's failure to use the parking brake and tire chock on employer's truck was a violation of the claimant's employer's parking safety policies and constituted willful misconduct).

Here, as in Heitzman, substantial evidence supports the Board's determination of disqualifying misconduct. More specifically, Claimant regularly operated a fork truck as part of his employment. Notes of Testimony (N.T.), 07/21/09, at 9, 15, 19-20. Employer transported a lathe from its facility in Grove

City to Hermitage and back. Id. at 8. Claimant witnessed Robert Lewis, Employer's manager and Claimant's supervisor, load the lathe for transport from Employer's facility. Id. at 8, 15. Claimant contests that Employer trained him to move the lathe with the fork truck. However, the testimony of Tom Barron, Employer's vice president, and of Robert Lewis amply supports the Board's finding that Employer instructed Claimant on operating procedures for moving the lathe with the fork truck, which included securing and balancing it. Id. at 8, 10-11, 15. Moreover, the Board expressly rejected Claimant's testimony on this point. Certified Record, (C.R.), Item 11 at 3.

Undisputedly, Claimant failed to secure the lathe, which became unbalanced and fell when Claimant went over uneven ground with the fork truck. N.T. at 8, 19, 24. Claimant acknowledged slings were necessary to secure the lathe to the forks, and admitted his failure to use them. Id. at 19. Additionally, Claimant unloaded the lathe in the rough terrain in front of the facility, rather than on the concrete pad in the back of Employer's facility designated for loading and unloading large objects. Id. at 9, 14, 20, 24. The lathe, valued at \$3,750, was a total loss. Id. at 9, 18. Employer terminated Claimant's employment due to the incident with the lathe. N.T. at 9, 17.

In summary, Employer established the existence of a known rule or policy regarding fork truck operation and Claimant's violation of it by failing to secure the lathe to the fork truck using slings. Rejecting Claimant's argument that he was not properly trained, the Board found Claimant intentionally failed to

secure the lathe with slings. Therefore, Claimant did not establish justification for his failure to unload the lathe in a manner consistent with Employer's instruction.

Akin to Heitzman, Claimant's conduct was disobedience of Employer's instruction. Consistent with the result in Heitzman, the Board properly denied Claimant benefits due to claimant's discharge from employment for willful misconduct.

Discerning no error, we affirm.

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ROBERT SIMPSON, Judge

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	:	
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**ORDER**

**AND NOW**, this 29<sup>th</sup> day of July, 2010, the order of the Unemployment Compensation Board of Review is **AFFIRMED**.

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ROBERT SIMPSON, Judge