

Claimant knew of this regulation. On the day in question, Claimant was working in the mine and began to get a tube to install in a particular place in the mine. When his foreman saw him, he got angry and said that was his job to do and Claimant stopped. After that, the foreman told Claimant to connect a ventilation tube to the end of the existing tube. The existing tube ended two feet before the unsupported section of the roof, and the tube was 10 feet long. Unknown to Claimant, there was a shorter tube available, but the foreman did not tell him. The foreman watched him struggle to install the 10-foot tube, which weighed 40-50 pounds, in the two-foot area he had to work in before the unsupported roof began. Claimant asked the foreman for help, but he did not respond and just stared at Claimant. While attempting to install the tube from the two-foot area, Claimant stepped beyond the imaginary line separating the supported roof from the unsupported roof.

According to Employer's witness, who did not see the event, Claimant came out of the mine at the end of his shift and stated that he had accidentally gone beyond the supported roof while attempting to connect the tube. He was immediately suspended and two days later was told he would be fired for violating the federal regulation, but Employer would accept a resignation in lieu of firing. Claimant resigned.

Claimant filed for unemployment compensation benefits which were granted by the Department of Labor and Industry. Employer appealed this determination, and the hearing eliciting the above testimony was held before the Referee. The Referee also granted Claimant benefits finding that Claimant had not

voluntarily quit and that he had not committed willful misconduct. Employer appealed again to the Board, which affirmed, adopting the Referee's decision. Employer then filed the instant appeal.¹

On appeal, Employer first contends that Claimant is ineligible for benefits because he voluntarily resigned from the work force or that Claimant was justly terminated for willful misconduct for going under an unsupported roof in violation of federal regulations. Employer further argues that Claimant's termination was justified because there is strict liability for violating federal law and Employer's work rule.

All of Employer's contentions are frivolous. First, the law is well-settled that a resignation in lieu of imminent termination is a discharge, not a voluntary quit. *Charles v. Unemployment Compensation Board of Review*, 552 A.2d 727 (Pa. Cmwlth. 1989) (citing *Sweigert v. Unemployment Compensation Board of Review*, 408 A.2d 561 (Pa. Cmwlth. 1979)). Second, willful misconduct requires a wanton and willful disregard of the employer's interests or a deliberate violation of the employer's rules, not just an inadvertent slip, which literally is all that happened here. *See Oliver v. Unemployment Compensation Board of Review*, 5 A.3d 432 (Pa. Cmwlth. 2010). Third, Employer's strict liability argument is baseless as Claimant was following his foreman's order. In any event, it is abundantly clear that Claimant was purposefully placed in a position where it was

¹ Our scope of review is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with the law or whether necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

a near certainty that he would fall beyond the supported roof, thus violating the regulation. Any misconduct was Employer's, not Claimant's.

For the foregoing reasons, the determination of the Board is affirmed.

DAN PELLEGRINI, JUDGE

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Consol Pennsylvania Coal	:
Company, LLC,	:
Petitioner	:
	:
v.	: No. 2302 C.D. 2010
	:
Unemployment Compensation	:
Board of Review,	:
Respondent	:

ORDER

AND NOW, this 4th day of April, 2011, the order of the Unemployment Compensation Board of Review, Decision No. B-507248, dated October 4, 2010, is affirmed.

DAN PELLEGRINI, JUDGE