IN THE COMMONWEALTH COURT OF PENNSYLVANIA

People 2.0 Global, Inc., Petitioner	:	
v.	:	
Unemployment Compensation Board of Review, Respondent	:	No. 237 C.D. 2010 Submitted: August 27, 2010

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER FILED: September 30, 2010

People 2.0 Global, Inc., petitions this Court for review of the December 16, 2009 order of the Unemployment Compensation Board of Review (UCBR) reversing the decision of the Referee and granting benefits. Hobbie Professional People 2.0 (Employer), an affiliate of People 2.0 Global, Inc., presents two issues for review before this Court: (1) whether the UCBR's decision is supported by substantial evidence and (2) whether the actions of Nathaniel Andrews (Claimant) constitute willful misconduct for which there is no good-cause excuse. For the reasons that follow, we affirm the UCBR's order.

Claimant was hired by Employer, as an engineering technician to work with various client-employers beginning November 5, 2007 and ending July 29, 2009. Claimant had a history of attendance issues. During the week of July 20, 2009, Employer warned Claimant about his attendance. On July 29, 2009, Claimant

advised Employer he would be absent for personal reasons. Employer discharged Claimant that same day for his absence.

Claimant subsequently applied for unemployment compensation (UC) benefits. On August 27, 2009, the Scranton UC Service Center mailed a notice of determination denying benefits under Section 402(e) of the Unemployment Compensation Law (Law).[1] Claimant appealed and a hearing was held by a Referee. On October 2, 2009, the Referee mailed his decision affirming the decision of the UC Service Center and denying Claimant benefits under Section 402(e) of the Law. Claimant appealed to the UCBR. The UCBR reversed the decision of the Referee. Employer appealed to this Court.[2]

Employer contends the UCBR erred in making finding of facts and conclusions of law that are not supported by substantial evidence. Specifically, Employer argues the UCBR erred in finding that Claimant was discharged because of his absence on July 29, 2009 alone. We disagree.

"Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *City of Pittsburgh, Dep't of Pub. Safety v. Unemployment Comp. Bd. of Review*, 927 A.2d 675, 676 n.1 (Pa. Cmwlth. 2007) (quotation marks omitted). Here, when asked why Claimant was discharged on July 29th, Amy Tycholiz (Tycholiz), senior recruiter and staffing manager for Employer, testified at the hearing: "he did not show up for work, he had habitual problems with attendance." Reproduced Record (R.R.) at 12a.

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

[2] This Court's review is limited to determining whether the findings of fact were supported by substantial evidence, whether constitutional rights were violated, or whether errors of law were committed. *Johnson v. Unemployment Comp. Bd. of Review*, 869 A.2d 1095 (Pa. Cmwlth. 2005).

She further testified that "it was the straw that broke the camel's back unfortunately." R.R. at 12a. Clearly, this testimony is evidence that a reasonable mind might accept as adequate to support the finding that Claimant was fired because of his absence on July 29, 2009. Accordingly, the UCBR did not err in making this determination.

Employer further argues that the UCBR ignored record evidence of Claimant's repeated failure to properly report his absences. "In an unemployment compensation case, the [UCBR] is the ultimate fact finder and is empowered to make credibility determinations. In making those determinations, the [UCBR] may accept or reject the testimony of any witness in whole or in part." *Korpics v. Unemployment Comp. Bd. of Review*, 833 A.2d 1217, 1219 n.1 (Pa. Cmwlth. 2003) (citation omitted). Although there was testimony regarding Claimant's failure to properly report his absences, as stated above, Tycholiz testified that Claimant's absence on July 29, 2009 was "the straw that broke the camel's back." R.R. at 12a. Clearly, the UCBR accepted this testimony when it found Claimant's absence that day was the reason for his discharge.

Employer next contends that the UCBR erred as a matter of law in finding that Claimant's conduct did not constitute willful misconduct for which there was no good-cause excuse. We disagree.

Here, the UCBR did find that Claimant's action constituted willful misconduct. However, "[o]nce the employer establishes a prima facie case of willful misconduct, the burden shifts to the claimant to prove that his actions were justified or reasonable under the circumstances." *Downey v. Unemployment Comp. Bd. of Review*, 913 A.2d 351, 353 (Pa. Cmwlth. 2006). Claimant testified at the hearing that he called off work on July 29, 2009 because he got an emergency phone call advising him that his mother was on the way to the hospital by ambulance, and he had to meet

her at the hospital. R.R. at 17a. As such testimony was credited by the UCBR, this was sufficient to prove that Claimant's absence on July 29, 2009 was justified or reasonable under the circumstances. Accordingly, the UCBR did not err in making its findings.

For all of the above reasons, the order of the UCBR is affirmed.

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JOHNNY J. BUTLER, Judge

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Board of Review,	:	No. 237 C.D. 2010
Respondent	:	

O R D E R

AND NOW, this 30th day of September, 2010, the December 16, 2009 order of the Unemployment Compensation Board of Review is affirmed.

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JOHNNY J. BUTLER, Judge