IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Rose A. Kelly,	:	
Petitioner	:	
v.	:	No. 2437 C.D. 2009
Unemployment Compensation Board of Review,	:	Submitted: May 21, 2010
Respondent	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE COHN JUBELIRER **FILED: July 8, 2010**

Rose Kelly (Claimant), pro se, petitions for review of an order of the Unemployment Compensation Board of Review (Board) ruling her ineligible to receive unemployment compensation benefits under Section 402(e) of the Pennsylvania Unemployment Compensation Law (Law).[1] PATH, Inc. (Employer) discharged Claimant from her employment when she failed to attend, for the third time, a mandatory employee training session. Claimant argues that the Board erred

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

in denying her unemployment compensation benefits because her conduct did not constitute willful misconduct.

After Claimant was discharged from her employment, she filed for unemployment compensation benefits. On May 19, 2009, the Philadelphia Unemployment Compensation Service Center (Service Center) issued a determination denying Claimant benefits under Section 402(e). Claimant appealed the Service Center's determination, and the Unemployment Compensation Referee (Referee) held an evidentiary hearing on the matter on July 2, 2009. The Referee reversed the Service Center's ruling, granting benefits to Claimant. (Referee's Decision/Order.) Employer appealed the Referee's decision to the Board. The Board made the following findings of fact:

1. The claimant was last employed as a residential skills trainer by PATH Inc. from December 3, 2007, at a final rate of $9.52 per hour, and her last day of work was April 8, 2009.

2. To ensure the health and safety of the employer's clients, all employees are required to take 24 hours of state-mandated training per year.

3. The claimant was aware of the training requirements.

4. On January 24, 2008, the claimant received a written warning for failing to attend a scheduled training.

5. On April 14, 2008, the claimant was placed on disciplinary probation for failing to attend a scheduled training. The notice advised the claimant that any further infraction would result in her discharge.

6. On February 26, 2009, the employer notified the claimant that she was scheduled to attend a training session on April 8, 2009.

7. The claimant failed to attend a scheduled training on April 8, 2009, because she forgot.
8. The claimant was discharged for her continued failure to attend required training.

(Board Decision and Order, Findings of Fact (FOF) ¶¶ 1-8.) The Board reversed the Referee's decision, denying benefits to Claimant under Section 402(e). (Board Decision and Order at 3, September 30, 2009.) Claimant requested reconsideration of the issue by the Board, but the Board denied the request. (Ruling on Request For Reconsideration of Board Decision, October 22, 2009.) Claimant now petitions this Court for review of the Board's order denying benefits.[2]

Before this Court, Claimant argues that the Board committed an error of law in determining that she is ineligible for benefits under Section 402(e). Claimant admits that she missed the meeting after receiving notice of the training requirements and a warning that any further violation of Employer's training policy would result in her discharge. However, she contends that because she did not miss the training intentionally her actions do not constitute willful misconduct.

Section 402(e) provides that a claimant will not be eligible for unemployment compensation when the claimant's "unemployment is due to his discharge or temporary suspension from work for willful misconduct connected with his work." 43 P.S. § 802(e). When a claimant is discharged for failure to comply with a work rule, the employer has the burden of proving that the claimant

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[2] This Court's scope of review is limited to determining whether constitutional rights were violated, errors of law were committed, and whether essential findings of fact are supported by substantial evidence. Lee Hospital v. Unemployment Compensation Board of Review, 637 A.2d 695, 697 (Pa. Cmwlth. 1994).

was aware of the rule and violated the rule. Bishop Carroll High School v. Unemployment Compensation Board of Review, 557 A.2d 1141, 1143 (Pa. Cmwlth. 1989). If the employer can meet this burden, the burden then shifts to the claimant to prove that there is good cause for violation of the rule. Id. There is good cause if a claimant's actions are "justifiable and reasonable under the circumstances." Docherty v. Unemployment Compensation Board of Review, 898 A.2d 1205, 1208-09 (Pa. Cmwlth. 2006).

Employer has met its burden. Claimant acknowledges that she was aware of the mandatory training. (FOF ¶ 2.) Employer gave Claimant multiple written warnings about her missing the trainings and notified her, in writing, that "[s]hould there be any further infraction of a similar nature you will be dismissed from your employment at PATH." (FOF ¶¶ 4-5; Memorandum to Kelly from Scott, April 14, 2008, Ex. SC-12.) Claimant admits that she was previously placed on "disciplinary probation because she missed a scheduled training on April 3, 2008." (Petitioner's Br. at 5.) Claimant, nonetheless, failed to attend the training meeting on April 8, 2009 and was, therefore, discharged. (FOF ¶¶ 7-8.)

Claimant cites Navickas v. Unemployment Compensation Board of Review, 567 Pa. 298, 305, 787 A.2d 284, 289 (2001), for the principle that negligent behavior cannot constitute willful misconduct. In Navickas, the claimant, a nurse, negligently calculated the wrong ratio of dilution for an antibiotic that she administered to a patient. Id. at 300, 787 A.2d at 286. The claimant was required by the hospital to look up medication in a reference book if she had any questions regarding the dilution ratio. Id. at 300-01, 787 A.2d at 286. She "glanced at the

reference book but did not read it carefully enough because she thought she had administered the medication previously and knew the proper dilution." Id. at 301, 787 A.2d at 286. The claimant also had a previous incident where she had been placed under supervision for a brief period as a result of an error in patient care. Id. at 300, 787 A.2d at 287. After the hospital discovered the infraction of policy involving the dilution ratio, the claimant was allowed to resign from her employment with the hospital in lieu of dismissal. Id. at 301, 787 A.2d at 286. The Pennsylvania Supreme Court held that this kind of negligent behavior does not rise to the level of willful misconduct. Id. at 308 ,787 A.2d at 291.

The Board argues that, where a claimant has violated a known work rule, Navickas does not apply. Instead, the Board argues that this Court should follow Moran v. Unemployment Compensation Board of Review, 973 A.2d 1024 (Pa. Cmwlth. 2009), and Heitczman v. Unemployment Compensation Board of Review, 638 A.2d 461 (Pa. Cmwlth. 1994). In Moran, the claimant forgot to apply the brake and chock when parking a work truck, in violation of a known work rule, resulting in the truck rolling away and damaging property. 973 A.2d at 1026. This Court held that the violation of the work rule constituted willful misconduct. Id. at 1030. This Court distinguished Moran from the situation in Navickas. In Navickas, the claimant followed the work policy, but did so negligently and was discharged for negligent application of the policy, not complete failure to follow the rule. Id. In the present situation, much like in Moran, Claimant completely failed to follow Employer's rule of attending the trainings.

Similarly, in Heitczman, the employer had a company rule that truck drivers were to walk around their truck and inspect the area each time before backing up. The claimant failed to follow the rule and backed into a light pole. Id. at 463. He was discharged by his employer for violation of the work rule. Id. This Court found willful misconduct because of his failure to follow the established work rule. Id. at 464.

We agree with the Board that, under Heitczman and Moran, Claimant's failure to attend the training session, in violation of the known policy and repeated warnings of Employer, constitutes willful misconduct. "A conclusion that the employee has engaged in disqualifying willful misconduct is especially warranted in such cases where, as here, the employee has been warned and/or reprimanded for prior similar conduct." Department of Transportation v. Unemployment Compensation Board of Review, 479 A.2d 57, 58 (Pa. Cmwlth. 1984). Even though Claimant received reminders and warnings from Employer, had been notified that failure to attend another mandatory training would result in dismissal, and had ample opportunity and reason to mark this mandatory training session on her calendar, she failed to attend a mandatory training, for the third time, in violation of the known work rule of Employer.[3]

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[3] Although Claimant does not explicitly raise an argument that she had good cause for the violation of the work rule, she does highlight that she did not receive a message left by Employer reminding her about the training because the message was left with her daughter, who did not give Claimant the message. Claimant stated that reminder messages are usually left on her voicemail. This Court has stated that there is good cause if a claimant's actions are "justifiable and reasonable under the circumstances." Docherty, 898 A.2d at 1208-09. While it is unfortunate that Claimant failed to receive the reminder message from her daughter, we cannot say that this failure to receive the message is a circumstance which justifies Claimant's missing a third mandatory training meeting after multiple warnings from Employer. Claimant had been

For the foregoing reasons, we are constrained to agree with the Board that Claimant's actions constitute willful misconduct under Section 402(e). Accordingly, the Board's order is affirmed.

RENÉE COHN JUBELIRER, Judge

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informed about the training meeting approximately six weeks before the meeting took place and should have taken the necessary steps to assure that she would remember to attend the training.

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	:	
Respondent	:	

ORDER

NOW, July 8, 2010, the order of the Unemployment Compensation Board of Review in the above-captioned matter is hereby **AFFIRMED**.

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RENÉE COHN JUBELIRER, Judge