

The UCBR found as follows. Claimant last worked for Employer as a full-time registration clerk from May 21, 2007, through May 20, 2009. Employer has a discipline policy that encompasses breaches of confidentiality and HIPAA² violations. The policy provides for the termination of an employee who uses, possesses, copies or distributes patient records, or discloses information contained in such records, without authorization. Employer's policy further provides that employees are not permitted to request, use or disclose protected health information in excess of the minimum required to satisfy the purpose of the use, request or disclosure. Claimant was aware of Employer's policies, the HIPAA law and the privacy requirements. (UCBR's Findings of Fact, Nos. 1-5.)

On January 27, 2009, at 3:09 a.m., a patient called to verify an appointment. In an attempt to confirm the caller's identity, Claimant accessed several entries in the patient's record, including the patient's address, telephone number, emergency contacts, prior appointments, birthday and last four digits of her social security number. The caller was able to correctly answer all questions.

In May 2009, Employer received a complaint that Claimant had shared medical records with a person outside the hospital. An audit by Employer's information technology services department established that Claimant had accessed

² The Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936 (1996). This act legally protects a patient's right to have her health information kept private and secure. (Certified Record, (C.R.), Item #3, Ex. 16.)

the particular patient's records from 3:09 a.m. to 3:12 a.m. on January 27, 2009, and Employer asked why she had done so. Claimant could not remember the call from four months before, but assumed that the patient had called to verify an appointment.³ Employer terminated Claimant for violating HIPAA and for revealing private matters from patient records. (UCBR's Findings of Fact, Nos. 6-11.)

Claimant applied for unemployment compensation benefits, which the local job center denied pursuant to section 402(e) of the Law. Claimant appealed, and a hearing was held before the referee, who reversed the job center's determination and awarded Claimant benefits. On further appeal by Employer, the UCBR affirmed the referee's decision. Crediting Claimant's testimony that she accessed the records merely to verify the identity of the patient calling, the UCBR determined that Employer failed to meet its burden of proving that Claimant's actions constituted willful misconduct. Specifically, the UCBR reasoned that: (1) Employer failed to establish what protected or private information Claimant supposedly revealed on January 27, 2009; (2) Employer failed to prove the caller was not the patient whose records Claimant accessed; (3) Employer failed to show Claimant did not have a work-related reason for accessing the record; and (4) Employer's bald

³ For purposes of clarification, Claimant testified that, when the manager of patient registration, Monica Stewart, initially asked her why she had accessed the record, Claimant could not remember, but then she went home, thought about it, and called her supervisor back. (C.R., Item #9, Notes of Testimony, (N.T.) at 24.) The UCBR credited Claimant's testimony as to why she accessed the caller's record.

assertions to the contrary were not credible. (UCBR op. at 3.) Thereafter, Employer filed a petition for review with this court.⁴

In order to meet its burden of proving willful misconduct due to violation of a work rule, an employer must establish the existence of the rule and its violation by the claimant. *Docherty v. Unemployment Compensation Board of Review*, 898 A.2d 1205, 1208 (Pa. Cmwlth. 2006). Only then does the burden shift to the employee to prove either that the rule was unreasonable or that good cause existed for its violation. *Id.*

Employer argues that the UCBR erred in deciding Claimant did not commit willful misconduct in the face of substantial record evidence to the contrary. Employer's argument is based on its contention that the primary reason for firing Claimant was not for revealing patient information to others, but, rather, because Claimant repeatedly accessed the patient's medical record without authorization.⁵ However, we conclude that the UCBR's finding that Claimant was specifically discharged "for violating HIPAA and revealing private matters on patient records,"

⁴ Our scope of review is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with the law and whether necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

⁵ Employer now asserts that unauthorized *access* of patient information was the *primary* reason for Claimant's discharge. (Employer's brief at 10.) However, in its petition for review, Employer contended substantial evidence does not support the UCBR's finding that Employer terminated Claimant for violating HIPAA and *revealing* private matters on patient records. (Petition for Review at 2-3.)

(UCBR's Findings of Fact, No. 11), is substantially supported by the testimony of Monica Stewart, Employer's manager of patient registration and Claimant's supervisor, who stated: "Seeing that the employee accessed the account without justification for her job, she was terminated for violating HIPAA and revealing private matters on patient records." ((C.R.), Item #9, (N.T.) at 17.)

As well, despite Employer's contention that Claimant had no work-related reason for accessing the records, the UCBR clearly found, based on Claimant's credible testimony, that, by accessing the records in question, Claimant merely attempted to verify that the patient who called in on the morning of January 27, 2009, was the person that she purported to be.⁶ Issues of credibility, resolution of conflicting evidence, and weight to be accorded the evidence are matters for the UCBR, as ultimate factfinder, to resolve. *Ruiz v. Unemployment Compensation Board of Review*, 887 A.2d 804, 808 (Pa. Cmwlth. 2005).

The issue of whether a claimant's conduct amounts to willful misconduct rendering her ineligible for benefits is one of law subject to our plenary review. *Docherty*, 898 A.2d at 1209. In this case, the UCBR explained that Employer failed to meet its burden by what Employer did not show; Employer did not prove what private information Claimant supposedly shared with a person who

⁶ Although Stewart testified that Claimant would not have had to check past appointments to verify a caller's identity, (C.R., Item #9, N.T. at 18), we note that Stewart admitted that other employees in Claimant's position access patient records as Claimant did on January 27th. (C.R., Item #9, N.T. at 19.)

was not the patient, and Employer did not establish an improper motive for Claimant to access this record.⁷ Because the UCBR did not credit the testimony of Employer's witnesses that Claimant improperly accessed or shared private information in violation of HIPAA, the UCBR properly concluded that Employer failed to meet its burden of proving that Claimant violated Employer's work policy such that her actions constituted willful misconduct.⁸

Accordingly, we affirm.

ROCHELLE S. FRIEDMAN, Senior Judge

⁷ In fact, Claimant testified that the person who called answered all questions correctly and that Claimant did not personally know the patient involved. (C.R., Item #9, N.T. at 23-24.)

⁸ In support of its argument, Employer cites *Arbster v. Unemployment Compensation Board of Review*, 690 A.2d 805 (Pa. Cmwlth.), *appeal denied*, 549 Pa. 718, 701 A.2d 579 (1997), for the proposition that a claimant who, without good cause, violates an employer's policy regarding confidentiality and unauthorized access of computer records is guilty of willful misconduct. However, as discussed, Employer did not establish that Claimant violated its policy regarding patient confidentiality.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Pinnacle Health Hospitals,	:	
Petitioner	:	
	:	
v.	:	No. 2440 C.D. 2009
	:	
Unemployment Compensation	:	
Board of Review,	:	
Respondent	:	

ORDER

AND NOW, this 28th day of May, 2010, the order of the Unemployment Compensation Board of Review, dated November 12, 2009, is hereby affirmed.

ROCHELLE S. FRIEDMAN, Senior Judge