IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Russel V. Boring, Petitioner	:	
v.	:	
Unemployment Compensation Board of Review, Respondent	:	No. 2450 C.D. 2009
	:	Submitted: June 11, 2010

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER FILED: July 15, 2010

Russel Boring (Claimant) petitions this Court for review of the November 5, 2009 order of the Unemployment Compensation Board of Review (UCBR) affirming the decision of the Referee holding Claimant ineligible for benefits under Section 402(e) of the Unemployment Compensation Law (Law).[1] Claimant essentially raises two issues before this Court: (1) whether the UCBR's findings of fact are supported by substantial evidence, and (2) whether the UCBR erred in finding that Claimant committed willful misconduct. For reasons that follow, we affirm the UCBR's order.

Claimant was working for Renzenberger, Inc. (Employer) as a shuttle driver on May 16, 2009, when he threatened to hurt a co-worker in response to the

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

co-worker accusing him of throwing out garbage at a hotel. Employer maintains a policy of zero tolerance for an employee who threatens, harasses or intimidates another, which provides for disciplinary action up to and including discharge from employment. Claimant was terminated for violation of this policy.

Claimant subsequently applied for Unemployment Compensation (UC) benefits. On July 2, 2009, the Duquesne UC Service Center mailed a notice of determination denying benefits under Section 402(e) of the Law. Claimant appealed and a hearing was held before a Referee. On August 31, 2009, the Referee mailed his decision affirming the determination of the UC Service Center. Claimant appealed to the UCBR. The UCBR affirmed the decision of the Referee. Claimant appealed, pro se, to this Court.[2]

Claimant argues that the UCBR's findings of fact are not supported by substantial evidence. Specifically, Claimant contends Findings of Fact No. 5 (wherein the Referee found Employer maintains a zero tolerance policy for employees who threaten, harass or intimidate others), No. 7 (wherein the Referee found that Claimant never saw his co-worker with a firearm), No. 9 (wherein the Referee found Claimant said quit it or I will hurt you), No. 10 (wherein the Referee found Claimant was terminated for violation of the policy), and No. 11 (wherein the Referee found that Claimant never reported any alleged threats made by his co-worker), are not supported by substantial evidence.[3] We disagree.

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[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).

[3] Claimant also contends that Finding of Fact No. 4 (wherein the Referee found Claimant did not file a timely appeal) is not supported by substantial evidence. Because the Referee accepted the appeal as if it were timely filed, this issue is moot.

"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).

Concerning Finding of Fact No. 5, Roy Rodgers (Rodgers), Regional Manager for Employer, testified that Employer has a company policy of zero tolerance for employees who threaten, harass or intimidate others, and that Claimant was aware of the policy because it is in the handbook which Claimant signed. Original Record (O.R.), Item No. 11 at 4. Rodgers subsequently testified that the name of the policy is "Workplace Security and Antiviolence Policy," and that Claimant signed an acknowledgement stating, "I have received, read, and understand the policies and procedures outlined by [Employer] in the Employee Handbook." O.R., Item No. 11 at 7. In Finding of Fact No. 7, the Referee specifically found that "[C]laimant did not ever see this co-worker with a firearm in the workplace . . . ." O.R., Item No. 12 at 1. At the hearing, when asked if his co-worker had a gun that day, Claimant responded, "I don't know but I know I've seen him with the gun when we used to deliver railroads to Sewickley Country Inn . . . ." O.R., Item No. 11 at 5. Claimant continued to testify that that was the only day he saw the gun, and that it was in a van not on railroad property, i.e., not in the workplace. Regarding Finding of Fact No. 9, Claimant specifically testified that a co-worker was accusing him of throwing garbage out at the hotel and Claimant told him, "if [you] don't quit it, [you're] going to get hurt." O.R., Item No. 11 at 5. Concerning Finding of Fact No. 10, Rodgers testified that Claimant was fired because of the above threat and that it was considered a violation of company policy. O.R., Item No. 11 at 4. Finally, concerning Finding of Fact No. 11, Claimant testified that his co-worker had

threatened him in the past but he "never reported it because [he's] not one to be a tattletale." O.R., Item No. 11 at 5. Clearly, the above testimony is relevant evidence that a reasonable mind might accept as adequate to support the findings of fact made by the Referee. Accordingly, as the UCBR adopted the Referee's findings, the UCBR's findings of fact are supported by substantial evidence.

Claimant next argues that the UCBR erred in finding that Claimant committed willful misconduct. Specifically, Claimant contends he did not violate the work rule; he was only defending himself with words. We disagree.

"Willful misconduct has been defined as the (a) wanton and 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 interests or an employee's duties and obligations." *On Line Inc. v. Unemployment Comp. Bd. of Review*, 941 A.2d 786, 789 (Pa. Cmwlth. 2008) (quotation marks omitted). "In the case of a work rule violation, the employer must establish the existence of the rule, the reasonableness of the rule and its violation." *Lindsay v. Unemployment Comp. Bd. of Review*, 789 A.2d 385, 389 (Pa. Cmwlth. 2001).

In the instant case, as reported by Claimant, the policy as stated in the Employer's Handbook states, in pertinent part:

> [C]arrying or concealing a weapon on company or customer property: fighting: exhibiting disorderly conduct, such as the use of profanity, *threatening*, intimidating, or using abusive language toward another person: engaging in any form of horseplay, scuffling, or mischief that shows a disregard for safety, comfort, or work performance of others is strictly prohibited.

Claimant's Br. at 11 (emphasis added). Further, according to Rodgers, the last paragraph of the Antiviolence Policy states:

> Compliance of Antiviolence Policy is a condition of employment. Due to the importance of this policy, employees who violate any of its terms, who engage in, or contribute in violent behavior or who threatens others with violence may be subject to a (inaudible) action up to and including immediate termination of employment.

O.R., Item No. 11 at 8. It is undisputed that Claimant threatened to hurt his co-worker if he continued accusing him of throwing garbage out at the hotel. As it is more than reasonable for an employer to establish an antiviolence policy, Employer has established the necessary requirements for proving willful misconduct in the context of a work rule violation. Accordingly, the UCBR did not err in finding that Claimant committed willful misconduct.

This Court notes that Claimant admitted that he violated the policy. Specifically, Claimant testified: "I was wrong in the aspect that if I'd of [sic] known that it was written in stone for defending yourself, you were going to get terminated, I would have kept my mouth shut." O.R., Item No. 11 at 5. Claimant further testified: "I would agree that I should have been maybe reprimanded, suspended without pay for x amount of time, whatever. But automatic termination with my record . . . ." O.R., Item No. 11 at 8. Claimant was in fact aware of the policy and potential consequences when he violated it. Accordingly, the UCBR did not err in finding that Claimant committed willful misconduct.

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

JOHNNY J. BUTLER, Judge

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O R D E R

AND NOW, this 15th day of July, 2010, the November 5, 2009 order of the Unemployment Compensation Board of Review is affirmed.

JOHNNY J. BUTLER, Judge