IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Erik O. Vale-Sotomayor, Petitioner	:	
v.	:	No. 2520 C.D. 2010
Unemployment Compensation Board of Review, Respondent	:	Submitted: March 25, 2011

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY FILED: April 25, 2011

Erik O. Vale-Sotomayor (Claimant) petitions, pro se, for review of the order of the Unemployment Compensation Board of Review (Board) affirming the decision of a Referee determining that Claimant is ineligible for unemployment compensation benefits pursuant to Section 402(e) of the Unemployment Compensation Law (Law).[1] We affirm.

[1] Act of December 5, 1936, Second Ex. Sess. P.L. (1937) 2897, as amended, 43 P.S. § 802(e). Section 402(e) of the Law provides, in pertinent part:

> An employe shall be ineligible for compensation for any week-
>
> * * *
>
> (e) In which his unemployment is due to his discharge or

(Continued....)

Claimant filed a claim for unemployment compensation benefits with the Scranton UC Service Center upon the termination of his employment as a forklift driver with Quietflex Manufacturing Company (Employer). The Service Center representative concluded that Claimant had been discharged for reasons that constitute willful misconduct under Section 402(e) of the Law. As a result, unemployment compensation benefits were denied.

Claimant appealed this determination and a hearing was conducted before a Referee. See N.T. 8/24/10[2] at 1-18. On August 24, 2010, the Referee issued a decision and order disposing of the appeal in which she made the following relevant findings of fact: (1) on May 11, 2010, Claimant violated an Employer safety procedure by not placing the chocks behind the tires of a truck before unloading it; (2) Claimant was aware of Employer's safety procedures; (3) Claimant informed his supervisor that he told the driver to make sure that it was done, but that he did not double check prior to unloading the trailer; (4) the supervisor informed Claimant that he needs to be careful to make sure that the procedure is followed; (5) Claimant was going to be suspended for his violation of Employer's safety policy because this was a serious violation; (6) that same day, prior to being informed of the suspension, Claimant was again observed unloading another trailer that did not have the chocks placed behind the tires of the truck and did not have its dolley down; (7) this was Claimant's second serious safety violation; (8) Claimant did not check the security of the second trailer prior to

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> temporary suspension from work for willful misconduct connected with his work, irrespective of whether or not such work is "employment" as defined in this act.

[2] "N.T. 8/24/10" refers to the transcript of the hearing conducted before the Referee on August 24, 2010.

unloading it because he was in charge of everything that day at work and he had too many things to do; and (9) Claimant was discharged in accordance with Employer's policy based on his two serious safety violations. Referee Decision at 1-2.

Based on the foregoing, the Referee concluded:

> In this case, the employer credibly established the claimant was aware of the correct safety procedures and that the claimant violated the safety procedures on 2 occasions. Although there was a lack of staff and the claimant was busy, it does not justify his actions for disregarding the employer's safety procedures. Therefore, his actions show a disregard for the employer's interests, which constitutes willful misconduct and benefits are denied under Section 402(e) of the Law.

Referee Decision at 2. Accordingly, the Referee issued an order affirming the Service Center's determination and denying Claimant unemployment compensation benefits. Id.

On September 2, 2010, Claimant appealed the Referee's decision to the Board. On October 15, 2010, the Board issued an order adopting the Referee's findings and conclusions, and affirming the Referee's decision. Claimant then filed the instant petition for review.[3]

In this appeal, Claimant contends the Board erred in determining that Claimant was ineligible for compensation benefits under Section 402(e) of the Law. More specifically, Claimant contends that he was impermissibly terminated

[3] This Court's scope of review in an unemployment compensation appeal is limited to determining whether an error of law was committed, whether constitutional rights were violated, or whether necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa.C.S. § 704; Hercules, Inc. v. Unemployment Compensation Board of Review, 604 A.2d 1159 (Pa. Cmwlth. 1992).

from his employment based upon a single violation of Employer's safety policies. We do not agree.

As noted above, pursuant to Section 402(e) of the Law, an employee is ineligible for unemployment compensation benefits when he had been discharged from work for willful misconduct connected with his work. Guthrie v. Unemployment Compensation Board of Review, 738 A.2d 518 (Pa. Cmwlth. 1999). The burden of proving willful misconduct rests with the employer. Id. Whether an employee's conduct constitutes willful misconduct is a question of law subject to this Court's review. Id.

Although willful misconduct is not defined by statute, it has been described as: (1) the wanton and willful disregard of the employer's interests; (2) the deliberate violation of rules; (3) the disregard of standards of behavior that an employer can rightfully expect from his employee; or (4) negligence which manifests culpability, wrongful intent, evil design, or intentional and substantial disregard for the employer's interests or the employee's duties and obligations. Id. (citing Kentucky Fried Chicken of Altoona, Inc. v. Unemployment Compensation Board of Review, 309 A.2d 165, 168-169 (Pa. Cmwlth. 1973)).

Thus, a violation of an employer's work rules and policies may constitute willful misconduct. Id. An employer must establish the existence of the work rule and its violation by the employee. Id. If the employer proves the existence of the rule, the reasonableness of the rule, and the fact of its violation, the burden of proof shifts to the employee to prove that he had good cause for his actions. Id. The employee establishes good cause where his actions are justified or reasonable under the circumstances. Id.

In addition, it is well settled that the Board is the ultimate finder of fact in unemployment compensation proceedings. Peak v. Unemployment

Compensation Board of Review, 509 Pa. 267, 501 A.2d 1383 (1985); Chamoun v. Unemployment Compensation Board of Review, 542 A.2d 207 (Pa. Cmwlth. 1988). Thus, issues of credibility are for the Board which may either accept or reject a witness' testimony whether or not it is corroborated by other evidence of record. Peak; Chamoun. Findings of fact are conclusive upon review provided that the record, taken as a whole, contains substantial evidence to support the findings. Taylor v. Unemployment Compensation Board of Review, 474 Pa. 351, 378 A.2d 829 (1977). This Court must examine the evidence in the light most favorable to the party who prevailed before the Board, and to give that party the benefit of all inferences that can be logically and reasonably drawn from the testimony. Id.

When viewed in a light most favorable to Employer, our review of the certified record in this case demonstrates that there is substantial evidence supporting the Board's findings regarding the existence of Employer's policies regarding the placement of chocks behind the wheels of a truck prior to unloading and the requirement of putting down the dolley, the reasonableness of the policies, and the fact of two separate violations by Claimant. See N.T. 8/24/10 at 8-9, 10-11, 13, 16.[4,5] More specifically, the testimony of Employer's Operations Manager and Supervisor of Shipping and Receiving support the Board's findings in this regard. See id.

As noted above, the Board was free to credit the foregoing evidence regarding the number of violations of Employer's policies and to discredit evidence to the contrary. Peak; Chamoun. In addition, those findings are conclusive

[4] See also Exhibits 8, 9, 11, Certified Record (CR) Item No. 3 at 4-5, 6-7, 10.

[5] At the hearing, Claimant conceded that he was aware of Employer's foregoing safety policies. See N.T. 8/24/10 at 12. See also Exhibit 33, CR Item No. 3 at 35.

on appeal as they are supported by the foregoing substantial evidence. Taylor. As Employer satisfied its burden of proof in this regard, the burden then shifted to Claimant to establish good cause such that his actions were justified or reasonable under the circumstances. Guthrie.

In support of his burden, Claimant cites to his assertion at the hearing that he only committed one violation of Employer's safety policies. See Brief of Petitioner at 7. However, in the Referee's decision adopted by the Board, she specifically stated, "In this case, the employer credibly established the claimant was aware of the correct safety procedures and that the claimant violated the safety procedures on 2 occasions. Although there was a lack of staff and the claimant was busy, it does not justify his actions for disregarding the employer's safety procedures. Therefore, his actions show a disregard for the employer's interests, which constitutes willful misconduct and benefits are denied under Section 402(e) of the Law." Referee's Decision at 2.

As noted above, the Board is the ultimate finder of fact in unemployment compensation proceedings. Peak; Chamoun. In addition, issues of credibility are for the Board which may either accept or reject a witness' testimony whether or not it is corroborated by other evidence of record. Id. Thus, although Claimant presented evidence which, if believed, could establish his assertion that he only committed one violation of Employer's safety policies, the Board adopted the Referee's rejection of his testimony offered in support thereof and its determination in this regard is patently not subject to our review.

Moreover, the fact that Claimant repeats this assertion in his appellate brief, which contradicts the Referee's determination regarding the number of violations, does not compel the conclusion that this determination that was adopted by the Board should be reversed. See, e.g., Tapco, Inc. v. Unemployment

Compensation Board of Review, 650 A.2d 1106, 1108-1109 (Pa. Cmwlth. 1994) ("[T]he fact that Employer may have produced witnesses who gave a different version of events, or that Employer might view the testimony differently than the Board, is not grounds for reversal if substantial evidence supports the Board's Findings.").

In short, there is ample substantial evidence demonstrating the existence of Employer's work safety policies, the reasonableness of the policies, Claimant's awareness of the policies, and the fact of their violations. As a result, the Board did not err in determining that Claimant is ineligible for benefits pursuant to Section 402(e) of the Law.[6]

Accordingly, the order of the Board is affirmed.

JAMES R. KELLEY, Senior Judge

[6] See, e.g., Moran v. Unemployment Compensation Board of Review, 973 A.2d 1024 (Pa. Cmwlth. 2009) (A claimant engaged in willful misconduct, thereby precluding the award of benefits under Section 402(e) of the Law, where he forgot to apply the brake and chock when parking a work truck in violation of a known work safety rule, resulting in the truck rolling away and damaging property.); Heitczman v. Unemployment Compensation Board of Review, 638 A.2d 461 (Pa. Cmwlth.), petition for allowance of appeal denied, 538 Pa. 660, 648 A.2d 791 (1994) (A claimant engaged in willful misconduct, thereby precluding the award of benefits under Section 402(e) of the Law, where he failed to walk around his truck and inspect the area before backing up in violation of a known work safety rule, resulting in the truck backing into a light pole.). See also Department of Transportation v. Unemployment Compensation Board of Review, 479 A.2d 57, 58 (Pa. Cmwlth. 1984) ("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.").

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O R D E R

AND NOW, this 25th day of April, 2011, the order of the Unemployment Compensation Board of Review, dated October 15, 2010, at No. B-507753, is AFFIRMED.

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JAMES R. KELLEY, Senior Judge