IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Architectural Innovations, Petitioner	:	
v.	:	No. 2570 C.D. 2010
	:	Submitted: April 21, 2011
Unemployment Compensation Board of Review, Respondent	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FRIEDMAN FILED: June 16, 2011

Architectural Innovations (Employer) petitions for review of an order of the Unemployment Compensation Board of Review (UCBR), dated November 4, 2010, which affirmed a referee's decision that Linda Gabosch (Claimant) is not ineligible for benefits under Section 402(e) of the Unemployment Compensation Law (Law).[1] We affirm.

The UCBR found as follows. Claimant last worked for Employer as a part-time administrative assistant from May 1, 2008, until May 10, 2010. She worked twenty-four hours in an average week. Employer's president, Jan

[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 that a claimant shall be ineligible for benefits for any week in which her unemployment is due to discharge from work for willful misconduct connected with her work. 43 P.S. §802(e).

Brimmeier,[2] believed that Claimant often overstepped the boundaries of her job or did things that she was not authorized to do. For example, Brimmeier believed that Claimant applied for credit cards in her name under Employer's account without authorization to do so. However, Claimant was originally given credit cards by Brimmeier or Brimmeier's executive assistant. Brimmeier also believed that Claimant impersonated Brimmeier when making bank withdrawals on her behalf. (Findings of Fact, Nos. 1, 3-7.)

Brimmeier became upset when Claimant disclosed to Brimmeier's sister that Brimmeier bought property in Florida. Claimant should have known that she was prohibited from disclosing confidential company information. Brimmeier discharged Claimant on May 10, 2010, telling Claimant that she was being let go because of her gossiping and her breach of confidentiality. Claimant asked about specific incidents but did not receive an answer. (Findings of Fact, Nos. 8-11.)

Thereafter, Claimant applied for unemployment compensation benefits. The local job center determined that Claimant was ineligible for benefits under Section 402(e) of the Law due to dishonesty. Claimant appealed,[3] and the referee reversed the job center's determination. The referee reasoned in relevant part that "[t]he employer's burden must be met by substantial first-hand competent evidence. [Brimmeier] testified at length in many generalities. She also testified about a few

[2] The record reflects that Jan Brimmeier is Employer's president and owner. (N.T., 8/18/10, at 1.)

[3] In her appeal letter, Claimant stated that Employer had not accused her of dishonesty at her termination meeting. (Appeal Letter, 7/21/10, at 1.)

specific incidents that were either not proven or do not rise to the level of willful misconduct." (Referee's Op. at 2.) The referee also concluded that Claimant's actions in disclosing that Brimmeier had bought property in Florida and in revealing that Brimmeier had met with an employee on a Saturday did not amount to willful misconduct. (*Id.*)

Employer appealed the referee's decision, simultaneously requesting that the UCBR remand the matter for submission of additional evidence.[4] The UCBR denied Employer's remand request and affirmed the referee's decision, adopting the referee's findings of fact and conclusions of law. The UCBR also stated that "the claimant worked to the best of her ability." (UCBR's Op. at 1.) Employer's petition for review to this court followed.

On appeal, Employer asks whether the UCBR erred in determining that Claimant's actions did not rise to the level of willful misconduct.[5]

We explained in *Ductmate Industries, Inc. v. Unemployment Compensation Board of Review*, 949 A.2d 338, 341-42 (Pa. Cmwlth. 2008):

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[4] In its appeal/remand request letter, Employer's counsel stated that Brimmeier "*believes* that the Claimant was terminated for willful misconduct and as such, unemployment compensation benefits should have been denied." (Appeal/Remand Request Letter, 8/31/10, at 1) (emphasis added).

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

> Our Supreme Court defines willful misconduct as behavior that evidences a willful disregard of the employer's interests, a deliberate violation of the employer's work rules, or a disregard of standards of behavior that the employer can rightfully expect from its employees. When asserting discharge due to violation of a work rule, an employer must establish existence of the rule and its violation. The employer bears the initial burden of proving a claimant engaged in willful misconduct. Whether a claimant's actions rise to the level of willful misconduct is a question of law fully reviewable on appeal.

First, Employer argues that Claimant committed willful misconduct, both as a practical matter and in derogation of the employee handbook, by divulging confidential information regarding Employer's hiring strategy through e-mails that Claimant sent to a potential employee.[6] However, Brimmeier acknowledged that she did not terminate Claimant for her e-mails. (N.T., 8/18/10, at 15). Therefore, Claimant's conduct in sending these e-mails cannot serve as a basis for disqualifying her from benefits. *Ductmate*, 949 A.2d at 344 n.5; *see also PrimePay, LLC v. Unemployment Compensation Board of Review*, 962 A.2d 684, 687 (Pa. Cmwlth. 2008) ("It is well settled that to disqualify an employee from receiving unemployment benefits, the employer must prove: (1) the employee was engaged in

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[6] The specific rule that Employer argues Claimant violated is as follows:

> You are not to discuss or share confidential information with anyone inside or outside of AI who does not have a direct need-to-know involvement. If you are unsure of whether or not information may be released, please consult the President. Violation of confidentiality is grounds for immediate termination of employment.

(Employee Handbook, Section E, Confidentiality Policies.)

willful misconduct; and (2) that the willful misconduct was the 'actual reason' or the 'cause' for the employee's separation from employment.")[7]

Next, Employer argues that Claimant's lack of punctuality and inconsistent work schedule amounted to willful misconduct. Employer also asserts that Claimant's failure to stop impersonating Brimmeier against Brimmeier's direct orders, when doing Brimmeier's banking, also rose to the level of willful misconduct. Once again, however, Brimmeier testified that she terminated Claimant for breaching confidentiality and for gossiping. (N.T., 8/18/10, at 14). Consequently, any other allegations of misconduct cannot form the basis for denying benefits to Claimant. *PrimePay*, 962 A.2d at 687; *Ductmate*, 949 A.2d at 344 n.5.[8]

Last, Employer argues that, by gossiping, Claimant risked harming her co-workers, as well as harming the reputations of Employer and Brimmeier. Employer further asserts that Claimant's gossiping wasted Employer's time and resources. However, in specific support of its contentions, Employer only points to

[7] At the referee's hearing, Brimmeier also testified that Claimant breached confidentiality by telling Brimmeier's sister that Brimmeier bought property in Florida and that this information "was something that was confidential and . . . was no business of anybody's." (N.T., 8/18/10, at 8.) However, Employer does not argue in its brief to this court that this alleged disclosure rose to the level of willful misconduct, and, therefore, we need not address this testimony further.

[8] Moreover, Brimmeier testified that she learned Claimant was impersonating her at least two months before she terminated Claimant. (N.T., 8/18/10, at 16.) Therefore, this matter is not akin to cases in which an employer could properly present after-discovered evidence of criminal conduct, if any such conduct occurred. *PrimePay*, 962 A.2d at 687-88. Employer does not contend otherwise in its brief.

an e-mail sent by Claimant. (Employer's Brief at 13.) As previously noted, Claimant was not discharged for her e-mails. Therefore, this argument, too, lacks merit.[9]

Accordingly, we affirm.

ROCHELLE S. FRIEDMAN, Senior Judge

[9] Employer does not here argue that other instances of gossip to which Brimmeier testified, *viz.*, that Claimant gossiped about Brimmeier's sister and the sister's employee and that Claimant also gossiped about another employee who, due to his personal problems, met with Brimmeier on a Saturday, constituted willful misconduct. Even had Employer made such an argument, without more, Brimmeier's vague testimony that Claimant engaged in such gossip fails to prove Employer's case.

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O R D E R

AND NOW, this 16th day of June, 2011, the order of the Unemployment Compensation Board of Review, dated November 4, 2010, is hereby affirmed.

ROCHELLE S. FRIEDMAN, Senior Judge