

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

William A. Raines, :
Petitioner :
 : No. 2594 C.D. 2009
v. : Submitted: May 14, 2010
 :
Unemployment Compensation Board :
of Review, :
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 McCULLOUGH

FILED: August 5, 2010

William A. Raines (Claimant) petitions for review of the December 17, 2009, order of the Unemployment Compensation Board of Review (Board), which held that Claimant is ineligible for benefits pursuant to section 402(e) and section 3 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) and 752.

Section 402(e) of the Law provides that an employee is ineligible for compensation for any week in which his unemployment is due to his discharge from work for willful misconduct connected to his work. The term “willful misconduct” includes: a wanton and willful disregard of the employer’s interest; a deliberate violation of the employer’s rules; a disregard of the standards of behavior that the employer has the right to expect of an employee; and negligence that manifests culpability, wrongful intent, or intentional disregard of the employer’s interests or the employee’s duties. Lytle v. Unemployment Compensation Board of Review, 387 A.2d 962 (Pa. Cmwlth. 1978).

Section 3 of the Law states that unemployment compensation is for persons who become unemployed through no fault of their own. In contrast to section 402(e), section 3 of the Law renders a claimant ineligible for benefits based on non-work-related misconduct. Frazier v. **(Footnote continued on next page...)**

Claimant worked for Ryder Truck Rental (Employer) from August 28, 2003, to July 31, 2009, (Employer) as a tech room mechanic, a position that required Claimant to have a valid commercial driver's license. Employer's DUI/DWI policy states that Employer has the right to terminate any employee whose position requires driving if the state cancels, suspends, or revokes the employee's driving privilege for cause related to the operation of a motor vehicle while under the influence of alcohol or controlled substances. The policy requires that Employer first make a reasonable attempt to place the employee in a position that does not require driving a motor vehicle on company business but states that the employee will be terminated if Employer is unable to locate an alternative position within thirty days. (Record Item 10, Ex. E-1.)

In July 2008, Claimant was arrested and charged with driving under the influence. Claimant was found guilty, and he was required to forfeit his commercial driver's license in June 2009. Employer had no work available that did not require a commercial driver's license and terminated Claimant's employment on July 31, 2009. (Findings of Fact, Nos. 3-7.)

The local job center denied Claimant's application for benefits pursuant to section 402(e) of the Law. Claimant appealed, and a referee held a hearing at which Claimant and Ronald Hunter, Employer's maintenance manager, participated without benefit of counsel. In response to the referee's questions, Hunter testified that Claimant violated Employer's policy when he lost his

(continued...)

Unemployment Compensation Board of Review, 833 A.2d 1181 (Pa. Cmwlth. 2003). Under section 3, the employer must demonstrate 1) that the claimant's conduct was contrary to acceptable standards of behavior and 2) that the claimant's unacceptable conduct directly affects or reflects upon the claimant's ability to perform his assigned duties. Id.

commercial driver's license. Hunter added that, although he had been able to accommodate similarly situated employees in the past, on this occasion Employer had no alternate position available for Claimant. (N.T. at 5-7.) Claimant acknowledged that he lost his commercial driver's license due to his DUI conviction, but he believed that Employer had other work available.

The referee found that Employer had no work available that did not require a commercial driver's license. Noting that Claimant had been discharged based on non-work-related conduct, the referee concluded that Claimant was ineligible for benefits pursuant to section 3 of the Law, 43 P.S. §752.² Claimant appealed to the Board,³ which adopted the referee's findings and conclusions and held that Claimant is ineligible for benefits under both section 402(e) and section 3 of the Law.

On appeal to this Court,⁴ Claimant argues that the Board erred in concluding he was ineligible for benefits because his termination was not due to

² The notice of the hearing informed Claimant that section 3 of the Law was among the issues that may be considered on appeal. (Record Item 9.)

³ In his brief to the Board, Claimant asserted that the six-week delay between the loss of his commercial driver's license and his discharge renders the alleged misconduct too remote in time to warrant a denial of benefits under section 402(e). As we explained in Raimondi v. Unemployment Compensation Board of Review, 863 A.2d 1242 (Pa. Cmwlth. 2004), where there is an unexplained delay between the claimant's misconduct and the employer's discharge of the claimant, the remoteness doctrine will preclude the employer from seeking a denial of benefits based on allegations of willful misconduct. However, where, as here, the record establishes an explanation for the delay, such as Employer's policy to attempt to find alternate work, and there is no indication on the part of the employer that it condoned the claimant's conduct, the remoteness doctrine does not apply to preclude a denial of benefits.

⁴ Our scope of review is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with law or whether necessary findings of **(Footnote continued on next page...)**

his fault or misconduct but instead was due to Employer's lack of work. Claimant also argues that he did not violate Employer's rule deliberately, asserting that Employer's past practice established a reasonable expectation that Claimant would be reassigned to another position.

However, Claimant does not dispute that he violated Employer's policy, which specifically provides that an employee *may* be terminated for losing a required license due to a DUI infraction and *will* be terminated if Employer is unable to identify a non-driving position for the employee within thirty days. In addition, Claimant does not dispute that the loss of his commercial driver's license resulted from his off-duty misconduct. Moreover, Claimant does not suggest that work requiring a commercial driver's license was no longer available. Under the circumstances, we cannot agree that Employer's policy to find a different job for an employee when possible transforms the cause of Claimant's unemployment from Claimant's fault to a lack of work.

We previously have held that off-duty misconduct that has a direct effect on a claimant's job, such as the failure to acquire or maintain a state license necessary for employment, may be analyzed under section 402(e) or section 3 of the Law. Robinson v. Unemployment Compensation Board of Review, 546 A.2d 750 (Pa. Cmwlth. 1988). Because Claimant's off-duty misconduct resulted in the loss of a license required for his employment, the Board correctly determined that Claimant is ineligible for benefits in this case. Williams v. Unemployment Compensation Board of Review, 651 A.2d 708 (Pa. Cmwlth. 1994) (holding pest

(continued...)

fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

control serviceman whose driver's license was suspended ineligible for benefits pursuant to section 402(e)); Varmecky v. Unemployment Compensation Board of Review, 432 A.2d 635 (Pa. Cmwlt. 1981) (holding mail carrier who lost required federal driver's license ineligible for benefits pursuant to section 3).

Accordingly, we affirm.

PATRICIA A. McCULLOUGH, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

William A. Raines,	:	
Petitioner	:	
	:	No. 2594 C.D. 2009
v.	:	
	:	
Unemployment Compensation Board	:	
of Review,	:	
Respondent	:	

ORDER

AND NOW, this 5th day of August, 2010, the order of the Unemployment Compensation Board of Review, dated December 17, 2009, is hereby affirmed.

PATRICIA A. McCULLOUGH, Judge