

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Phyllis E. Mickens, :
Petitioner :
v. : No. 2639 C.D. 2009
Unemployment Compensation :
Board of Review, : Submitted: July 16, 2010
Respondent :
:

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY

FILED: August 6, 2010

Phyllis E. Mickens (Claimant), *pro se*, petitions for review of an order of the Unemployment Compensation Board of Review (Board) affirming the decision of the Referee denying her 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) 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 temporary suspension from work for willful misconduct connected with his work, irrespective of whether or not such work is "employment" as defined in the act.

Claimant was employed by the Southeastern Pennsylvania Transportation Authority (Employer) as a bus driver for approximately nine years until her last day of employment on July 17, 2009. Claimant filed a claim via the internet for unemployment compensation benefits on or about August 5, 2009. By determination mailed August 17, 2009, the Philadelphia UC Service Center (Service Center) denied Claimant benefits pursuant to Section 402(e) of the Law based on Claimant's violation of Employer's rule regarding unsanitary conditions.

Claimant appealed the Service Center's determination and a hearing ensued before a Referee. Claimant appeared *pro se* and testified on her own behalf. Employer presented two fact witnesses: (1) Susan Sanderson, Manager of Labor Relations; and (2) David Rogers, Senior Director.

By decision mailed September 18, 2009, the Referee affirmed the Service Center's determination and denied Claimant benefits pursuant to Section 402(e) of the Law. Claimant appealed to the Board. The Board adopted the Referee's findings of fact and conclusions of law which are as follows.

On May 22, 2009, videos taken of the inside of Employer's bus that Claimant was operating showed Claimant urinating into a wheel chock while on the bus and disposing of the contents out the middle door of the bus. When the video contents were made known to Employer, it arranged for a hearing which took place on July 17, 2009. At the hearing, Claimant acknowledged urinating into the wheel chock and disposing of the contents out the door of the bus. However, Claimant offered the justification that she was taking medication for diabetes. Claimant could have gone to a bathroom which was twenty seconds away had she needed to use the bathroom facilities.

As required by the union contract, a formal hearing was scheduled and conducted on July 29, 2009. As a consequence of her actions and based on the findings adduced at the formal hearing, Claimant was terminated.

Based on the foregoing findings, the Board affirmed the Referee's decision and denied Claimant benefits. The Board pointed out that Claimant did not dispute that she urinated into the wheel chock on the bus and then disposed of the urine. The Board pointed out further that while Claimant stated that she did not believe she would have time to go to the nearby bathroom facility, the uncontroverted testimony of Employer's witness was that the bathroom was twenty seconds away from the bus and that Claimant spent approximately four minutes on the bus before urinating in the wheel chock. The Board concluded that Claimant had in fact ample opportunity to get to a bathroom facility and thus her actions were unjustified. The Board concluded further that Claimant's actions were a clear disregard of the standards of behavior an employer can rightfully expect of its employees and if unjustified, such conduct must be considered willful work-related misconduct.

We now address Claimant's *pro se* appeal to this Court from the Board's decision.² We begin by pointing out to Claimant that it is well established within our jurisprudence that a claimant who chooses to appear *pro se* assumes the

² Initially, we note that this Court's review of the Board's decision is set forth in Section 704 of the Administrative Agency Law, 2 Pa.C.S. §704, which provides that the Court shall affirm unless it determines that the adjudication is in violation of the claimant's constitutional rights, that it is not in accordance with law, that provisions relating to practice and procedure of the Board have been violated, or that any necessary findings of fact are not supported by substantial evidence. See Porco v. Unemployment Compensation Board of Review, 828 A.2d 426 (Pa. Cmwlth. 2003). Whether an employee's conduct constituted willful misconduct is a matter of law subject to this Court's review. Miller v. Unemployment Compensation Board of Review, 405 A.2d 1034 (Pa. Cmwlth. 1979). The burden of proving willful misconduct rests with the employer. Brant v. Unemployment Compensation Board of Review, 477 A.2d 596 (Pa. Cmwlth. 1984).

risk that her lack of expertise and legal training may adversely affect her case. Griffith v. Workers' Compensation Appeal Board (New Holland North America, Inc.), 798 A.2d 324 (Pa. Cmwlth. 2002).³ Claimant's apparent decision to file her brief with this Court in support of her appeal without legal assistance must bear the consequences of that risk.

The Pennsylvania Rules of Appellate Procedure mandate that an appellant include, *inter alia*, in his or her brief to this Court a "Statement of Questions Involved." Pa.R.A.P. 2116. Rule 2116(a) requires that the statement of the questions involved "must state concisely the issues to be resolved, expressed in terms and circumstances of the case but without unnecessary detail." Pa.R.A.P. 2116(a). In other words, an appellant is required to set forth any issue that he or she wishes this Court to review with respect to his or her appeal. Rule 2116(a) further provides that "[n]o question will be considered unless it is stated in the statement of questions involved or is fairly suggested thereby." As such, unless an appellant sets forth what issue(s) he or she wishes to be reviewed in his or her appellate brief, the issues are waived. See County of Venango v. Housing Authority of Venango, 868 A.2d 646 (Pa. Cmwlth. 2005); Van Duser v. Unemployment Compensation Board of Review, 642 A.2d 544 (Pa. Cmwlth. 1994) (Issues not briefed are waived.).

³ Our Supreme Court and this Court have noted on numerous occasions that a layperson who chooses to represent herself in a legal proceeding must assume the risk that her lack of expertise and legal training may prove to be her undoing. See Vann v. Unemployment Compensation Board of Review, 508 Pa. 139, 494 A.2d 1081 (1985); Finfinger v. Unemployment Compensation Board of Review, 854 A.2d 636 (Pa. Cmwlth. 2004); Raleigh v. Pennsylvania Human Relations Commission, 660 A.2d 177 (Pa. Cmwlth. 1995); Daly v. Unemployment Compensation Board of Review, 631 A.2d 720 (Pa. Cmwlth. 1993).

The Statement of Questions contained in Claimant’s brief reads as follows: “To the best of my knowledge, I don’t remember any questions asked by the unemployment board.” Accordingly, since Claimant has failed to preserve any issues for our review in the Statement of Questions section of her brief, her sparse argument that she had no choice but to urinate on the bus due to the medication she was taking for diabetes is waived.⁴ The Board’s order is affirmed.⁵

JAMES R. KELLEY, Senior Judge

⁴ Willful misconduct is not found where a claimant can show good cause for his or her actions, i.e., that the actions which resulted in the discharge were justifiable and reasonable under the circumstances. Perez v. Unemployment Compensation Board of Review, 736 A.2d 737 (Pa. Cmwlth. 1999). While the employer bears the burden of proving that a claimant's behavior constitutes willful misconduct, it is the claimant who bears of the burden of proving good cause for his or her actions. Id.

Herein, Claimant did not present any competent medical evidence at the hearing before the Referee to support her assertion that her medical condition or medication justified her decision to urinate in the wheel chock rather than proceeding to a nearby bathroom facility.

⁵ We note that Claimant’s brief also fails to comply with: (1) Pa.R.A.P. 2111(3) by failing to include a statement of both the scope of review and the standard of review; (2) Pa.R.A.P. 2117 by failing to include a proper statement of the case; and (3) Pa.R.A.P. 2119 by, *inter alia*, failing to include citations to any legal authority or present any legal argument to support her appeal.

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Board of Review,	:	
	:	
Respondent	:	
	:	

ORDER

AND NOW, this 6th day of August, 2010, the order of the Unemployment Compensation Board of Review in the above captioned matter is affirmed.

JAMES R. KELLEY, Senior Judge