

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Lauren N. Harris, :  
 :  
 : Petitioner :  
 : :  
 : No. 2649 C.D. 2010 :  
 :  
 : v. :  
 : :  
 : Submitted: April 21, 2011 :  
 :  
 : Unemployment Compensation :  
 : Board of Review, :  
 : :  
 : Respondent :

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE PATRICIA A. McCULLOUGH, Judge  
HONORABLE JOHNNY J. BUTLER, Judge

**OPINION NOT REPORTED**

MEMORANDUM OPINION  
BY JUDGE McCULLOUGH

FILED: June 14, 2011

Lauren N. Harris (Claimant) petitions for review of the October 15, 2010, order of the Unemployment Compensation Board of Review (Board), which affirmed a referee's determination that Claimant is ineligible for benefits pursuant to section 402(e) of the Unemployment Compensation Law (Law).<sup>1</sup> We affirm.

Claimant applied for unemployment compensation benefits, which were granted by the local service center. Claimant's employer, PNC Bank (Employer), appealed the determination, and a referee conducted a hearing on July 28, 2010.

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<sup>1</sup> Act of December 5, 1936, Second Ex. Session, P.L. (1937) 2897, as amended, 43 P.S. §802(e). Section 402(e) provides that an employee is ineligible for compensation for any week in which her unemployment is due to her discharge from work for willful misconduct.

Employer appeared at the hearing and presented the testimony of two witnesses; however, Claimant did not appear. The referee found Employer's witnesses to be credible and, based on the evidence presented, made the following findings of fact:

1. The claimant worked for the employer, PNC Bank, as a Financial Sales Consultant, full-time, from March 20, 2008 until her last day worked, March 22, 2010....
2. The claimant had an attendance problem. She missed more than thirty days from the beginning of January 2010 until the date of her discharge.
3. On February 25, 2010, the claimant's Supervisor ... met with the claimant about her attendance problems.
4. During the meeting concerning the claimant's attendance problems, the claimant used profanities toward her Supervisor.
5. The claimant's Supervisor gave the claimant a final warning notice on February 25, 2010, because she used profanities toward him during his discussion with her concerning her absenteeism.
6. Following February 25, 2010, the claimant did not appear for work.
7. The claimant missed four straight days of work, and did not report off work.
8. The employer sent the claimant a letter on March 25, 2010, regarding the fact that the claimant had missed four days in a row and had not called off work. The letter stated that claimant must call her Manager by March 30, 2010, or the employer would consider her to have resigned.
9. On March 31, 2010, the employer discharged the claimant.

10. Both the claimant's Supervisor and the Assistant Vice President for Employee Relations tried to reach the claimant, both on her home number of record and on her cell phone number, and could not reach the claimant.

11. The employer left messages for the claimant, but received no return call.

(Findings of Fact Nos. 1-11.) The referee determined that Claimant had been discharged for absenteeism, in particular, for being absent without reporting off work after February 25, 2010.

The referee concluded that Employer shouldered its burden to prove that Claimant was discharged for willful misconduct and thus is ineligible for benefits under section 402(e) of the Law. Claimant filed an appeal with the Board along with documents that allegedly supported her assertions of error. The Board did not specifically respond, but affirmed and adopted the referee's findings of fact and conclusions of law.

In her *pro se* appeal to this Court,<sup>2</sup> Claimant contends that the Board failed to consider or understand Employer's handbook and call off procedures, erred by failing to request call off records from Employer, and erred by failing to review her usage of allotted vacation and personal days. We disagree.

The employer has the burden of demonstrating willful misconduct. McKeesport Hospital v. Unemployment Compensation Board of Review, 625 A.2d 112 (Pa. Cmwlth. 1983). This burden may be satisfied by proof that an employee was excessively absent, disregarded absentee warnings, and failed to report absences in

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<sup>2</sup> Our scope of review is limited to determining whether constitutional rights were violated, whether errors of law were committed, or whether findings of fact are supported by substantial evidence. Thompson v. Unemployment Compensation Board of Review, 723 A.2d 743 (Pa. Cmwlth. 1999).

the manner prescribed by her employer. Gonzalez v. Unemployment Compensation Board of Review, 395 A.2d 292 (Pa. Cmwlth. 1978). An employee's absence for even one day without a credible justification and without notification to the employer is a basis for denying benefits. White v. Unemployment Compensation Board of Review, 450 A.2d 770 (Pa. Cmwlth. 1982). If the employer meets its burden, the burden then shifts to the claimant to demonstrate good cause for her conduct. Department of Corrections v. Unemployment Compensation Board of Review, 943 A.2d 1011 (Pa. Cmwlth. 2008).

Claimant contends that the Board failed to consider, understand, or review Employer's rules and her employment history. However, in making this argument, Claimant is inviting this Court to exceed its scope of review and encroach upon the fact finding authority of the Board. The Board's findings of fact, which are not challenged by Claimant, demonstrate that Claimant had a history of absenteeism, failed to appear for work, failed to report off work as required, and failed to respond as directed by Employer's letter. These facts are sufficient to establish willful misconduct. See Hadvance v. Unemployment Compensation Board of Review, 442 A.2d 862 (Pa. Cmwlth. 1982) (holding that a claimant's failure to report his absence from work for five consecutive work days constituted willful misconduct). Moreover, Claimant did not appear at the referee's hearing and, consequently, presented no evidence or argument to demonstrate good cause for her absences. We note that Claimant did not explain her failure to appear at the hearing or request the Board to reopen the record.

Claimant also argues that the Board erred by not requesting records from Employer. However, the burden was on Claimant, not the Board, to produce evidence in support of her position and she failed to do so.

Accordingly, the Board's order is affirmed.

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PATRICIA A. McCULLOUGH, Judge

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|                           | : |                    |
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**ORDER**

AND NOW, this 14<sup>th</sup> day of June, 2011, the October 15, 2010, order of the Unemployment Compensation Board of Review is hereby affirmed.

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PATRICIA A. McCULLOUGH, Judge