

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Antoinette M. Rakowski,	:	
Petitioner	:	
	:	
v.	:	2673 C.D. 2010
	:	Submitted: May 13, 2011
Unemployment Compensation	:	
Board of Review,	:	
Respondent	:	

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE SIMPSON**

FILED: July 12, 2011

Antoinette M. Rakowski (Claimant), representing herself, petitions for review of an order of the Unemployment Compensation Board of Review (UCBR), which affirmed the decision to deny her request for unemployment compensation benefits. The UCBR determined that Claimant was not entitled to benefits because her discharge was the result of willful misconduct under section 402(e) of the Unemployment Compensation Law (Law).¹ We affirm.

Claimant worked as a sales associate for The Home Depot (Employer) from January 25, 1999, until her termination in May 2010. Findings of Fact, No.

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 an employee shall be ineligible for compensation for any week in which his unemployment is due to his discharge for willful misconduct connected with his work. 43 P.S. §802(e).

1.² Employer has a written policy requiring its employees to conduct themselves with honesty and integrity.³ Findings of Fact, No. 2. Claimant was, or should have been, aware of the policy.⁴ Findings of Fact, No. 3.

Employer issued a store card for merchandise credit to a customer in exchange for returned merchandise. Findings of Fact, No. 4. Claimant later found the merchandise credit card lying on the floor of the vestibule outside Employer's front door. Findings of Fact, No. 5. Claimant did not know to whom the card belonged but knew that it belonged to a customer. Findings of Fact, No. 6. Claimant neither returned the card to Employer nor made an attempt to locate the

² The UCBR adopted the referee's findings of fact and conclusions of law in their entirety. Thus, the findings of fact cited in this opinion can be found in the referee's August 18, 2010, decision.

³ The policy states in relevant part:

[Employer] expects all associates to act with integrity and honesty in all matters related to Company business. Associates may not obtain or use any property or services belonging to the Company, fellow associates, customers, visitors or vendors in a manner other than that authorized by Company policy

N.T., 8/13/10, Ex. R-6, at 3. The policy also states that the following conduct is a "Major Work Rule Violation" warranting an employee's termination:

Stealing or attempting to steal the property of a customer ... regardless of purpose, the amount involved or the method used to remove the property from the premises; knowingly possessing any such stolen property.

Id. at 8.

⁴ Claimant testified that, although she did not specifically recall the written policy in Employer's Code of Conduct, she might have received the Code of Conduct at orientation eleven or twelve years ago. N.T., 8/13/09, at 9. She then testified that she was aware that employees were required to conduct themselves with honesty and integrity. Id.

card's owner. Findings of Fact, No. 7. Instead, Claimant used the card to make purchases for herself from Employer's store. Findings of Fact, No. 8) Employer learned of this incident when the customer to whom the card belonged returned to the store to report the card missing. Findings of Fact, No. 9. Employer discharged Claimant for violating its policy requiring honesty and integrity. Findings of Fact, No. 10.

Claimant filed a claim for unemployment benefits, which was granted by the local service center. Employer appealed to the referee, who held an evidentiary hearing at which Claimant, her husband, and Employer's store manager testified. Following the hearing, the referee reversed the service center's decision and denied Claimant benefits because her discharge was the result of willful misconduct.

Claimant timely appealed to the UCBR, which affirmed. The UCBR adopted the referee's findings and conclusions in their entirety and denied Claimant's request for a remand for additional testimony.

In her petition for review,⁵ Claimant asserts that she did not commit willful misconduct because she did not know that using a customer's lost merchandise credit card for her own benefit was a violation of Employer's policy. We reject this claim.

⁵ Our scope of review is limited to determining whether constitutional rights were violated, an error of law was committed, or findings of fact were unsupported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

“Willful misconduct” is defined as: (1) wanton and willful disregard of the employer’s interests; (2) deliberate violation of the employer’s rules; (3) disregard of the standards of behavior that an employer rightfully can expect from its employees; or (4) negligence that manifests culpability, wrongful intent, evil design, or intentional or substantial disregard for the employer’s interests or the employee’s duties and obligations. Andrews v. Unemployment Comp. Bd. of Review, 633 A.2d 1261, 1262 (Pa. Cmwlth. 1993). When an employee is discharged for violating a work rule, the employer must prove the existence of the work rule, the reasonableness of the rule, and the fact of its violation. Chapman v. Unemployment Comp. Bd. of Review, __ A.3d __, 2011 WL 1549057, at *2 (Pa. Cmwlth., No. 1583 C.D. 2010, filed April 25, 2011). The burden then shifts to the employee to prove that he or she had good cause for violating the rule. *Id.* An employee establishes “good cause” by showing that his or her conduct was justified or reasonable under the circumstances. Anderson Equip. Co. v. Unemployment Comp. Bd. of Review, 994 A.2d 1192, 1195 (Pa. Cmwlth. 2010).

Here, the UCBR found that Employer had a policy requiring its employees to conduct themselves with honesty and integrity and that Claimant was aware of the policy. At the hearing, Claimant admitted that she found a merchandise credit card that belonged to a customer and used it to make purchases for herself, N.T., 8/13/10, at 10-11, which was a violation of Employer’s policy. Claimant’s only justification for violating the policy was that she had “a lapse in judgment,” *id.* at 11, 17, which the UCBR properly concluded was insufficient to establish good cause.

Accordingly, we affirm.

ROBERT SIMPSON, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Antoinette M. Rakowski,	:	
Petitioner	:	
	:	
v.	:	2673 C.D. 2010
	:	
Unemployment Compensation	:	
Board of Review,	:	
Respondent	:	

ORDER

AND NOW, this 12th day of July, 2011, we hereby **AFFIRM** the November 4, 2010, order of the Unemployment Compensation Board of Review.

ROBERT SIMPSON, Judge