IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Terry L. Williams, Petitioner	:	
v.	:	
Unemployment Compensation Board of Review, Respondent	:	No. 2733 C.D. 2010
	:	Submitted: May 6, 2011

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY FILED: June 14, 2011

Terry L. Williams (Claimant) challenges the order of the Unemployment Compensation Board of Review (Board) which affirmed the referee's denial of benefits under Section 402(e) of the Unemployment Compensation Law (Law).[1]

The facts, as initially found by the referee and confirmed by the Board, are as follows:

> 1. Claimant was employed as a full-time bank manager with Northwest Bancshares Inc. from January 3, 2000 through June 29, 2010 at $41,000.00 per year.
>
> 2. Employer has a Code of Conduct which lists examples of improper conduct that can result in immediate suspension or termination.

[1] Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §802(e).

3. Included in this list of improper conduct is, 'Falsification of work records.'

4. Claimant was aware of employer's Code of Conduct as he completed the online course on December 10, 2009 with a 100% score.

5. Employer must follow the guidelines of the Equal Opportunity Act, and every loan application requires pulling credit reports.

6. Every application requires a new credit report; it is improper procedure to rely on a prior credit report.

7. Employer conducted an audit of claimant's branch in March 2010 noting violations, including how an adverse action was to be handled.

8. On May 21, 2010 claimant submitted a response to the audit which stated that going forward all adverse action forms would be submitted by an authorized representative.

9. In June 2010 employer conducted a review of the turned down loan applications, questioning claimant about credit bureau reports which were not attached.

10. On June 22, 2010 claimant received a notice of disciplinary action indicating he was being formally reprimanded due to the audit that was conducted in the first quarter of 2010 when several policy violations were found.

11. On June 28, 2010 claimant was questioned about three files in particular, all adverse action documents showing that the loan applications had been disapproved because of information obtained in a report from the consumer reporting agency.

12. Claimant responded at that time that he was sure he had taken care of the reports and just failed to attach them to the adverse action documents.

> 13. After employer verified that in those three cases no credit bureau report was ever pulled, claimant was placed on suspension pending the outcome of the investigation.
>
> 14. On June 29, 2010, claimant was terminated for his misrepresentation on the adverse action documentation and for falsification of work records.

Referee's Decision (Decision), October 5, 2010, Findings of Fact Nos. 1-14 at 1-2; Reproduced Record (R.R.) at 30-31.

> The referee determined:
>
> In this case, after employer conducted an audit of bank records in March 2010, several violations were pointed out to claimant, and he responded in writing as to how they were going to be corrected. Subsequently in June 2010, claimant was given a written reprimand as the result of that audit outcome. After further investigation into some adverse action documents claimant had signed, he was terminated for falsifying the documents. Claimant testified that the issue with the unpulled credit bureau reports was never brought up prior to June 28, 2010, however, the documents indicate that the borrowers were disapproved because of information obtained in a credit report, and [the] Referee can only conclude that claimant falsified that document as he has not shown that a credit report was ever generated in those cases.
>
> A knowing misrepresentation bearing upon a claimant's employment constitutes a departure from standards of behavior an employer can rightfully expect from an employee. Claimant's action was a breach of duty owed to employer and an act so contrary to employer's best interests that discharge was a natural result. Accordingly, claimant is disqualified under the provisions of Section 402(e) of the Law.

Decision at 2; R.R. at 31.

Claimant contends that the Board erred when it determined that he committed willful misconduct.[2]

Whether a Claimant's conduct rises to the level of willful misconduct is a question of law subject to this Court's review. Lee Hospital v. Unemployment Compensation Board of Review, 589 A.2d 297 (Pa. Cmwlth. 1991). Willful misconduct is defined as conduct that represents a wanton and willful disregard of an Employer's interest, deliberate violation of rules, disregard of standards of behavior which an Employer can rightfully expect from the employee, or negligence which manifests culpability, wrongful intent, evil design, or intentional and substantial disregard for the Employer's interest or employee's duties and obligations. Frick v. Unemployment Compensation Board of Review, 375 A.2d 879 (Pa. Cmwlth. 1977). The Employer bears the burden of proving that it discharged an employee for willful misconduct. City of Beaver Falls v. Unemployment Compensation Board of Review, 441 A.2d 510 (Pa. Cmwlth. 1982). The Employer bears the burden of proving the existence of the work rule and its violation. Once the Employer establishes that, the burden then shifts to the Claimant to prove that the violation was for good cause. Peak v. Unemployment Compensation Board of Review, 509 Pa. 267, 501 A.2d 1383 (1985).

Claimant asserts that Northwest Bancshares, Inc. (Employer) failed to establish that it had a rule that a credit report was required to be obtained for every

[2] This Court's review in an unemployment compensation case is limited to a determination of whether constitutional rights were violated, errors of law were committed, or findings of fact were not supported by substantial evidence. Lee Hospital v. Unemployment Compensation Board of Review, 637 A.2d 695 (Pa. Cmwlth. 1994).

credit application because there was no documentation of the rule introduced into evidence. James Shawver (Shawver), regional manager for Employer, testified to the rule's existence but did not produce a written rule. Consequently, Claimant argues that the findings of fact Nos. 5, 6, and 13 are unsupported by substantial evidence because Employer did not establish that there was a rule that every loan application required a new credit report.

Shawver testified regarding Employer's policy and Claimant's termination:

> In the month of March and April when an audit was being conducted, we took note that there were violations of the adverse action of credit denial on applicants and that was discussed with Terry [Claimant]. In this packet there's a response from him that he had a staff meeting and going forward that would have been corrected. When we take an application, part of the process is to pull a credit bureau report to make a determination of the credit's worthiness. It's part of the Equal Credit Opportunity Act. We do not discriminate. In the following months, I revisited the office in June and reviewed again the turned down applicants and realize [sic] that we still had the violations occurring. When I met with Terry in my office, we went over the findings. He did sign the turn down. He acknowledged that he realized it was not procedure, but he felt that he had actually pulled the credit bureau reports. That they were not attached to the application and the adverse notice which they are always done, so at that point in time I was with my human resources department, Steve Chrissy, and it was determined that we would put Terry [Claimant] on suspension on Monday, June 28th. After he left I went into my computer system and went into his office and went through their credit bureau reports and there was no report ever pulled and I have access to every office in my region. Anything I want to do and there was no report every [sic] pulled. So at that point it was determined that

> Terry [Claimant] was in violation of company policy and procedures.

Notes of Testimony, September 29, 2010, (N.T.) at 4; R.R. at 5.

Shawver also testified that Claimant had completed training courses and scored 100 percent on tests following the courses. The training courses indicated that a credit bureau report had to be obtained for any loan application. N.T. at 5; R.R. at 6. On cross-examination, Shawver explained why Claimant was terminated:

> He was terminated for not following policy and procedure. He did not pull a credit report but yet on the statement that was sent to the customer, it was clearly indicated by the box that he had actually turned the customer down for that very reason, but it could not have been the reason because there was no credit bureau report.

N.T. at 8; R.R. at 9.

Claimant testified that he never indicated that a loan application was denied due to a credit report without reviewing the credit report. Claimant also testified that he could review a credit report without pulling a new credit report. He denied ever making any false representations with respect to a credit report on a loan application. N.T. at 21; R.R. at 22.

The Board implicitly accepted the testimony of Shawver over that of Claimant. In unemployment compensation proceedings, the Board is the ultimate fact-finding body empowered to resolve conflicts in evidence, to determine the credibility of witnesses, and to determine the weight to be accorded evidence. Unemployment Compensation Board of Review v. Wright, 347 A.2d 328 (Pa.

Cmwlth. 1975). Findings of fact are conclusive upon review provided that the record, taken as a whole, provides substantial evidence to support the findings. Taylor v. Unemployment Compensation Board of Review, 474 Pa. 351, 378 A.2d 829 (1977). Shawver's testimony provided support for the challenged findings.

Claimant attempts to characterize Shawver's testimony as hearsay. Shawver's testimony was not hearsay. Shawver, a regional manager for Employer, was competent to testify as to Employer's rules and policies. Further, Shawver conducted his own research to verify that a credit report was not pulled for the loan applications in question which related to finding of fact number thirteen. Claimant asserts that Employer had to provide written documentation of its rule.

In Graham v. Unemployment Compensation Board of Review, 840 A.2d 1054, 1057 (Pa. Cmwlth. 2004), this Court stated, "It is not necessary that an employer's reasonable order or directive be written in order for the Court to determine that an employee's violation thereof constitutes willful misconduct . . . ."

In Fera v. Unemployment Compensation Board of Review, 407 A.2d 942 (Pa. Cmwlth. 1979), Linda J. Fera (Fera) left her work site without notice or permission in violation of company policy and was discharged. Fera was denied benefits by the Board on the basis of willful misconduct. She challenged the decision in this Court. One of the issues Fera raised was whether a finding regarding the existence of a written company rule that addressed abandonment of the job site was supported by substantial evidence because the only evidence

concerning the rule was the testimony of the witness of Storehmann Brothers Company, Fera's employer and was in violation of the best evidence rule. This Court rejected that argument and affirmed.

The findings of fact challenged by Claimant are supported by substantial evidence. Employer established that it had a rule of which Claimant was aware and that Claimant broke that rule. Claimant did not provide any argument that he had good cause for breaking the rule.

Accordingly, this Court affirms.

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BERNARD L. McGINLEY, Judge

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O R D E R

AND NOW, this 14th day of June, 2011, the order of the Unemployment Compensation Board of Review in the above-captioned matter is affirmed.

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BERNARD L. McGINLEY, Judge