

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Andrea M. Alabran, :  
 :  
 Petitioner :  
 :  
 : No. 331 C.D. 2010  
 v. :  
 :  
 : Submitted: February 18, 2011  
 Unemployment Compensation Board :  
 of Review, :  
 :  
 Respondent :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge  
HONORABLE PATRICIA A. McCULLOUGH, Judge  
HONORABLE JOHNNY J. BUTLER, Judge

**OPINION NOT REPORTED**

MEMORANDUM OPINION  
BY JUDGE McCULLOUGH

FILED: September 12, 2011

Andrea M. Alabran (Claimant) petitions pro se for review of the January 4, 2010, order of the Unemployment Compensation Board of Review (Board), which held that Claimant was ineligible for benefits under section 402(e) of the Unemployment Compensation Law (Law).<sup>1</sup> We affirm.

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<sup>1</sup> 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 states that an employee shall be ineligible for compensation for any week in which her unemployment is due to willful misconduct connected with her work. While the term "willful misconduct" is not defined in the Law, the courts have defined it as including the following: a wanton or willful disregard for an employer's interests; a deliberate violation of an employer's rules; a disregard for standards of behavior which an employer can rightfully expect of an employee; or negligence indicating an intentional disregard of the employer's interest or an employee's duties or obligations. Caterpillar, Inc. v. Unemployment Compensation Board of Review, 550 Pa. 115, 703 A.2d 452 (1997). Whether certain conduct constitutes willful misconduct is a question of law subject to our review. *Id.*

Claimant worked as a sales-associate for Country Fair, Inc.-All Stores (Employer) from January 16, 2007, until she was discharged on May 14, 2009. The local service center denied Claimant's application for benefits pursuant to section 402(e) of the Law, and Claimant appealed. Following a hearing, a referee dismissed Claimant's appeal as untimely under section 501(e) of the Law.<sup>2</sup> Claimant appealed to the Board, asserting that she did not receive the service center's determination of benefits until the day before the appeal period expired, that neither the notice of determination nor the petition for appeal forms had listed her complete mailing address, and that she was informed by a service center representative that she would be given an extension of time in which to file her appeal. The Board remanded the case to a referee to take evidence regarding the merits of the appeal under section 402(e) in order for the Board to have a complete record.

Claimant, with counsel, and two witnesses for Employer testified at the remand hearing. Alicia Williams, Employer's store manager, testified that Claimant had been coming in late and over-staying her breaks for quite a while when, on her last day of work, Claimant began counting down a register drawer and ignored Williams' request to stop and take care of customers. Williams stated that Claimant yelled at her and a loud argument ensued; when Claimant refused Williams' direction to leave, Williams fired her for insubordination. Assistant manager Tabetha Davenport testified briefly, confirming that Williams and Claimant argued loudly and that Williams told Claimant to leave several times. (N.T. at 7-13.)

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<sup>2</sup> 43 P.S. §821(e). Section 501(e) provides that an appeal from a local service center's notice of eligibility determination must be filed within fifteen days after such notice was delivered to the claimant personally or mailed to his or her last known post office address. Failure to timely appeal an administrative agency's decision constitutes a jurisdictional defect. Russo v. Unemployment Compensation Board of Review, 13 A.3d 1000 (Pa. Cmwlth. 2010).

Claimant acknowledged that Williams had made a comment to her about being late on one occasion, but she stated that there had been no extended discussion of the matter because Williams was angry and had an attitude. Claimant also testified that she believed she was authorized to count down the drawer, adding that she had done the same thing the previous day. According to Claimant, there were no customers in line at her register or at the other open register when Claimant posted a sign indicating that her register was closed. When customers came to the other register a few minutes later, Claimant called to Williams and Davenport, who were in the office, and asked them for help. Claimant stated that the two women helped for a few minutes and then Williams scolded her for closing her register when no one else was around. Claimant denied that Williams told her to stop counting out the register drawer. She also stated that she did not leave immediately when Williams told her to go because she was trying to resolve the conflict and save her job. (N.T. at 14-17.)

The Board accepted Claimant's testimony as credible to establish that Claimant did not receive a copy of the service center's determination until the day before the deadline to file an appeal and that, when Claimant called the service center, she was misled into thinking that she had an additional fifteen days to file her appeal. Accordingly, the Board accepted Claimant's appeal as if it were timely filed.

However, with respect to the merits of the case, the Board rejected Claimant's testimony and accepted the testimony of Employer's witnesses as credible to demonstrate the following facts. On her last day of work, Claimant over-stayed her break and then began counting out a register drawer while ignoring customers. Claimant and the assistant manager got into a heated argument.<sup>3</sup> Claimant yelled at

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<sup>3</sup> We recognize that Williams was Employer's store manager, but we conclude that the Board's mistaken reference to Employer's assistant manager is of no moment.

the assistant manager and told her she did not know what she was doing. The assistant manager twice asked Claimant to leave, but Claimant continued to argue and was discharged for insubordination. (Board's Findings of Fact Nos. 5-12; Board's op. at 4.) Based on these findings, the Board concluded that Employer met its burden to prove that Claimant is ineligible for compensation due to willful misconduct.

On appeal to this Court,<sup>4</sup> Claimant argues that certain of the Board's findings are not supported by substantial evidence. Claimant does not object to the Board's legal conclusions, and she does not specify which of the Board's twenty-five findings she challenges. Instead, Claimant presents her preferred account of the events surrounding her discharge, and she contends generally that the Board erred and misinterpreted the evidence to reach its contrary findings.

However, Claimant offered her version of the circumstances precipitating her discharge at the hearing before the referee, and the Board rejected Claimant's testimony in this regard as not credible. It is well settled that, in unemployment compensation cases, the Board is the ultimate fact-finder, empowered to determine the credibility of witnesses and resolve conflicts in evidence. Curran v. Unemployment Compensation Board of Review, 752 A.2d 938 (Pa. Cmwlth. 2000). Thus, the Board's findings are conclusive on appeal where, as here, they are supported by substantial evidence. Martin v. Unemployment Compensation Board of Review, 387 A.2d 998 (Pa. Cmwlth. 1978). Moreover, the existence of evidence to support contrary findings does not mean there is not substantial evidence to support

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<sup>4</sup> Our scope of review is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with the law, or whether necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

the Board's findings; it is the function of the Board, and not this Court, to resolve questions of credibility and evidentiary weight. Id.

Accordingly, we affirm.

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PATRICIA A. McCULLOUGH, Judge

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**ORDER**

AND NOW, this 12<sup>th</sup> day of September, 2011, the order of the Unemployment Compensation Board of Review, dated January 4, 2010, is affirmed.

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PATRICIA A. McCULLOUGH, Judge