

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Judith A. Radwanski,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
Unemployment Compensation	:	
Board of Review,	:	No. 373 C.D. 2011
	:	
Respondent	:	Submitted: July 8, 2011

BEFORE: HONORABLE DAN PELLEGRINI, Judge  
HONORABLE MARY HANNAH LEAVITT, Judge  
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY  
JUDGE BUTLER

FILED: August 10, 2011

Judith A. Radwanski (Claimant) petitions pro se for review of the January 4, 2011 order of the Unemployment Compensation Board of Review (Board) affirming the Referee's denial of unemployment compensation (UC) benefits. The issues before this Court are: 1) whether the Board's finding that Claimant engaged in willful misconduct is supported by substantial evidence, and 2) whether Claimant met her burden of proving that she had good cause for violating a company policy. For the reasons that follow, we affirm the order of the Board.

Claimant worked for First National Bank of Pennsylvania (Employer) from August 1, 1975 until July 23, 2010. On July 21, 2010, Susan Sefcik, who works for Employer's human resources department, received a phone call from Employer's internal security department concerning a formal, verbal complaint from Claimant's ex-husband, Richard Kelly. Mr. Kelly informed Employer that Claimant had made inquiries into his bank account and obtained confidential information which she

allegedly gave to her attorney for use during a domestic relations hearing. After an investigation, it was determined that Claimant did, in fact, access Mr. Kelly's account several times between January and July of 2008.

On July 23, 2010, Ms. Sefcik had a discussion with Claimant in which Claimant admitted that she had accessed Mr. Kelly's account without authorization in order to verify his deposits into that account for purposes of divorce proceedings relating to her obligation of spousal support. Employer discharged Claimant for violating its policy against accessing accounts or other information for personal gain or curiosity. Claimant asserted that she did access Mr. Kelly's account to see if he was telling the truth about his income, but that she did not give this information to her attorney or release it to any other third party because the domestic relations office already had the information. Claimant also indicated that she had overheard other employees discussing information they had obtained for non-business reasons and was not aware of any of those employees being disciplined for such activities. When asked for the names of these other employees, she declined to give them.

Claimant filed for UC benefits. The UC Service Center denied benefits pursuant to Section 402(e) of the Unemployment Compensation Law (Law).<sup>1</sup> Claimant appealed, and a hearing was held before a Referee at which Claimant and one Employer witness testified.<sup>2</sup> The Referee issued an order affirming the UC Service Center's determination. Claimant appealed to the Board. The Board affirmed the Referee's order, determining that Employer had a policy prohibiting employees from accessing customer accounts for personal gain and that Claimant knowingly violated that policy. It also determined that Claimant did not present

---

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

<sup>2</sup> Claimant was represented by counsel before the Referee.

sufficient evidence to prove that she had good cause to violate the policy or that the policy was unreasonable. Claimant appealed to this Court.<sup>3</sup>

Claimant argues that she did not violate Employer's policy because she did not provide the information she accessed to any third party. Further, as stated, she contends that other employees have accessed customer information merely for curiosity. We disagree with Claimant as to whether she violated the policy.

“Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *City of Pittsburgh, Dep't of Pub. Safety v. Unemployment Comp. Bd. of Review*, 927 A.2d 675, 676 n.1 (Pa. Cmwlth. 2007) (quotation marks omitted). Further,

Section 402(e) of the Law provides that an employee is ineligible for unemployment compensation benefits when his unemployment is due to discharge from work for willful misconduct connected to his work. The employer bears the burden of proving willful misconduct in an unemployment compensation case. Willful misconduct has been defined as (1) an act of wanton or willful disregard of the employer's interest; (2) a deliberate violation of the employer's rules; (3) a disregard of standards of behavior which the employer has a right to expect of an employee; or (4) negligence indicating an intentional disregard of the employer's interest or a disregard of the employee's duties and obligations to the employer.

*Dep't of Transp. v. Unemployment Comp. Bd. of Review*, 755 A.2d 744, 747 n.4 (Pa. Cmwlth. 2000) (citation omitted). “In the case of a work rule violation, the employer must establish the existence of the rule, the reasonableness of the rule and its violation.” *Lindsay v. Unemployment Comp. Bd. of Review*, 789 A.2d 385, 389 (Pa. Cmwlth. 2001).

---

<sup>3</sup> This Court's review is limited to determining whether the findings of fact were supported by substantial evidence, whether constitutional rights were violated, or whether errors of law were committed. *Johnson v. Unemployment Comp. Bd. of Review*, 869 A.2d 1095 (Pa. Cmwlth. 2005).

There is no dispute in this case that a rule exists or that it is reasonable. Employer's confidentiality policy states, *inter alia*: "Employees are not to access accounts of other employees, customers, suppliers and shareholders for personal gain or curiosity." Original Record (O.R.), Item 3 at 5. Mr. Kelly filed a complaint against Claimant indicating she had given information regarding his bank account to her attorney for purposes of a domestic relations matter. Even though the policy prohibits the release of account information to "persons outside the Company" without customer authorization,<sup>4</sup> the policy also specifically prohibits merely accessing a customer's account for personal gain even without distribution. Claimant testified that she accessed Mr. Kelly's account in order to see if he was telling the truth about his income for purposes of their divorce proceedings. In addition, Employer provided evidence of at least four occasions on which Claimant accessed her ex-husband's account between January and June of 2008. Clearly, this is relevant evidence that a reasonable mind might accept as adequate to support the conclusion that Claimant violated Employer's work rules. With respect to the matter presently before the Court, it is of no moment that other employees allegedly accessed customer accounts for non-business purposes and were not disciplined for their actions. Therefore, the Board's finding is supported by substantial evidence.

"Once the employer establishes a prima facie case of willful misconduct, the burden shifts to the claimant to prove that his actions were justified or reasonable under the circumstances." *Downey v. Unemployment Comp. Bd. of Review*, 913 A.2d 351, 353 (Pa. Cmwlth. 2006). Clearly, as Claimant's stated reason for accessing Mr. Kelly's account was for personal gain, her actions were unjustified and unreasonable. Therefore, Claimant did not meet her burden of proving good cause for violating Employer's policy.

---

<sup>4</sup> O.R., Item 3 at 5.

For the reasons stated above, the order of the Board is affirmed.

---

JOHNNY J. BUTLER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Judith A. Radwanski,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
Unemployment Compensation	:	
Board of Review,	:	No. 373 C.D. 2011
	:	
Respondent	:	

ORDER

AND NOW, this 10<sup>th</sup> day of August, 2011, the January 4, 2011 order of the Unemployment Compensation Board of Review is affirmed.

---

JOHNNY J. BUTLER, Judge