



Claimant worked for Employer from December 15, 2008, until January 22, 2010. (UCBR's Findings of Fact, No. 1.)<sup>2</sup> As a painter, Claimant prepared, masked, and painted vehicles. (UCBR's Findings of Fact, No. 2.)

On May 12, 2009, Employer gave Claimant a written warning about her absenteeism. (UCBR's Findings of Fact, No. 3.) On November 11, 2009, Employer gave Claimant a verbal warning about her alleged absence from work on November 10, 2009. (UCBR's Findings of Fact, No. 4.) In December 2009, Employer received written notice from Claimant's physician that Claimant was pregnant and could no longer work with paint and chemicals. As a result, Employer moved Claimant to the position of paint preparation at the same rate of pay. (UCBR's Findings of Fact, No. 5.)

On Monday, January 18, 2010, Claimant received her manager's permission to leave work early due to pregnancy-related illness. (UCBR's Findings of Fact, No. 6.) On Wednesday, January 20, 2010, Claimant prepared several bumpers, a hood, and other vehicle parts for painting. (UCBR's Findings of Fact, No. 7.) Claimant worked to the best of her ability and followed standard shop procedure for preparing parts. (UCBR's Findings of Fact, No. 8.)

On Thursday, January 21, 2010, Claimant's manager brought some of the bumpers back to Claimant and told her that they were prepared poorly. (UCBR's Findings of Fact, No. 10.) Claimant touched up the bumpers. (UCBR's Findings of Fact, No. 11.)

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<sup>2</sup> The UCBR initially issued a decision on August 3, 2010, but later vacated it. Thus, the citations herein to the UCBR's findings of fact can be found in its February 15, 2011, decision.

Claimant worked on Friday, January, 22, 2010. (UCBR's Findings of Fact, No. 12.) On Monday, January 25, 2010, Employer discharged Claimant for her unsatisfactory work performance and absenteeism. (UCBR's Findings of Fact, No. 13.)

Claimant filed a claim for unemployment benefits, which was granted by the local service center. Employer timely appealed to the referee, who held an evidentiary hearing. The referee concluded that Claimant was not discharged for willful misconduct and affirmed.

Employer timely appealed to the UCBR and contemporaneously requested a remand hearing to present additional testimony and evidence. On August 3, 2010, the UCBR affirmed the referee's decision and denied Employer's request for a remand hearing.

Employer timely appealed to this court. On January 7, 2011, the UCBR filed with this court an application for remission of the appeal to the UCBR for the limited purpose of addressing an inconsistency within its initial findings of fact. On January 19, 2011, we granted the UCBR's application and remanded the matter to the UCBR for further consideration, review, and disposition. The UCBR then vacated its prior order and issued a new decision, again affirming the referee's order. Employer now petitions for review of that decision.<sup>3</sup>

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<sup>3</sup> Our scope of review is limited to determining whether constitutional rights were violated, whether an error of law was committed, or whether findings of fact were unsupported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

Employer first argues that its due process rights were violated because, after remission of the appeal, the UCBR improperly entered new findings of fact and conclusions of law without remanding the matter for a new hearing.

We conclude that the UCBR properly made additional findings of fact and credibility determinations on remand in order to clarify an apparent inconsistency in its prior order. In its brief, the UCBR explains that it was unnecessary to remand for additional evidence because the established record was sufficient to render a decision. (UCBR's Brief at 12.) The UCBR complied with this court's remand order, which ordered the UCBR to further consider and review the evidence of record and issue a new disposition.

With respect to Employer's request to introduce Claimant's final timesheet at a remand hearing, the UCBR denied the request because Employer "failed to provide any reason why this timesheet was not available, by the exercise of reasonable diligence, at the time of the initial hearing." (UCBR's Decision & Order, 2/15/11, at 2.) We find no abuse of discretion. *See Emery Worldwide v. Unemployment Compensation Board of Review*, 540 A.2d 988, 990 (Pa. Cmwlth. 1988); *Young v. Workmen's Compensation Appeal Board (Britt & Pirie, Inc.)*, 456 A.2d 1150, 1152 (Pa. Cmwlth. 1983).

Next, Employer argues that the UCBR erred in determining that Claimant's absenteeism during her final week of work, after receiving prior warnings about her attendance, did not amount to willful misconduct. We disagree.

“Willful misconduct” is defined as: (1) a wanton and willful disregard of the employer’s interests; (2) a deliberate violation of the employer’s rules; (3) a 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 an intentional and substantial disregard of the employer’s interests or the employee’s duties and obligations. *Oliver v. Unemployment Compensation Board of Review*, 5 A.3d 432, 438 (Pa. Cmwlth. 2010) (*en banc*). The employer has the burden of proving that it discharged an employee for willful misconduct. *Id.*

While it is true that absenteeism may justify an employee’s discharge, absenteeism alone is not willful misconduct. *Atlantic Richfield Company v. Unemployment Compensation Board of Review*, 441 A.2d 516, 517 (Pa. Cmwlth. 1982). “[E]xcessive absenteeism, when justified and properly reported, does not disqualify a claimant from receiving [unemployment] compensation, despite repeated warnings.” *Sprague v. Unemployment Compensation Board of Review*, 647 A.2d 675, 680 (Pa. Cmwlth. 1994).

Here, the behavior that led to Claimant’s termination was her alleged absenteeism during her final week of work. The UCBR, however, resolved all conflicts in the evidence in Claimant’s favor. Claimant testified that, shortly after discovering that she was pregnant in late November 2009, she submitted a doctor’s note to Employer regarding her pregnancy. (N.T., 4/27/10, at 12.) According to Claimant, “the reason that I wasn’t feeling well that whole entire time was because I was pregnant.” (*Id.* at 13.) The UCBR found that Claimant left work early on January 18, 2010, due to pregnancy-related illness, after receiving permission from her supervisor, and that she worked for the remainder of the week. (UCBR’s

Decision & Order at 3.) Our court has recognized that illness, when properly reported, is a good cause defense to a willful misconduct charge due to absenteeism. *McKeesport Hospital v. Unemployment Compensation Board of Review*, 625 A.2d 112, 114 (Pa. Cmwlth. 1993). Moreover, the UCBR specifically disbelieved the testimony of Employer's witnesses regarding Claimant's attendance during her final week of work because their testimony was inconsistent and uncertain. (UCBR's Decision & Order at 3.) We will not disturb these credibility determinations.

Like the UCBR below, we do not question Employer's ability to terminate Claimant for her absenteeism. We conclude, however, that Claimant's absenteeism during her final week of work did not rise to the level of willful misconduct under the Law. Accordingly, we affirm.

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ROCHELLE S. FRIEDMAN, Senior Judge

