IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Deanna Allen,	:	
Petitioner	:	
	:	
v.	:	
	:	
Unemployment Compensation	:	
Board of Review,	:	No. 454 C.D. 2011
Respondent	:	Submitted: October 28, 2011

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER FILED: December 1, 2011

Deanna Allen (Claimant) petitions this Court for review of the February 16, 2011 order of the Unemployment Compensation Board of Review (UCBR) affirming the decision of a Referee denying benefits to Claimant. Essentially Claimant presents three issues for this Court's review: (1) whether the UCBR's conclusion that Claimant committed willful misconduct is supported by substantial evidence, (2) whether Claimant had a necessitous and compelling reason to leave her employment, and (3) whether the witness presented on behalf of Community Preschool and Nursery (Employer) was credible. For the following reasons, we affirm the UCBR's order.

Claimant was employed as a full time assistant group supervisor for Employer beginning April 15, 2008 and ending September 15, 2010. On September 8, 2010, Claimant requested to leave work early because her child did not get picked

up by the bus for his first day of school.[1] Claimant left at 11:15 a.m. and said she would return at 2:00 p.m. Claimant did not return that day, nor did she call to say she would not be returning. Claimant called a supervisor at home that evening, advising that because the situation was not corrected, she would not report to work the following day. Employer left a message for Claimant to drop off her keys. Claimant believed she had been fired and called the supervisor, but the supervisor was too busy to return her calls. Claimant did not return to work until September 15, 2010 to return her keys and pick up her paycheck. Employer discharged Claimant at that time for failing to report for work as scheduled.

Claimant subsequently applied for Unemployment Compensation (UC) benefits. On October 12, 2010, the Philadelphia UC Service Center mailed a notice of determination denying benefits under Section 402(b) of the Law (Law).[2] Claimant appealed and a hearing was held by a Referee. On December 20, 2010, the Referee mailed her decision affirming the determination of the UC Service Center. Claimant appealed to the UCBR. The UCBR affirmed the decision of the Referee, but found Claimant ineligible pursuant to Section 402(e) of the Law.[3] Claimant then appealed to this Court.[4]

Claimant argues that the UCBR erred in affirming the Referee's decision. Specifically, Claimant contends the UCBR's determination that Employer discharged Claimant for willful misconduct was not supported by substantial evidence. We disagree.

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[1] Claimant's child has special needs.

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

[3] 43 P.S. § 802(e).

[4] 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).

"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).

> 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).

Here, Valerie Wilson, the Director of Community Preschool and Nursery, testified that "by not coming to work" Claimant violated the "[n]o call, no show" rule or policy. Original Record (O.R.), Item No. 9 at 15. Ms. Wilson further testified that violation of said rule is cause for immediate termination. In addition, Ms. Wilson confirmed that Claimant received a handbook to advise her of this rule. This testimony is sufficient to support the conclusion that claimant was discharged for willful misconduct.

Once the employer proves willful misconduct, "the burden of proof shifts to the claimant to prove she had good cause for her actions." *Owens v. Unemployment Comp. Bd. of Review*, 748 A.2d 794, 798 (Pa. Cmwlth. 2000). Here, although Claimant contends she believed she was fired, she could not explain why she did not return to work until September 15, 2010 without confirming such belief. Claimant testified that a co-worker told her she was fired but she never spoke to her supervisor, or anyone from corporate to confirm that information. In her last conversation with her supervisor, she said she would not be in the next day, which was followed by a voice mail from her supervisor asking Claimant to bring in the keys so that someone else could open in the morning. Clearly, by not subsequently returning to work until September 15, 2010, she had violated Employer's policy without good cause. Accordingly, there was substantial evidence to support the UCBR's conclusion that Claimant committed willful misconduct.

Claimant next argues that she had a necessitous and compelling reason to leave her employment. Specifically, she contends that she had to take off from work for one and a half days to tend to her children's needs.

Initially, we recognize that "the burden of proof is on a claimant who voluntarily terminates employment to prove that the termination was for a necessitous and compelling cause, and whether the claimant has such cause is a question of law subject to review by the Court." *Procito v. Unemployment Comp. Bd. of Review*, 945 A.2d 261, 266 (Pa. Cmwlth. 2008). However, although the Referee found that Claimant had voluntarily quit her job, the UCBR did not. Moreover, Claimant herself testified that she did not quit her job. The UCBR found that Claimant was terminated for willful misconduct. Further, the willful misconduct was not Claimant's absenteeism for one and a half days, but the three days thereafter. Accordingly, this argument is without merit.

Claimant finally argues that Ms. Wilson was not a credible witness. Specifically, Claimant contends that because the payroll records admitted into evidence by Employer state that Claimant had quit the week of September 6, 2010, Ms. Wilson could not have been credible when she said Claimant was discharged for willful misconduct.

However, Ms. Wilson did not testify that Claimant had committed willful misconduct. Willful misconduct is a conclusion of law that was made by the UCBR not the Employer. What Ms. Wilson did testify to was that Claimant left on September 8, 2010, and did not return until September 15, 2010. Ms. Wilson further testified that if Claimant would have come in or spoke to her sometime between September 8 and September 15, she would not have had a problem, but she did not and "[i]t's a place of employment, and I [had] a job to do." O.R., Item No. 9 at 17. Claimant said she was told she was fired on September 15, 2010 when she returned her keys and picked up her check. Based on the above testimony, the UCBR determined it was a termination based on willful misconduct. Accordingly, this argument is without merit.

For all of the above reasons, the UCBR's order is affirmed.

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JOHNNY J. BUTLER, Judge

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O R D E R

AND NOW, this 1st day of December, 2011, the February 16, 2011 order of the Unemployment Compensation Board of Review is affirmed.

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JOHNNY J. BUTLER, Judge