



time of her discharge, Claimant was earning \$42,660 per year as Events Operations Manager for Employer's Pullo Performing Arts Center and was responsible for supervising two employees. (UCBR's Findings of Fact, Nos. 1-2.)

Shortly after Claimant's promotion to Events Operations Manager in October 2007,<sup>2</sup> Employer became dissatisfied with Claimant's job performance. (UCBR's Findings of Fact, Nos. 2-3.) In particular, Employer believed that Claimant was treating her co-workers inappropriately, micromanaging her subordinates, and acting disrespectfully toward her superiors. (N.T., 10/6/09, at 10-13.) Despite Employer's efforts to mentor Claimant, her performance did not improve. As a result, Employer temporarily removed Claimant from her supervisory role in December 2008. (UCBR's Findings of Fact, No. 4.)

Claimant's relationships with her co-workers still did not improve after further coaching. (UCBR's Findings of Fact, No. 5.) Therefore, on May 13, 2009, Holly Gumke, Director of Business Services, met with Claimant and proposed either demoting her or placing her on a performance improvement plan, known internally as an HC-78. (UCBR's Findings of Fact, No. 6.) However, after two incidents in which Claimant was disrespectful to Gumke,<sup>3</sup> Employer took the demotion option off the table. (UCBR's Findings of Fact, No. 7.)

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<sup>2</sup> Before October 2007, Claimant held the position of Production and Technical Coordinator for the Pullo Center.

<sup>3</sup> Claimant refused to meet with Gumke and later threw a tape recorder at her and demanded that Claimant be allowed to record their conversations. (UCBR's Findings of Fact, No. 7.)

On May 15, 2009, Gumke informed Claimant that she would be placed on a performance improvement plan when she returned from her pre-scheduled, two-week vacation. (UCBR's Findings of Fact, No. 8.) Upon her return from vacation on June 1, 2009, Claimant met with Gumke and Vickie Hubbard, General Manager of the Pullo Center and Claimant's direct supervisor. At this meeting, Gumke and Hubbard informed Claimant of the requirements of the HC-78. (UCBR's Findings of Fact, No. 10.) Claimant was advised that she needed to come up with a plan to improve her relations with four specific employees—Gumke, Hubbard, Shane Lauer, and Tina Rohrbaugh. Claimant was also instructed to review her proposed plan with Hubbard, who would have to approve any plan before it was implemented. (UCBR's Findings of Fact, Nos. 11-12.) Claimant acknowledged her understanding of these instructions. (UCBR's Findings of Fact, No. 13.)

The next day, June 2, 2009, Claimant distributed questionnaires to approximately ten of her co-workers. She also e-mailed a copy of the questionnaire to Hubbard.<sup>4</sup> In the questionnaire, Claimant asked her co-workers what she was doing wrong in her personal relationships with them. (UCBR's Findings of Fact, No. 14.) Claimant did not have her supervisor's permission to send out the questionnaires. (UCBR's Findings of Fact, No. 15.) When later questioned about the incident, Claimant admitted that she disseminated the questionnaires and that she knew she needed prior approval before implementing her improvement plan. (UCBR's Findings of Fact, No. 16.) Employer immediately terminated Claimant for

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<sup>4</sup> It is unclear from the record whether Claimant sent the e-mail to Hubbard before or after she began hand-delivering the questionnaire to her co-workers, and neither the referee nor the UCBR made a specific finding as to that issue.

violating its directive to obtain prior approval before implementing any improvement plan. (UCBR's Findings of Fact, No. 17.)

On July 2, 2009, Claimant filed a claim for unemployment compensation benefits, which was denied by the local service center. Claimant appealed to the referee. The referee held a hearing on September 18, 2009, limited to the issue of the timeliness of Claimant's appeal.<sup>5</sup> The referee held a second hearing on October 6, 2009, on the merits of the appeal.

At the October 6, 2009, hearing, Claimant testified that she did not recall ever being told that she needed prior approval before implementing her improvement plan. (N.T. 10/6/09, at 44.) She also testified that Gumke did not specify which individual relationships were to be the focus of Claimant's plan. According to Claimant, she was simply told to come up with a plan and execute it. (*Id.* at 43-44.) Gumke and Hubbard, however, testified that Claimant was specifically instructed at the June 1, 2009, meeting that she was to discuss her proposed plan with Hubbard and obtain prior approval before implementing it. (*Id.* at 22-23, 62-63.) Gumke testified that Claimant acknowledged her understanding of the HC-78 procedure. (*Id.* at 22.) Gumke further testified that, although Claimant e-mailed a copy of the questionnaire to Hubbard, Claimant did not send the questionnaire to any of the other employees identified during the June 1, 2009, meeting. (*Id.* at 24-25.)

On October 23, 2009, the referee entered an order awarding Claimant benefits. The referee found that Claimant's distribution of the questionnaire was

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<sup>5</sup> Both the referee and the UCBR concluded that Claimant's appeal was timely filed.

merely “an attempt to determine what exactly she had done to cause [the] disruption in [her] interpersonal relationships” and was not the implementation of an improvement plan. (Referee’s Decision/Order at 3.) Therefore, the referee concluded that Claimant did not engage in willful misconduct.

Employer timely appealed to the UCBR. By order dated January 11, 2010, the UCBR reversed the referee’s decision. The UCBR specifically rejected Claimant’s testimony that the questionnaire itself was not a “plan” but a process to come up with a plan. The UCBR found that Employer’s directive to obtain prior approval before implementing an improvement plan was reasonable and that Claimant’s failure to follow the directive lacked good cause. The UCBR found that Claimant’s dissemination of the questionnaire without prior approval was a deliberate act of insubordination. Therefore, the UCBR concluded that Claimant was ineligible for benefits under section 402(e) of the Law because her termination was the result of willful misconduct.

Claimant filed a timely request for reconsideration of the UCBR’s order. On February 4, 2010, the UCBR granted Claimant’s request and vacated its prior order. On March 2, 2010, the UCBR again reversed the referee’s decision and entered an order denying Claimant benefits on the same basis as the prior order. Claimant now petitions for review of that decision.

On appeal, Claimant asserts that there was insufficient evidence to support the UCBR’s conclusion that her dissemination of a questionnaire without

prior approval was a deliberate act of insubordination and, therefore, willful misconduct.<sup>6</sup> We disagree.

Section 402(e) of the Law provides that an employee shall be ineligible for compensation for any week “[i]n which his unemployment is due to his discharge ... from work for willful misconduct connected with his work.” 43 P.S. §802(e). “Willful misconduct” is defined as: (1) wanton and willful disregard of the employer’s interests; (2) deliberate violation of the rules; (3) disregard of standards of behavior that an employer rightfully can expect from its employees; or (4) negligence that manifests culpability, wrongful intent, evil design, or intentional and substantial disregard for the employer’s interests or the employee’s duties and obligations. *Andrews v. Unemployment Compensation Board of Review*, 633 A.2d 1261, 1262 (Pa. Cmwlth. 1993). Where, as here, an employee is discharged for refusing or failing to follow an employer’s directive, we must examine the reasonableness of both the employer’s demand and the employee’s refusal. *Dougherty v. Unemployment Compensation Board of Review*, 686 A.2d 53, 54 (Pa. Cmwlth. 1996). If there was good cause for the employee’s conduct, we will not find willful misconduct. *Rebel v. Unemployment Compensation Board of Review*, 555 Pa. 114, 117, 723 A.2d 156, 158 (1998).

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<sup>6</sup> Our scope of review is limited to determining whether constitutional rights were violated, an error of law was committed, or findings of fact were unsupported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704. Whether an employee’s conduct constitutes willful misconduct is a question of law subject to our review. *Andrews v. Unemployment Compensation Board of Review*, 633 A.2d 1261, 1262 (Pa. Cmwlth. 1993). The burden of establishing willful misconduct is on the employer. *Rivera v. Unemployment Compensation Board of Review*, 526 A.2d 1253, 1255 (Pa. Cmwlth. 1987).

Here, Employer directed Claimant to come up with a plan to improve her relationships with her co-workers and to review that plan with her supervisor before beginning to implement it. Considering the problems Employer had been having with Claimant getting along with her co-workers for almost two years, even after further training by Employer, it was entirely reasonable for Employer to instruct Claimant to obtain her supervisor's approval before reaching out to her co-workers on her own.

Moreover, Claimant failed to establish that there was good cause for her failure to follow Employer's directive. The UCBR determined that Claimant knew she needed her supervisor's approval before implementing an improvement plan and specifically disbelieved Claimant's testimony that she was not told that she needed such approval. The UCBR also rejected Claimant's testimony that she did not knowingly disregard Employer's directive by sending out the questionnaire. *See Graham v. Unemployment Compensation Board of Review*, 840 A.2d 1054, 1059 (Pa. Cmwlth. 2004) (stating that UCBR's credibility determinations are not subject to re-evaluation on appeal). Even though Claimant e-mailed a copy of the questionnaire to Hubbard, the UCBR correctly found that Claimant failed to obtain Hubbard's approval *before* distributing the questionnaire to her co-workers as she was instructed to do.

We also reject Claimant's assertion that her dissemination of the questionnaire was not the implementation of a plan but merely an attempt to come up with a plan. At the hearing before the referee, Claimant testified that the dissemination of the questionnaire was "the start of implementation of my plan."

(N.T., 10/6/09, at 53.) The referee then asked, “The start of what?” to which Claimant replied, “The implementation.” (*Id.*) This evidence alone, which Claimant does not refute, was sufficient to support the UCBR’s finding that Claimant had begun implementing her plan without prior approval.<sup>7</sup>

We conclude that the testimony credited by the UCBR provides substantial evidence to support its determination that Claimant deliberately violated Employer’s directive by distributing the questionnaire to her fellow employees without her supervisor’s consent. Accordingly, because we conclude that Claimant engaged in willful misconduct, we affirm.

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ROCHELLE S. FRIEDMAN, Senior Judge

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<sup>7</sup> We further note that Claimant devotes the majority of her brief to arguing that the UCBR erred in rejecting the referee’s findings of fact and conclusions of law. However, the UCBR is the ultimate factfinder in an unemployment compensation case and may substitute its judgment for that of the referee on disputed facts. *Peak v. Commonwealth of Pennsylvania, Unemployment Compensation Board of Review*, 509 Pa. 267, 270, 501 A.2d 1383, 1385 (1985); *see* Section 504 of the Law, 43 P.S. §824 (stating that the UCBR has power to reverse a referee’s decision on the basis of evidence previously submitted in the case).



IN THE COMMONWEALTH COURT OF PENNSYLVANIA

April A. Moore,	:	
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Petitioner	:	
	:	
v.	:	No. 518 C.D. 2010
	:	
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 20th day of September, 2010, we hereby affirm the March 2, 2010, order of the Unemployment Compensation Board of Review.

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ROCHELLE S. FRIEDMAN, Senior Judge