

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Jennifer L. Hurley,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 537 C.D. 2010
	:	
Unemployment Compensation	:	Submitted: September 17, 2010
Board of Review,	:	
	:	
Respondent	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE COHN JUBELIRER**

FILED: December 28, 2010

Jennifer L. Hurley (Claimant) petitions for review from the Order of the Unemployment Compensation Board of Review (Board) that affirmed the Decision and Order of the Unemployment Compensation (UC) Referee (Referee), which affirmed the determination of the UC Service Center to deny Claimant UC benefits on the basis that she committed willful misconduct, pursuant to Section 402(e) of the Unemployment Compensation Law¹ Claimant argues that the Referee's conclusion that she falsified her time sheets is not supported by substantial

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

evidence.

The Referee made the following findings of fact, which were adopted by the Board:

1. For the purposes of this appeal, the claimant was employed most recently for approximately 1 ½ years with The Shoe Department as a full-time key holder earning \$9 per hour plus commissions. The claimant's last day of work was August 6, 2009.
2. The employer's rules and regulations include a policy prohibiting the falsification of any records, documents, and/or reports. The employer's rules and regulations further explain that violation of the employer's policy prohibiting falsification of any records, documents, and/or reports will result in discipline up to and including termination.
3. The employer's rules and regulations are contained within the employee manual, which the claimant received at the time of her initial hire. Further, the claimant was trained with regard to the employer's policies and procedures.
4. During the review of records reflecting employee register sign in and sign out times as well as employee sign in and sign out sheets, the employer found discrepancies between the claimant's sign in time on her sign in sheets and the records showing the time at which she signed into the register system.
5. For a two week period, the employer found eight instances in which the claimant's sign in time on her sign in sheet and her sign in time on the register system did not coincide.
6. The two weeks during which the employer found discrepancies in the time records were the same two weeks during which the claimant's store manager was on vacation.
7. The employer reviewed records showing the claimant's sign in time on the register system and her sign in time on her sign in sheets for the three weeks prior to the two weeks during which the claimant's manager was on vacation. The employer found no discrepancies during that three week period.

8. Effective August 6, 2009, the claimant was terminated from employment for violation of the employer's policy prohibiting the falsification of any records, documents, and/or reports.

(Referee's Decision, Findings of Fact (FOF) ¶¶ 1-8.) The Referee concluded that Employer “presented evidence and testimony that, when viewed in its totality, demonstrates that the claimant violated the employer's policy when she did not record accurate times on her sign-in and sign-out sheets during the two week period during which her manager was on vacation.” (Referee's Decision at 2.) Therefore, the Referee concluded that Claimant committed willful misconduct and was not eligible for benefits pursuant to Section 402(e). Claimant appealed to the Board, which credited the testimony of Employer's witnesses over Claimant's testimony, adopted the Referee's findings of facts, and affirmed the Referee's Order. (Board Order.) Claimant now petitions this Court for review.

Before this Court, Claimant argues that the Referee’s determination that she falsified her time sheets is not supported by substantial evidence in that Employer admittedly has no evidence that she was not actually at work at the times she signed in on the sign-in sheets. Claimant argues, pursuant to Frey v. Unemployment Compensation Board of Review, 589 A.2d 300, 304 (Pa. Cmwlth. 1991), that speculation is insufficient to support a finding of willful misconduct.

The Board’s findings of fact “are conclusive on appeal so long as the record, viewed in its entirety, contains substantial evidence to support such findings. Substantial evidence is such relevant evidence as a reasonable person might accept as adequate to support a conclusion.” Flores v. Unemployment Compensation Board of Review, 686 A.2d 66, 70 n.12 (Pa. Cmwlth. 1996). Additionally,

Employer, as the party prevailing below, is “entitled on appeal to any favorable inferences that can logically and reasonably be drawn from the evidence.” Curran v. Unemployment Compensation Board of Review, 752 A.2d 938, 941 (Pa. Cmwlth. 2000). Here, the Referee made the finding, which was adopted by the Board, that Claimant falsified her time sheets.² This finding is supported by the sign-in sheets and records of register log-ins introduced by Employer. This evidence shows that, in the period between July 17, 2009, and July 30, 2009, Claimant on eight occasions logged in to her register significantly later than she signed in on the sign-in sheet.³ (Referee Hr’g Tr., Employer Ex. 1.) These deviations ranged from as few as sixteen minutes, but on at least four occasions were more than half an hour, with the longest delay being fifty minutes on July 23, 2009. (Referee Hr’g Tr., Employer Ex. 1.) Employer’s witness testified that employees know that management employees, such as Claimant, are to reboot their register as soon as they arrive at work and that an employee cannot conduct a transaction until they have signed into their register. (Referee Hr’g Tr. at 11, 18.) While employees would occasionally log in late to their registers, Employer’s witness did not see this happen more than once in a ten day period, “[c]ertainly not

² Although couched in the Referee’s discussion rather than made as an enumerated finding, this determination is, essentially, a finding of fact and we will treat it as such.

³ Specifically, Employer’s evidence shows that Claimant: (1) signed in at 9:30 a.m., but did not log in to her register until 10:02 a.m. on July 17, 2009; (2) signed in at 2:00 p.m., but did not log in to her register until 2:40 p.m. on July 21, 2009; (3) signed in at 2:00 p.m., but did not log in to her register until 2:17 p.m. on July 22, 2009; (4) signed in at 9:30 a.m., but did not log in to her register until 10:20 a.m. on July 23, 2009; (5) signed in at 10:00 a.m., but did not log in to her register until 10:16 a.m. on July 24, 2009; (6) signed in at 2:00 p.m., but did not log in to her register until 2:42 p.m. on July 28, 2009; (7) signed in at 10:00 a.m., but did not log in to her register until 10:19 a.m. on July 29, 2009; (8) signed in at 12:00 or 12:30 p.m. (the sign-in sheet is unclear and looks as if one number was written over another), but did not log in to her register until 12:52 p.m. on July 30, 2009. (Referee Hr’g Tr., Employer Ex. 1.)

eight times in a ten-day work week.” (Referee Hr’g Tr. at 13.) In addition, Employer’s witness stated that Claimant told Employer that she did not do anything differently during this period but, on review of the three weeks prior to the period in question, Employer’s witness did not find such discrepancies. (Referee Hr’g Tr. at 17-18.) Employer’s witness stated that the first date on which there was a discrepancy was the first day of the store manager’s vacation. (Referee Hr’g Tr. at 18.) Finally, Employer’s witness stated, “I personally in my 12 years with the company have never seen discrepancies to this extent, eight times in ten days, for close to four hours.” (Referee Hr’g Tr. at 18.) Given this evidence and testimony, which the Board credited (Board Opinion and Order), it was reasonable and logical for the Board and the Referee to infer that Claimant falsified her time sheets.

Claimant argues that the Referee’s and Board’s conclusion that she falsified her sign-in sheets is based wholly on circumstantial evidence and is, therefore, unsubstantiated. In support, Claimant cites Frey. In Frey, this Court stated that speculation does not constitute substantial evidence. Frey, 589 A.2d at 303-04 (citing Bobchock v. Unemployment Compensation Board of Review, 525 A.2d 463, 464-65 (Pa. Cmwlth. 1987)). This Court also stated that circumstantial evidence may only provide substantial evidence to support a finding of fact where “such evidence is so preponderate in favor of a finding of misconduct that it outweighs, in the factfinder’s mind, any inconsistent evidence and reasonable inferences drawn therefrom.” Id. at 303. Claimant argues that Employer’s witness admitted that, despite the evidence presented, it was possible that Claimant could have been at work at the times she signed in on the sign-in sheets. (Referee Hr’g

Tr. at 10.) Upon reviewing the record, we believe that the evidence and testimony presented so preponderate as to legitimately outweigh any inconsistent evidence. In fact, the only inconsistent evidence Claimant points to for purposes of indicating that she did not falsify her time sheets is her own testimony, which the Board did not credit. (Board Decision and Order.)

While Claimant argues that there is no evidence that she was not at work at the times she signed in on her sign-in sheet, there is, in fact, substantial evidence, as pointed out above. While Employer does not have testimony from someone present at the store on the dates in question who can testify that Claimant was not present, Employer does have the evidence of the discrepancies between Claimant's sign-in times and her log-in times, Employer's witness's testimony that: Employees are to log in when they arrive at work and cannot conduct transactions until they have logged in, the number of discrepancies between Claimant's sign-in and log-in times is unprecedented, and the discrepancies began on the day that Claimant's supervisor went on vacation. Furthermore, in response to questions from Claimant's Counsel about whether he was in the store and could personally verify that Claimant was not there working, Employer's witness stated:

[W]e do have we call it the journal tape. It's a record of every single transaction that's done during the day and again, the morning the first thing we do is we reboot the register and those times did not correspond with her sign-ins and outs. Also, typically, what we see if an employee is say a half hour into their shift and they realize they didn't clock in, our register will not allow them to operate it until they do clock in. So typically what we'll see is a clock-in and then that employee ringing up a sale instantly because the register reminded them not to clock in [Claimant] would clock in say 2:40 . . . on 7/21, but the first sale she did not ring up until say half an hour later, for a rough estimate. So again her claim of forgetting to clock in wasn't substantiated by her register operations.

(Referee Hr'g Tr. at 18.) Taken together this evidence is substantial and convincing and, in the absence of any evidence other than Claimant's testimony, which the Board did not credit, we cannot say that this evidence does not so preponderate that the Board and the Referee could not have made the logical and reasonable inference that Claimant falsified her sign-in sheets.

For these reasons, we affirm the Order of the Board.

RENÉE COHN JUBELIRER, Judge

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ORDER

NOW, December 28, 2010, the Order of the Unemployment Compensation Board of Review in the above-captioned matter is hereby **AFFIRMED**.

RENÉE COHN JUBELIRER, Judge