



history of absences and failing to call off before the start of his shift. Employer's general manager issued Claimant verbal warnings numerous times about the need to call off properly. (Findings of Fact, Nos. 1-5.)

On October 26, 2009, Claimant did not report to work and, likewise, did not call off prior to the beginning of his 8:00 a.m. shift. Instead, Claimant called the general manager around noon to say that he would not be coming to work. Claimant did not provide a reason for his absence. The manager then responded that he was "at the end" with Claimant missing work and not reporting off. That evening, Claimant called Employer and left a message on the answering machine of a non-supervisory employee, stating: "Don't call out if you don't want to get reamed out. I'm not coming in tomorrow." Claimant followed this statement with a laugh. Claimant did not provide Employer with a reason for his absence on October 27, 2009. On October 28, 2009, Employer terminated Claimant's employment for excessive absenteeism and failure to report off properly. (Findings of Fact, Nos. 6-10.)

Claimant applied for unemployment compensation benefits, which the local job center denied under section 402(e). Claimant appealed, and the referee held a hearing at which Claimant and Employer's general manager testified. The referee affirmed the job center's determination denying benefits to Claimant. On further appeal by Claimant, the UCBR affirmed the referee's decision, crediting the testimony of Employer's witness over the testimony of Claimant. As a result, the UCBR reasoned that Claimant failed to call off before the start of his shift on October 26<sup>th</sup> in accordance with Employer's policy and also that Claimant left an inappropriate call-off message prior to his work day on October 27<sup>th</sup>. The UCBR

further found that Claimant did not establish good cause for his absence on October 27<sup>th</sup>. Claimant then filed a petition for review with this court.

On appeal,<sup>2</sup> Claimant asserts that Employer failed to prove either that Claimant was excessively absent from work or that Employer had a clearly established call-off policy.<sup>3</sup> With respect to this latter contention, Claimant emphasizes that Employer had no written policy regarding absenteeism and reporting off from a work shift. Claimant's arguments are unavailing.

Our review of the record reveals that Employer's witness and general manager, Tom Minger, specifically testified to Claimant's multiple absences, (Notes of Testimony, N.T., 1/5/2010, at 7-8), stating that he discharged Claimant because his pattern of behavior was clearly not going to change. (*Id.* at 9.) Minger also testified that, after a number of Claimant's absences, he implemented a new call-off policy requiring an employee to "either give a message at the office before you start your shift . . . or to preferably call my cell phone so I'm aware that you're not going to be in . . . ." (*Id.* at 7.) Minger explained that he warned Claimant about complying with this policy, (*id.*), and the UCBR specifically credited Minger's testimony over the

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<sup>2</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.

<sup>3</sup> Willful misconduct may be proven where an employer establishes that it has a company policy regarding the reporting of absences and that an employee was aware of the policy but failed to comply with it. *Lyons v. Unemployment Compensation Board of Review*, 533 A.2d 1144, 1145 (Pa. Cmwlth. 1987).

testimony of Claimant.<sup>4</sup> Moreover, Claimant admitted he knew he had to report off before the start of his October 26<sup>th</sup> work shift, (*id.* at 12); therefore, Claimant's argument that Employer did not have a well-established absenteeism policy is disingenuous at best.<sup>5</sup>

The UCBR's findings that Claimant violated Employer's work rule are substantially supported by the evidence. Claimant admitted that he called in mid-shift on October 26<sup>th</sup>, (*see* Claimant's Brief at 10; N.T., 1/5/2010, at 11), in contravention of Employer's reasonable policy.<sup>6</sup> Accordingly, we affirm.

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ROCHELLE S. FRIEDMAN, Senior Judge

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<sup>4</sup> The law is clear that the UCBR is the ultimate fact-finder in unemployment matters and is empowered to resolve evidentiary conflicts, questions of evidentiary weight and witness credibility. *Guthrie v. Unemployment Compensation Board of Review*, 738 A.2d 518, 521 (Pa. Cmwlth. 1999). The UCBR's findings of fact are conclusive on appeal as long as the record, taken as a whole, substantially supports its findings. *Id.*

<sup>5</sup> Claimant's assertion that Employer's policy was somehow deficient because it was verbal rather than written also fails because the law is clear that an absenteeism policy does not have to be written to be reasonable. *See Graham v. Unemployment Compensation Board of Review*, 840 A.2d 1054, 1057 (Pa. Cmwlth. 2004).

<sup>6</sup> Claimant's admittedly sarcastic call-off on the night before his absence from work on October 27<sup>th</sup> does not aid him. In fact, the UCBR found that Claimant provided no reason for being absent when he telephoned, and Claimant does not now argue that he had good cause for his failure to appear at work that day.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

James A. Carrington,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 689 C.D. 2010
	:	
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 29th day of October, 2010, the order of the Unemployment Compensation Board of Review, dated March 18, 2010, is hereby affirmed.

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ROCHELLE S. FRIEDMAN, Senior Judge