

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Tami Wyllie, :
 :
 Petitioner :
 :
 v. : No. 691 C.D. 2010
 : Submitted: September 17, 2010
 Unemployment Compensation :
 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 SENIOR JUDGE FRIEDMAN

FILED: October 13, 2010

Tami Wyllie (Claimant) petitions for review, *pro se*, of the March 26, 2010, order of the Unemployment Compensation Board of Review (UCBR) determining that she is ineligible for benefits under section 402(e) of the Unemployment Compensation Law (Law).¹ We affirm.

The UCBR found as follows. Claimant worked for Prodesco, Inc. (Employer) for approximately six months. Her last day of work was September 21, 2009. During the times Claimant’s supervisor was not present at work, Claimant received her assignments from a co-worker. Claimant asked the co-worker questions,

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

and the co-worker gave Claimant information. Claimant knew that she had to ask her supervisor if she needed to leave work during her scheduled hours. On Claimant's last day, Claimant asked her co-worker if she could speak to her supervisor. Claimant's co-worker told Claimant that her supervisor was on vacation and that, if Claimant needed to speak to somebody, Claimant should contact John, the Human Resources Manager, or Jeff, the next level supervisor. On a previous occasion, Claimant's co-worker had informed her that, if Claimant could not contact her supervisor, Claimant had to contact another supervisor in order to receive permission to leave work, as the co-worker was not authorized to approve such leave. (Findings of Fact, Nos. 1-7.)

Thereafter, Claimant informed her co-worker that she felt ill, and she was going home. Claimant had a copy of Employer's handbook, which provided that Claimant had to contact a supervisor other than her immediate supervisor before leaving. Claimant admitted that she did not contact John or Jeff because she did not think they cared for her. Claimant clocked out and was later terminated for failing to contact a supervisor before leaving work. (Findings of Fact, Nos. 8-12.)

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 representatives testified. The referee reversed the job center's determination and awarded benefits to Claimant. On appeal by Employer, the UCBR reversed the referee's decision, reasoning that Claimant knew before leaving the work place that she had to contact Jeff or John in lieu of her immediate supervisor and that Claimant did not credibly establish good cause for

failing to do so. Claimant requested reconsideration of the UCBR's decision, which the UCBR denied. Claimant then filed a petition for review with this court.

On appeal,² Claimant does not contest that she broke Employer's rule against leaving her shift without a supervisor's permission. Rather, she argues that her actions did not amount to willful misconduct because she had good cause for violating this work rule.³ In this regard, Claimant asserts that her actions were justified because: (1) in her immediate supervisor's absence, her co-worker was giving her assignments; (2) a reasonable person would believe that she could leave work when feeling ill after having told a co-worker, who was acting as a supervisor, that she was going home; and (3) there were no other supervisors in the building at that specific time.⁴ We are not persuaded.

² 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.

³ This court has explained that, after an employer has met its burden of proving there is a rule that the claimant has violated, the burden of proof shifts to a claimant to show she had good cause for the violation. *Thompson v. Unemployment Compensation Board of Review*, 723 A.2d 743, 744 n.4 (Pa. Cmwlth. 1999). Good cause is shown where the employee's actions are "justified or reasonable under the circumstances." *Guthrie v. Unemployment Compensation Board of Review*, 738 A.2d 518, 522 (Pa. Cmwlth. 1999) (quoting *Frumento v. Unemployment Compensation Board of Review*, 466 Pa. 81, 87, 351 A.2d 631, 634 (1976)).

⁴ According to Claimant, the other supervisors were in another building, (Claimant's brief at 8), and, in any event, "they were most likely out to lunch." *Id.* at 10. However, Claimant acknowledged that Employer had posted a list of cell numbers for the employees' use, (N.T. at 25-26), but Claimant did not call them, believing that cell numbers are "personal." *Id.* at 26.

Here, the UCBR found that Claimant was aware of Employer's rule that she had to contact a supervisor before leaving work during her shift. The UCBR also found that Claimant was informed that merely telling the co-worker appointed to give Claimant assignments in her supervisor's absence that Claimant had to leave early would not satisfy this rule.⁵ Claimant's suggestion that she did not have to follow Employer's rule because it was illogical in light of her immediate supervisor's absence and her co-worker's apparent authority is wholly unavailing. Simply stated, it is not what Claimant thinks the rule should be that matters.

Furthermore, the UCBR specifically found that Claimant did not contact John from Human Resources or Jeff, the upper level supervisor, because she did not believe they liked her, and Claimant does not challenge this finding in her brief on appeal. Therefore, we are bound by the finding.⁶ For all of these reasons, we reject Claimant's assertions that her failure to follow Employer's rule was reasonable under the circumstances.

Accordingly, we affirm.

ROCHELLE S. FRIEDMAN, Senior Judge

⁵ 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 at 521. The UCBR's findings of fact are conclusive on appeal as long as the record, taken as a whole, substantially supports its findings. *Id.*

⁶ Findings of fact unchallenged by a claimant bind this court on appeal. *Owens v. Unemployment Compensation Board of Review*, 748 A.2d 794, 797 n.3 (Pa. Cmwlth. 2000).

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Board of Review,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 13th day of October, 2010, the order of the Unemployment Compensation Board of Review, dated March 26, 2010, is hereby affirmed.

ROCHELLE S. FRIEDMAN, Senior Judge