

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

William Schwaibold,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 696 C.D. 2010
	:	
Unemployment Compensation Board	:	Submitted: September 10, 2010
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<sup>1</sup>**

**FILED: November 5, 2010**

William Schwaibold (Claimant) petitions for review of the March 8, 2010, order of the Unemployment Compensation Board of Review (Board) reversing an Unemployment Compensation Referee's (Referee) decision to award unemployment compensation benefits to Claimant. The Board determined that Claimant was ineligible for benefits under Section 402(e) of the Unemployment Compensation Law (Law)<sup>2</sup> because his discharge was the result of willful misconduct. We affirm.

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<sup>1</sup> This matter was reassigned to the authoring judge on October 1, 2010.

<sup>2</sup> Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. § 802(e) (stating that employees are ineligible for compensation for any week in which their unemployment is due to discharge from work for willful misconduct).

Claimant applied for unemployment compensation benefits after becoming separated from his employment with Carey Transportation (Employer). The Unemployment Compensation Service Center (Service Center) issued a determination finding Claimant ineligible for benefits under Section 402(e). Claimant appealed the Service Center's determination, and the Referee conducted an evidentiary hearing at which Claimant testified via telephone and one witness for Employer appeared and testified. Following the hearing, the Referee reversed the Service Center's determination and found Claimant was not ineligible for benefits pursuant to Section 402(e). Thereafter, Employer filed an appeal with the Board. After conducting a review of the record, the Board issued an opinion in which it made the following findings of fact:

1. [C]laimant was last employed as a truck driver by [Employer] from October 4, 2007, [being] paid a percentage of the trip revenue and his last day of work was August 19, 2009.
2. On August 18, 2009, [C]laimant was pulled over by the state police in Maryland.
3. The Maryland state police checked [C]laimant's driving record and discovered an unpaid ticket in Wyoming.
4. As a result, [C]laimant's driving privileges were suspended in Maryland and he was unable to complete his route.
5. Upon learning of the situation, [E]mployer sent two drivers to pick up [C]laimant and the truck and return them to Pennsylvania.
6. [E]mployer informed [C]laimant that he would need to take care of the Wyoming ticket and provide a report showing that his license was clear.
7. [C]laimant demanded that [E]mployer guarantee that he would have a job if he complied with its request.

8. [E]mployer discharged [C]laimant when it failed to offer him additional work because he would not comply with its request.

(Board Op., Findings of Fact (FOF) ¶¶ 1-8.) Based on these findings of fact, the Board determined that Claimant committed willful misconduct and Claimant failed to show good cause for his actions. The Board explained:

In this case [E]mployer made a reasonable demand that [C]laimant clear up his driving suspension by taking care of the Wyoming ticket and provide a report showing that his driving record was clear. Instead of complying with [E]mployer's reasonable request, [C]laimant demanded that [E]mployer guarantee in writing that he still had a job. [C]laimant's demand was not reasonable, nor was his failure to comply with [E]mployer's demand.

(Board Op. at 2-3.) Claimant now petitions this Court for review.<sup>3</sup>

On appeal, Claimant argues that Employer's request that he pay the outstanding Wyoming ticket and provide Employer with a report showing that his driving record was clear was unreasonable because he has a valid Pennsylvania Commercial Driving License and is eligible to drive in the continental United States, with the exception of Maryland due to his temporary suspension. Claimant also contends that his refusal to comply with Employer's request, unless Employer provided Claimant a written guarantee that it would continue to employ him, was

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<sup>3</sup> On appeal, this Court's review of the Board's decision "is limited to determining whether constitutional rights were violated, whether an error of law was committed, whether a practice or procedure of the Board was not followed or whether the findings of fact are supported by substantial evidence in the record." Western & Southern Life Insurance Co. v. Unemployment Compensation Board of Review, 913 A.2d 331, 334 n.2 (Pa. Cmwlth. 2006).

reasonable because of Employer's past practice of helping Claimant take care of a previous ticket in the State of California.

Section 402(e) of the Law provides that a claimant will not be eligible for unemployment compensation when "his unemployment is due to his discharge or temporary suspension from work for willful misconduct connected with his work." 43 P.S. § 802(e). Although the Law does not define the term "willful misconduct," the courts have defined it as follows:

a) wanton or willful disregard for an employer's interests; b) deliberate violation of an employer's rules; c) disregard for standards of behavior which an employer can rightfully expect of an employee; or d) negligence indicating an intentional disregard of the employer's interest or an employee's duties or obligations.

Caterpillar, Inc. v. Unemployment Compensation Board of Review, 550 Pa. 115, 123, 703 A.2d 452, 456 (1997). In Simpson v. Unemployment Compensation Board of Review, 450 A.2d 305 (Pa. Cmwlth. 1982), this Court explained:

[A]n employee's direct refusal to comply with a request of his employer can constitute willful misconduct under Section 402(e) of the Law. However, before we can decide whether such noncompliance amounts to willful misconduct in a particular case, we must evaluate not only the reasonableness of the employer's request under the circumstances, but also the employee's reason for noncompliance. If the employee's behavior was justifiable or reasonable under the circumstances, it cannot be considered willful misconduct. In other words, if there was "good cause" for the employee's action, he cannot be deemed guilty of willful misconduct.

Id. at 308 (citations omitted).

Here, the Board found that Employer's direction to Claimant, a truck driver, that he take care of an outstanding Wyoming ticket,<sup>4</sup> which had resulted in the suspension of his driving privileges in the State of Maryland, and provide proof that he could legally operate a truck in the states that Employer did business, was reasonable. We agree. As part of the terms and conditions of employment that Claimant had signed, Employer required its drivers to “maintain all licenses, health certificates, and other documentation relevant to your job or state requirements. Copies of these must be provided to [Employer].” (Terms and Conditions of Employment at 1, October 6, 2007, Record Item No. 6, Ex. 6C.) Regardless of whether Claimant was licensed to drive in all other states, his license was suspended in Maryland, a state that was part of his trucking route, (Hr’g Tr. at 10), because of the outstanding Wyoming ticket. Moreover, it is clearly rational and reasonable for Employer to make this request so that no more time or money would be lost in the future for the same type of incident.

The Board also found that Claimant's refusal to comply with what was a term of Claimant’s employment, unless Employer met his demand of giving him a written commitment of continued employment, was not reasonable. Again, we agree. We note first that Claimant’s demand for a written guarantee of continued employment

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<sup>4</sup> The circumstances of the Wyoming ticket are not described in the record, except that it occurred in 2006 before Claimant began working for Employer. Claimant testified that he was unaware of the ticket until he was pulled over in Maryland, and that he believed his driving record was clear because the ticket did not appear on his National Driving Record report from May 2009. (Hr’g Tr. at 23-24, 27.) In addition, Claimant testified that he was in the process of appealing the Maryland license suspension, and that his appellate rights would be forfeited if he were to pay the Wyoming ticket. (Hr’g Tr. at 27-29.) However, we note that Claimant does not make this argument in his brief before this Court.

came at the very end of a two-page rambling e-mail that was otherwise unrelated to work. (E-mail from Claimant to Employer (August 22, 2009), Record Item No. 2, Ex. 2C.) Claimant's demand for guaranteed employment was contained in two sentences in the second-to-last paragraph of this long screed. The demand was not reasonable, and neither was the method in which it was made. Additionally, there was no evidence submitted by Claimant that Employer ever intended to terminate Claimant if he complied with a term of his employment. While it may be true that Employer had helped Claimant take care of a previous ticket in the State of California, this fact supports how reasonable it was for Employer to want assurance that there were no other outstanding tickets or problems. Because Claimant's behavior was not reasonable under the circumstances, he failed to show good cause for not complying with Employer's request and, thus, his actions constituted willful misconduct.

Accordingly, the order of the Board is affirmed.

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**RENÉE COHN JUBELIRER, Judge**

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	:	
Unemployment Compensation Board	:	
of Review,	:	
	:	
Respondent	:	

**ORDER**

**NOW**, November 5, 2010, the order of the Unemployment Compensation Board of Review in the above-captioned matter is hereby **AFFIRMED**.

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**RENÉE COHN JUBELIRER, Judge**

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 : Submitted: September 10, 2010  
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HONORABLE P. KEVIN BROBSON, Judge  
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

DISSENTING OPINION  
BY SENIOR JUDGE FRIEDMAN

FILED: November 5, 2010

I respectfully dissent. The majority affirms the order of the Unemployment Compensation Board of Review (UCBR), which determined that it was unreasonable for William Schwaibold (Claimant) to require a guarantee of continued employment before complying with Carey Transportation's (Employer) demand that he pay an outstanding \$850 traffic fine in Wyoming. Because Claimant could not afford to pay the fine without continued employment and because Employer had assisted Claimant in paying a fine on a previous occasion, I would conclude that Claimant acted reasonably.<sup>1</sup>

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<sup>1</sup> If an employee does not follow an employer's directive, we must take into consideration all of the circumstances and the reasons for the employee's noncompliance with the directive before concluding that the employee has engaged in willful misconduct. *Rebel v. Unemployment Compensation Board of Review*, 555 Pa. 114, 117, 723 A.2d 156, 158 (1998). If an employee's conduct is reasonable under the circumstances, then the employee has good cause for the conduct, and there is no willful misconduct. *Id.*



Employer discharged Claimant because Claimant would not comply with Employer's request to pay a Wyoming traffic fine unless Employer guaranteed Claimant continued work as a truck driver. (UCBR's Findings of Fact, Nos. 6-8.) Claimant applied for unemployment compensation benefits, and, when the application was denied, Claimant filed an appeal. After a hearing, the referee found that: (1) Claimant was unable to pay the \$850 fine without having continued employment; (2) Employer previously assisted Claimant in paying a traffic fine; and (3) Employer did not agree to give Claimant more work so that he could pay the fine. Based on these findings, the referee concluded that it was reasonable for Claimant to ask Employer to guarantee him continued employment. The referee awarded Claimant benefits, and Employer appealed to the UCBR, which reversed.

In reversing, the UCBR disregarded the referee's findings that Claimant was unable to pay the \$850 fine without continued employment and that Employer previously assisted Claimant in paying a fine. (*See Referee's Findings of Fact, Nos. 11-12.*) "The [UCBR] may not, however, simply disregard findings made by the referee which are based upon consistent and uncontradicted testimony without stating its reasons for doing so." *Treon v. Unemployment Compensation Board of Review*, 499 Pa. 455, 461, 453 A.2d 960, 962 (1982). "If particular findings are inconsistent, incredible or unsupported by the evidence, then the [UCBR] must so indicate." *Id.* In *Treon*, where the UCBR failed to state any reason for disregarding a referee's finding, our supreme court reinstated the finding made by the referee. *Id.* at 461, 453 A.2d at 963. Thus, here, because the UCBR failed to state any reason for

disregarding the referee's findings about Claimant's inability to pay the fine and Employer's prior assistance in a similar situation, I would reinstate them.

Claimant was paid a percentage of the revenue generated from the drives he made for Employer. Thus, if Employer gave Claimant no assignments, he had no income. In 2008, when Claimant was Employer's top revenue-producing driver, Claimant had an unpaid traffic fine in California. Employer paid that fine and allowed Claimant to repay Employer through a series of payroll deductions. (N.T., 10/22/09, at 23, 26-28.) As in 2008, Claimant could not pay the Wyoming fine without continued assignments. Under the circumstances, especially considering Employer's willingness to help Claimant in the past in a similar situation, I submit that it was reasonable for Claimant to seek a guarantee of continued work before complying with Employer's demand that Claimant pay the Wyoming fine. Moreover, when Employer did not give Claimant any more assignments, Claimant was between a rock and a hard place; it was **impossible** for him to comply with Employer's directive to pay the fine.<sup>2</sup>

Accordingly, I would reverse.

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ROCHELLE S. FRIEDMAN, Senior Judge

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<sup>2</sup> To the extent that Employer was aware of Claimant's financial predicament, I submit that it was unreasonable for Employer to ask Claimant to pay the Wyoming fine without guaranteeing Claimant continued work.