

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

|                                 |            |                               |
|---------------------------------|------------|-------------------------------|
| James Brozenick,                | :          |                               |
|                                 | Petitioner | :                             |
| v.                              | :          | No. 710 C.D. 2010             |
|                                 | :          | Submitted: September 10, 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 JUDGE BROBSON**

**FILED:** February 22, 2011

James Brozenick (Claimant) petitions, *pro se*, for review of an order of the Unemployment Compensation Board of Review (Board). The Board affirmed a Referee’s decision that Claimant was ineligible for unemployment compensation benefits under Section 402(e) of the Unemployment Compensation Law (Law).<sup>1</sup> For the reasons set forth below, we affirm.

Claimant applied for unemployment compensation benefits after being discharged from his employment as an assistant manager for King’s Family Restaurant (Employer). The Duquesne UC Service Center (Service Center)

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

determined that Claimant was ineligible for unemployment compensation benefits under Section 402(e) of the Law.

Claimant appealed the Service Center's determination, and a hearing was held before a Referee. Following the hearing, the Referee issued a decision, in which he affirmed the Service Center's determination and found Claimant to be ineligible for unemployment compensation benefits. The Referee made the following relevant findings:

1. The claimant worked for the employer, King's Family Restaurant, as an assistant manger, full-time, from December 15, 2006 until his last day of work, September 20, 2009. The claimant's rate of pay was \$41,000.00 per year.
2. In the restaurant where claimant worked, in Sarver, there was an office which locked when the door was shut, there was a safe in the office for which there were two different keys, used to open different shelves of the safe, and there was a hidden key in the office which was kept in the compressor room.
3. The employer's polices required that any manager who was counting money for a bank deposit keep the office door closed while he was counting the money, and then immediately place the money in the safe.
4. On September 20, 2009, the District Manager received a call from the claimant in which the claimant informed the District manager that \$1,800.00 was missing from the restaurant.
5. The claimant told the District Manager that, while he was putting the morning cash deposit together, he was having a discussion with an hourly employee with the office door opened, while he was counting money.

6. At one point, the hourly employee with whom the claimant was having the discussion asked the claimant to look for something in the stockroom for him.
7. The claimant left the area and went to the stockroom.
8. When the claimant prepared to take the morning shift deposit to the bank, he found that it was not in the safe, but instead, only the money from the prior evening and the petty cash were in the safe.
9. It is the normal procedure of the manager for the morning shift to deposit the previous shift's money and the money from his own shift, because the employer's policies require all deposits to be made during daylight.
10. The claimant had previously been warned in 2007 for not putting a deposit in a safe, but instead, leaving it on a shelf in the office.
11. In 2007, both the claimant and another employee who had played a joke by hiding this deposit were told that they would be discharged if there were any other problems involving cash handling.
12. The claimant and a co-worker searched the entire restaurant, but were unable to find the missing deposit.
13. Although the claimant contended that the deposit must have been stolen after he put it in the safe, the previous shift's deposit and the petty cash remained in the safe.
14. The claimant was discharged because of his violation of cash handling procedures, because the \$1,800.00 deposit was missing.
15. The claimant received \$459.00 in unemployment compensation benefits.

(Certified Record (C.R.), Item No.11.)

In concluding that Claimant engaged in willful misconduct, the Referee provided, in pertinent part:

The evidence tends to establish that the claimant caused the loss of his money by failing to follow the employer's procedures for securing cash. The claimant was the person responsible for securing these funds. Given the extreme unlikelihood of someone else being able to get into the safe, the only reasonable explanation for the disappearance of the money is that the claimant left it somewhere where it could be taken.

(*Id.*)

Claimant appealed the Referee's order to the Board, which adopted the Referee's findings and conclusions and affirmed the Referee's decision.

Claimant now petitions this Court for review.

On appeal,<sup>2</sup> Claimant presents fourteen (14) questions for our review. In *pro se* appeals, we have previously expressed a willingness to construe filings liberally. *Means v. Housing Auth. of the City of Pittsburgh*, 747 A.2d 1286, 1289 (Pa. Cmwlth. 2000). Although Claimant's brief is flawed because it includes superfluous and unsubstantiated claims and because the correlation between the issues presented and the argument section lacks precision, our scrutiny of Claimant's statement of questions, the argument section of Claimant's brief, and his petition for review reveal only three (3) discernable issues that allow for

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<sup>2</sup> This Court's standard of review is limited to determining whether constitutional rights were violated, whether an error of law was committed, or whether necessary findings of fact are supported by substantial evidence. 2 Pa. C.S. § 704. Substantial evidence is relevant evidence that a reasonable mind might consider adequate to support a conclusion. *Hercules, Inc. v. Unemployment Comp. Bd. of Review*, 604 A.2d 1159 (Pa. Cmwlth. 1992).

meaningful appellate review. *Russell v. Unemployment Comp. Bd. of Review*, 812 A.2d 780, 784 (Pa. Cmwlth. 2002). First, Claimant challenges the Board’s finding that he left the door open to the office. Next, Claimant raises the argument of whether his conduct was “willful.” Finally, Claimant argues that he did not have enough time during the hearing to state all of the facts on his behalf.

We now address whether the Board’s finding regarding Claimant leaving the door to the office open is supported by substantial evidence.<sup>3</sup> Substantial evidence is defined as relevant evidence upon which a reasonable mind could base a conclusion. *Johnson v. Unemployment Comp. Bd. of Review*, 502 A.2d 738, 740 (Pa. Cmwlth. 1986). In determining whether there is substantial evidence to support the Board’s findings, this Court must examine the testimony in the light most favorable to the prevailing party, giving that party the benefit of any inferences that can logically and reasonably be drawn from the evidence. *Id.* A

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<sup>3</sup> Employer argues in its brief that Claimant does not challenge any of the Board’s findings. This Court may decline to consider issues a claimant fails to raise with sufficient specificity in his petition for review. *See* Pa. R.A.P. 1513; *Deal v. Unemployment Comp. Bd. of Review*, 878 A.2d 131 (Pa. Cmwlth. 2005) (holding that because claimant failed to comply with Pa. R.A.P. 1513(d) in providing a general statement of objections to Board’s order there were no issues for appellate review.) Furthermore, this Court may decline to consider issues a claimant raises in the argument section of his appellate brief but fails to include in his statement of questions involved. *See* Pa. R.A.P. 2119(a); *Leone v. Unemployment Comp. Bd. of Review*, 885 A.2d 76 (Pa. Cmwlth. 2005) (holding that because claimant failed to specifically raise issue in his questions presented for review, even though claimant raises the issue in argument section of his brief, Court may consider issue to be waived pursuant to Pa. R.A.P. 2116(a).) We decline to apply waiver in this instance and will consider the issue on its merits, because Claimant does challenge the Board’s finding that he left the door open to the office in his petition for review and sufficiently addresses this argument in his appellate brief.

determination as to whether substantial evidence exists to support a finding of fact can only be made upon examination of the record as a whole. *Taylor v. Unemployment Comp. Bd. of Review*, 474 Pa. 351, 355, 378 A.2d 829, 831 (1977).

Claimant testified that he locked the office door while he was working on the deposit in question. (C.R., Item No.10 at p.21.) Claimant testified that he opened the door when an hourly employee had a question to ask him. (*Id.*) Tony Karam, Employer's District Manager, testified that Claimant called him regarding the missing money and told him that he was putting the morning deposit together and had the office door propped open while having a discussion with the hourly employee. (*Id.* at p.7.) Mr. Karam testified that Claimant told him that at one point the hourly employee asked Claimant to get something from the stockroom, that Claimant shut the office door and went into the stockroom with the hourly employee, and that he then came back to the office and finished the deposit and put the deposit money into the safe. (*Id.*) Mr. Karam testified that the \$1,800.00 from Claimant's morning deposit was the only money missing and no other money was missing from the safe. (*Id.* at p.9.) Mr. Karam testified that the deposit from the previous night's shift was still in the safe along with \$750.00 in petty cash. (*Id.*) Mr. Karam testified that the office door will automatically shut and lock unless it propped open with either a door stop or a hook and chain. (*Id.*) Patrick McKee, Employer's Assistant Manager, testified that he was the next manager on duty after

Claimant and he noticed the deposit in question was missing from the safe. (*Id.* at p.17.) Mr. McKee testified that the safe was locked when he came into the office. (*Id.* at p.20.) The Board found Employer's policies required that any manager who was counting money for a bank deposit keep the office door closed and immediately place the money in the safe. (R.R., Item No.15.)

Employer, as the prevailing party below, is entitled to the benefit of any inferences which can reasonably and logically be drawn from the evidence. *Palmer v. Unemployment Comp. Bd. of Review*, 449 A.2d 126, 128 (Pa. Cmwlth. 1982). The Board found that Claimant caused the loss of the deposit money by failing to follow Employer's procedures for securing the deposit money. The Board reasoned that it was extremely unlikely that someone else would be able to get into the office and safe given the circumstances regarding the extra keys and the manager's presence at the restaurant. Moreover, it was extremely unlikely that someone who had gained access to the safe would steal only the one deposit and leave the other money in the safe. Rather, based upon the evidence, the Board inferred that the only reasonable explanation for the disappearance of the deposit money was that Claimant left it in a place where it could have been taken. (*Id.*) The testimony of Employer's witnesses, as summarized above, supports such a

finding, particularly when viewed in the light most favorable to Employer.<sup>4</sup> Our review of the record, therefore, demonstrates that there is substantial evidence to support the Board's findings that Claimant did not follow Employer's procedures and, as a result, caused the loss of the deposit money.

Next, we address Claimant's argument that the Board erred in concluding that his conduct rose to the level of willful misconduct under Section 402(e) of the Law. Section 402(e) of the Law provides, in part, that an employee shall be ineligible for compensation for any week "[i]n which his unemployment is due to his discharge or temporary suspension from work for willful misconduct connected with his work." The term "willful misconduct" is not defined by statute. The courts have defined "willful misconduct" as follows:

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<sup>4</sup> The Board rejected Claimant's contention that the facts support a finding that other employees had access to the office keys making it likely that someone took the deposit through no fault of his own. Mr. Karam testified that a hide-a-key was kept in the back compressor room and that the management staff had knowledge of the hide-a-key, but a customer would have no access to the back compressor room. (C.R., Item No.10 at p.10.) Mr. Karam testified that the only person to have access to that area would be a management person or potentially an hourly employee. (*Id.*) Mr. Karam testified that if an individual did take the hidden office key and open the office door he would have to find the two keys needed to open the safe, take the missing morning deposit out and leave the petty cash and the night deposit in the safe, return the safe keys, shut the office door, and put the hidden office key back where it belonged. (*Id.* at p.14.) The Board reasoned that due to the extreme unlikelihood of someone being able to get into the safe, the only reasonable explanation for the disappearance of the deposit money was that Claimant left it in a place where it could have been taken. (*Id.*, Item No.15.) It is within the purview of the Board to determine inferences to be drawn from the evidence. *Condo. Corp. of Pa., Inc. v. Unemployment Comp. Bd. of Review*, 398 A.2d 1122, 1124 (Pa. Cmwlth. 1979). Given the fact that Claimant was on the premises when the money in question was taken and in light of Mr. Karam's testimony, we cannot say the Board's inference was unreasonable. Thus, given the Board's role as the ultimate finder of fact, we are bound by the Board's reasonable inference that Claimant violated Employer's procedure for securing the deposit money.

(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.

*Grieb v. Unemployment Comp. Bd. of Review*, 573 Pa. 594, 600, 827 A.2d 422, 425 (2003).

An employer, seeking to prove willful misconduct by showing that the claimant violated the employer's rules or policies, must prove the existence of the rule or policy and that the claimant violated it. *Walsh v. Unemployment Comp. Bd. of Review*, 943 A.2d 363, 369 (Pa. Cmwlth. 2008). If, however, the claimant can show good cause for the violation—*i.e.*, “that the actions which resulted in the discharge were justifiable and reasonable under the circumstances”—then there should be no finding of willful misconduct. *Id.* Whether an employee's conduct constituted willful misconduct is a matter of law subject to this Court's review. *Id.* at 368.

All pertinent circumstances are considered in determining whether an employee's actions constituted willful misconduct. *Rebel v. Unemployment Comp. Bd. of Review*, 555 Pa. 114, 117, 723 A.2d 156, 158 (1998). An employee who ignores clear and simple instructions from his employer without establishing good cause engages in willful misconduct. *Hartman v. Unemployment Comp. Bd. of*

*Review*, 455 A.2d 756, 630 (Pa. Cmwlth 1983). A single incident of misconduct may support a denial of benefits. *Jones v. Unemployment Comp. Bd. of Review*, 373 A.2d 791, 792 (Pa. Cmwlth. 1977).

In this case, Claimant does not dispute that Employer had established specific procedures for handling the deposit money or that Claimant was aware of those procedures. Instead, Claimant argues that Employer failed to establish that he engaged in willful misconduct because there was no proof of any wrongdoing on his part. Specifically, Claimant contends that he did not leave the office door open and the keys to the office door were available to other employees. Mr. Karam testified that Employer's procedure for preparing a deposit for the bank is to take the money from the cash register, go into the office and shut the door behind you, complete a deposit slip, wrap the money up, and put it in a deposit bag, place the deposit bag in the safe, and lock the safe. (C.R., Item No.10 at p.8.) Mr. Karam testified that Claimant told him that Claimant had the door propped open while Claimant was in the office counting money. (*Id.* at p.7.) In addition, Mr. Karam testified there was a previous incident where Claimant did not place the deposit money in the safe. Employer warned Claimant that if another incident occurred regarding the mishandling of money, Claimant would be discharged. (*Id.*, Item No.10 at p.11.) The Board found Employer's policy required that any manager who was counting money for a bank deposit keep the office door closed

while they were counting the money, and then immediately place the money in the safe. (*Id.*, Item No.15.)

Based upon our review of the record, we are convinced that the Board correctly concluded that Employer met its burden to establish that Claimant's actions amounted to willful misconduct. That Claimant gave a different version of the events is not grounds for reversal if substantial evidence supports the Board's findings. *Tapco, Inc. v. Unemployment Comp. Bd. of Review*, 650 A.2d 1106, 1108-09 (Pa. Cmwlth. 1994). As noted above, substantial evidence exists in the record supporting the Board's finding that Claimant left the office door open while he was counting the money from that morning's deposit. This finding amply supports the Board's determination that Claimant was not eligible for unemployment compensation benefits under the provisions of Section 402(e) of the Law because Claimant failed to follow Employer's procedures for handling the money.

Because Employer satisfied its burden of proof as to willful misconduct, the burden shifts to Claimant to prove that he had good cause for his behavior. To prove "good cause" a claimant must demonstrate that his actions were justifiable and reasonable under the circumstances. *Walsh v. Unemployment Comp. Bd. of Review*, 943 A.2d 363, 369 (Pa. Cmwlth. 2008). Claimant does not argue that he has good cause to justify his behavior; rather, Claimant contends that

anyone could have access to the deposit money because the alarm on the back door was broken and the additional set of keys to the office was common knowledge among Employer's employees. Claimant neither offered any testimony before the Referee, nor does he offer an argument before this Court, showing that his actions in failing to follow Employer's procedures for handling the deposit money were justifiable and reasonable. Therefore, Claimant failed to meet his burden of proof to establish good cause for his actions.

Finally, Claimant contends that he was unable to state all of the facts on his behalf at the hearing. Claimant testified that he is dyslexic and cannot properly read and write. (C.R., Item No.10.) Claimant, however, testified that he understood his rights to have an attorney present at the hearing. (*Id.* at p.2.) In addition, Claimant testified that he had nothing else to add to his testimony at the hearing in response to the Referee's query. (*Id.* at p.21.) Further, Claimant, again, stated after his closing statement that he had nothing else to add to his testimony. (*Id.* at p.23.) "Any layperson choosing to represent himself in a legal proceeding must, to some reasonable extent, assume the risk that his lack of expertise and legal training will prove his undoing." *Groch v. Unemployment Comp. Bd. of Review*, 472 A.2d 286, 288 (Pa. Cmwlth. 1984). Our review of the record indicates,

contrary to Claimant’s contention, that Claimant did have numerous opportunities during the hearing to add additional testimony.<sup>5</sup>

Accordingly, the order of the Board is affirmed.

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P. KEVIN BROBSON, Judge

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<sup>5</sup> Claimant raises the argument that past managers had left the office door open and were not terminated. “The essence of disparate treatment is that similarly situated people are treated differently, based upon an improper criterion.” *Am. Racing Equip., Inc. v. Unemployment Comp. Bd. of Review*, 601 A.2d 480, 482 (Pa. Cmwlth. 1991). When determining whether there is disparate treatment by an employer, the burden of proof initially lies with the claimant alleging the disparate treatment to establish the identity of the person or persons who have received dissimilar treatment when disciplined for the same offense. *Id.* Claimant alleges that he was treated differently from other managers, although Claimant did not provide any of the necessary names of past managers who left the office door open, but were not terminated. First, this Court has held that arguments not properly developed in a brief will be deemed waived. *Rapid Pallet v. Unemployment Comp. Bd. of Review*, 707 A.2d 636, 638 (Pa. Cmwlth. 1998). Because Claimant does not provide any pertinent evidence to provide for meaningful appellate review of this issue, his undeveloped argument is, therefore, waived. Second, this issue is not properly preserved in Claimant’s petition for review, and, therefore, it is also waived for that reason. *See* Pa. R.A.P. 1551.

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

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| James Brozenick,                | : |                   |
|                                 | : |                   |
| Petitioner                      | : |                   |
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| v.                              | : | No. 710 C.D. 2010 |
|                                 | : |                   |
| Unemployment Compensation Board | : |                   |
| of Review,                      | : |                   |
|                                 | : |                   |
| Respondent                      | : |                   |

***ORDER***

AND NOW, this 22nd day of February, 2011, the March 8, 2010,  
order of the Unemployment Compensation Board of Review is hereby  
AFFIRMED.

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P. KEVIN BROBSON, Judge