

Rebecca's prescription medications, Vicodin (narcotic) and Ultrium. Hearing Transcript, December 6, 2010 (H.T.), at 23. Claimant admitted that Rebecca opened the bottles herself and took "one Vicodin and two of the – I don't know the other medication but she took two of those" while seated in Claimant's car. Rebecca did not swallow the pills in the car because she did not have water, but left with the pills in her hand. H.T. at 25.

Claimant did not go inside the facility to fill out the "medication log" and secure Rebecca's pills in the "medication room" because she had to attend another "crisis" that evening. H.T. at 34. Instead, she put the pills in her glove box and proceeded to drive home. The next day, while she was at training, Claimant was confronted by her superiors and asked to retrieve the pills from her car.

Claimant stated that it was common practice for PRCs to take members' medications home with them. She also testified that it was not common practice for PRC's to enter information into the "communication log" if access to the "medication log" was unavailable. H.T. at 26-27.

Claimant admitted she was unaware that Rebecca was on the "substance abuse track" and had previously relapsed twice. H.T. at 30-31. Claimant also did not know how many pills were originally prescribed, so Rebecca could have taken the whole bottle, half the bottle or none at all. H.T. at 36.

Claimant called Nicole Jordon (Jordon), a senior counselor employed by Employer, who testified that Claimant called her on the morning of September 14, 2010, to let her know that she took the medicine home. Jordon believed that by taking the medicine from Rebecca Claimant's actions were in the member's "best interests." H.T. at 38. She also stated that there were instances when PRC's would take medication "off the facility for an extended period of time." H.T. at 38.

Employer presented the testimony of its program director, Robert Beck (Beck), who testified that Claimant was trained in the proper procedure for logging and administering medications to program members. He personally talked to Claimant "about the importance of the medications being signed out on a daily basis to make sure that the member received [her] medications." H.T. at 5. PRCs were responsible for administering medications and maintaining a "medication log" for each member which was kept in a secured medication room. If a PRC was unable to access the "medication log" after normal operating hours between 8:00 a.m. to 9:00 p.m., the PRC was required to communicate this to Beck or the program psychiatrist via the "communications log." H.T. at 13-14.

In this situation, the member in question, Rebecca, had substance abuse and psychiatric issues and was not permitted to take her own medication. H.T. at 6. Beck testified at 8:30 a.m. on September 14, 2010, Rebecca reported to him that she needed her pain medication but knew Claimant had taken them home. H.T. at 7. Beck immediately contacted Claimant who retrieved Rebecca's prescriptions from her car. He and other management counted the pills in each bottle. Beck was concerned that Rebecca had control of the bottle and was not

supervised on how many pills were taken. Claimant, however, did not feel that it was “a big concern.” H.T. at 8. In his written statement, Beck reported that there were “three tablets missing from the Vicodin and two missing from the Ultrium.” H.T.at 34.

Employer’s Director of Human Resources and Operations, Scott Kramer (Kramer) testified that it was “absolutely not” common practice to take members’ medications home overnight. H.T. at 19.

The Referee concluded that Employer met its burden to prove that Claimant was discharged for willful misconduct.¹ The Board affirmed and made the following findings of fact:

¹ Section 402(e) of the Unemployment Compensation Law, Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. §802(e), states, in relevant part, that “an employe 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.” Although willful misconduct is not defined in the statute, this Court has described it as follows:

- (1) The wanton and willful disregard of the employer’s interests,
- (2) the deliberate violation of rules,
- (3) the disregard of standards of behavior which an employer can rightfully expect from his employee, or
- (4) negligence which manifests culpability, wrongful intent, evil design, or intentional and substantial disregard for the employer’s interests or the employee’s duties or obligations.

Guthrie v. Unemployment Compensation Board of Review, 738 A.2d 518 (Pa. Cmwlth. 1999).

Employer has the burden of proving Claimant engaged in willful misconduct. McLean v. Unemployment Compensation Board of Review, 476 Pa. 617, 383 A.2d 533 (1978). To meet this burden, the employer must not only establish the existence of the rule, but also that the claimant was aware of the rule. James v. Unemployment Compensation Board of Review, 429 A.2d 782 (Pa. Cmwlth. 1982).

1. The claimant was employed as a psychiatric rehabilitation counselor (PRC) by Young Adult Psychiatrics from February 9, 2009, until September 14, 2010, at a final hourly rate of \$16.32.
2. The claimant's final assignment with the employer was at the employer's Andorra Program at Program Transition.
3. The claimant received training on the proper administration of medication to the employer's program members.
4. The claimant was aware that all medications must be locked in the employer's medication room at the Andorra Apartment Complex or signed out to a member in the employer's medication log.
5. The claimant was aware that PRCs are required to record in the member's individual medication log when a member takes a dose of medication or receives a new prescription, along with any medication-related developments.
6. The employer keeps its medication log in its locked medication room.
7. The claimant was aware that, when a member's prescription is filled after working hours, the PRC on duty should promptly record this information in the communication log, and the program director would update the medication log on the following day.
8. The employer provides services to members from 8 a.m. until 9 p.m. daily.
9. The claimant was scheduled to work until 9 p.m. on September 13, 2010.
10. On September 13, 2010, the claimant drove a member from the apartment complex to the pharmacy to pick up the member's prescriptions for pain.

11. The prescriptions included a narcotic, Vicodin.
12. The member went into the pharmacy and returned to the claimant's vehicle with the prescriptions.
13. The claimant drove the member back to the apartment complex and, by this time it was after 9 p.m.
14. While still in the claimant's vehicle at the apartment complex, the member handled her own medications and took out one dose of each.
15. The claimant placed the prescriptions in the glove compartment of her vehicle and went home without entering any information in the medication log or the communication log.
16. The claimant had a key to the medication room and could have stored the medication there before leaving for the night.
17. The claimant kept the remaining medication until the following day, September 14, 2010.
18. It was not common practice...for PRC's to take members' medications home overnight.
19. The claimant attended a training session at the Andorra site on September 14, 2010.
20. At 8:30 a.m. the program director became aware that the member's medication was missing and that the claimant had taken it home on the previous evening.
21. When the program director could not reach the claimant by cell phone, he traveled to the Andorra site and asked to meet with the claimant.
22. The claimant told the program director that the medications were still in her vehicle.
23. At the program director's request, the claimant retrieved the pills.

24. The employer suspended the claimant pending an investigation.

25. Following an investigation, the employer discharged the claimant on September 16, 2010, for failing to secure the medication properly.

Board Opinion, February 11, 2011, Findings of Fact 1-25 at 1-3.

On appeal², Claimant argues that Employer failed to prove willful misconduct.³ Claimant argues that her failure to immediately return the member's prescriptions to the medication room and record the transaction did not rise to the level of misconduct. Specifically, she argues that her witness, Jordon, testified that Employer did not uniformly enforce its policy and that Employer previously allowed employees to keep medications overnight without prior authorization from the director if they were administering prescriptions at a member's home.

² This Court must uphold the Board's result and findings of fact absent a finding that the decision violates the Claimant's constitutional rights, is not in accordance with the law, or is not supported by substantial evidence. Lee Hospital v. Unemployment Compensation Board of Review, 637 A.2d 695 (Pa. Cmwlth. 1994).

³ The following are the issues raised by Claimant verbatim:

1. Was the decision to terminate claimant connected to her medical leave?
2. Why was the testimony of the Lead PRC omitted from findings facts?
3. Why was the Policy and Procedures never presented?
4. Without documentation, was the [Board's] decision based solely from employer's testimony and personal judgment?
5. If the communication log is not mandated in the workplace nor is it mentioned in the Policy and Procedures, why did the [Board] allow it to hold weight?

Claimant's Brief at 6.

In unemployment compensation cases, the Board is the ultimate fact-finding body empowered to resolve conflicts of evidence and determine the credibility of witnesses. Metropolitan Edison Co. v. Unemployment Compensation Board of Review, 606 A.2d 955, 957 (Pa. Cmwlth. 1992). This Court exceeds its scope of review if it reweighs the facts found by the Board rather than terminating its review once it has determined that there was substantial evidence to support the Board's findings of fact. Stringent v. Unemployment Compensation Board of Review, 703 A.2d 1084 (Pa. Cmwlth. 1997). Thus, while there may be record evidence to the contrary, findings of fact if supported by substantial evidence are conclusive on appeal. Duquesne Light Co. v. Unemployment Compensation Board of Review, 648 A.2d 1318 (Pa. Cmwlth. 1994).

The problem with Claimant's challenge is that the Board found Beck's testimony credible and it did not accept that Claimant's conduct was justified or the co-worker's testimony that conduct like Claimant's was condoned by Employer. The record supports that, in this situation, Claimant was aware of Employer's medication policy, and that Claimant's departure from Employer's medication policy put the member at risk of harm. The member involved was a known drug abuser and had "lapsed" twice before. Yet, Claimant allowed her to dispense her own narcotic medication. Further, because Claimant failed to inform the staff psychiatrist and program director of the transaction via the communication log, these individuals were not made aware that the member had taken Vicodin, what amount, or that she had taken a second unidentified medication. According to Employer, the member was placed at risk. There was also evidence in Beck's

written statement that three Vicodin, not one, were missing from the prescription bottle when counted the next morning.

The Board was free to credit Employer's evidence and conclude that Claimant's conduct on September 13, 2010, was contrary to the member's well-being, and Employer's mission to protect those members with drug-abuse problems from harming themselves, as explained by Beck. This Court will not disturb findings that are supported by substantial credible evidence. Accordingly the Board properly determined that Claimant's behavior rose to the level of misconduct.

Claimant also asserts that the Board erred when it credited Employer's testimony "without any substantial supporting documentation." Claimant's Brief at 14.

Contrary to Claimant's contention, it was not necessary for Employer to provide evidence of a written medication procedure. Graham v. Unemployment Compensation Board of Review, 840 A.2d 1054 (Pa. Cmwlth. 2003). The program director credibly testified that Claimant received current training in the proper administration of medication and, therefore, was aware or should have been aware that (1) medications must be kept locked in the medication room; (2) during work hours, PRCs are required to record in the medication log the administration of medication to members and the filling of new prescriptions, and (3) when a member's prescription is filled after normal working hours, PRCs must notify the

staff psychiatrist and director of the prescription via the “communications log” if they cannot access the “medication log.”

This evidence amply supported the Board’s finding that Claimant was aware, or should have been aware, of Employer’s medication policy.

Finally, Claimant attached two portions of Employer’s Policy & Procedure Manual, apparently to establish that Employer’s written rules do not specifically address the entire medication procedure outlined by Beck. However, Claimant neither submitted these documents to the Referee nor with her appeal to the Board. Therefore, this evidence will not be considered by this Court. McKenna v. Pa. State Horse Racing Comm’n, 476 A.2d 505 (Pa. Cmwlth. 1984) (holding that the Court, in its appellate capacity is bound by the certified record). See also Pa. R.A.P. 1551 (“No question shall be heard or considered by the court which was not raised before the government unit.”).

The decision of the Board is affirmed.

BERNARD L. McGINLEY, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Cari Ann Young,	:
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Petitioner	:
	:
v.	:
	:
Unemployment Compensation	:
Board of Review,	:
	:
Respondent	:

No. 745 CD 2011

ORDER

AND NOW, this 30th day of November, 2011, the decision of the Unemployment Compensation Board of Review in the above-captioned case is hereby affirmed.

BERNARD L. McGINLEY, Judge