

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Roger C. Brown,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 935 C.D. 2011
	:	SUBMITTED: October 7, 2011
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

BEFORE: **HONORABLE BONNIE BRIGANCE LEADBETTER**, President Judge
 HONORABLE P. KEVIN BROBSON, Judge
 HONORABLE PATRICIA A. McCULLOUGH, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER**

FILED: November 29, 2011

Petitioner, Roger C. Brown, proceeding *pro se*, petitions for review of the order of the Unemployment Compensation Board of Review (Board) denying unemployment compensation benefits pursuant to Section 402(e) of the Unemployment Compensation Law¹ (Law), 43 P.S. § 802(e). We affirm.

Petitioner worked for the School District of Pittsburgh (School District) from January 25, 1985 until June 2, 2010 as a bookroom clerk at Peabody

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 in which his unemployment is due to a discharge for willful misconduct connected with his work.

High School. Petitioner began medical leave on June 2, which was expected to last through the end of the school year. Prior to taking medical leave, Petitioner was informed that his position at Peabody High School was to be eliminated at the end of the school year, but that due to his seniority he would be assigned to another position at a different school. After Petitioner's last day of work, the School District discovered that Petitioner had removed from the premises the computer which it had assigned to him. The School District discharged Petitioner for theft and additionally filed criminal charges.²

Petitioner applied for unemployment compensation benefits, which were granted by the Service Center. The School District appealed and a hearing was held before a referee. Petitioner testified that he removed the hard drive of the computer from the premises because he assumed that he would need the material stored on it for his next position with the School District and because he wanted to retrieve stored personal files. Petitioner acknowledged that he did not seek permission to remove the computer from the school. Petitioner also testified that he was aware of other employees who removed the School District's property from the premises both with and without permission. Petitioner stated that he did not ask for permission because he did not think it would be an issue. The principal of Peabody High School, Kellie Abbott, testified that she did not give Petitioner permission to remove the computer from the school. Jay Trower, a former school district employee, testified on Petitioner's behalf that during his career he had removed and relocated school property both with and without permission from supervisors and that he was never disciplined.

² The criminal charges were dismissed pursuant to Pa.R.Crim.P. 586 (Court Dismissal Upon Satisfaction or Agreement).

The referee concluded that Petitioner was ineligible for benefits because he was terminated for willful misconduct. The referee stated that an employer would not expect an employee to remove a computer from a work place without permission and with no notice to the employer. The referee held that Petitioner had failed to establish that he was treated differently from other employees or that the School District's policies were unevenly enforced because Trower had worked under a different supervisor than Petitioner. Petitioner appealed to the Board, which affirmed the referee's decision.³ This appeal followed.

Petitioner argues that the Board erred because his conduct did not rise to the level of willful misconduct. "Willful misconduct" is defined as: "(1) a wanton and willful disregard of the employer's interests; (2) a deliberate violation of the employer's rules; (3) a disregard of the standards of behavior that an employer rightfully can expect from its employees; or (4) negligence that manifests culpability, wrongful intent, or evil design, or an intentional disregard of the employer's interests or the employee's duties and obligations." *Oliver v. Unemployment Comp. Bd. of Review*, 5 A.3d 432, 438 (Pa. Cmwlth. 2010). The employer has the burden of proving that the employee was discharged for willful misconduct. *Id.* An employee's unpermitted removal of an employer's property from the employment premises constitutes grounds for a determination of willful misconduct. *Bignell v. Unemployment Comp. Bd. of Review*, 434 A.2d 869 (Pa. Cmwlth. 1981). *See also White v. Unemployment Comp. Bd. of Review*, 330 A.2d 541 (Pa. Cmwlth. 1975) (holding that theft of an employer's property is an obvious

³ The Board adopted and incorporated the referee's findings and conclusions.

disregard of the standards of behavior which an employer has the right to expect from his employee).

Petitioner asserts that he acted negligently and did not intend to steal the hard drive, that he did not know that the School District had a rule against removing property from the premises and that he had good cause to remove the hard drive. However, the Board based its decision on Petitioner's disregard of the standards of behavior an employer can expect; namely that an employee would not remove district property from the premises without permission. Even if Petitioner intended to use the information stored on the hard drive and the hard drive itself at his next position, such intention does not justify his failure to obtain authorization to remove the hard drive from Peabody High School. Although the computer had been Petitioner's assigned computer for numerous years, it was still the property of the School District. It is not unreasonable for an employer to expect that an employee seek permission before removing an employer's property from its premises, as an employer must be able to account for its whereabouts. Accordingly, we affirm.

BONNIE BRIGANCE LEADBETTER,
President Judge

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ORDER

AND NOW, this 29th day of November, 2011, the order of Unemployment Compensation Board of Review is hereby AFFRIMED.

BONNIE BRIGANCE LEADBETTER,
President Judge