

public defender. Claimant was to work sixteen work hours per week, eight hours each Monday and Thursday, and she was to complete a time card to record the hours that she worked. (Findings of Fact Nos. 1-5.)

On December 3, 2008, Claimant reported to Central Court at approximately 8:00 a.m., but went to the rest room to attend to her steri-strips and the incision that resulted from her pregnancy. Employer's Chief Public Defender did not see Claimant at Central Court until about 9:00 a.m., and he assumed that she had just arrived. Claimant worked at Central Court until about 1:00 p.m. and then left for her one-hour lunch break. Claimant then returned to the courthouse and went to Employer's Controller's office to discuss an issue regarding her health insurance.³ The person to whom Claimant needed to speak was not there, and Claimant left the Controller's office about 3:00 p.m. to return home. On her time card that day, she recorded her work hours as 8:00 a.m. to 3:00 p.m. (Findings of Fact Nos. 6-13.)

On December 8, 2008, Claimant started work at 8:00 a.m. When she learned that an issue had arisen with respect to her disability insurance, she became very upset, believing she was being accused of insurance fraud. Claimant spoke to the Chief Public Defender about this issue, and he told her to go home, speak to her boyfriend, and make any necessary arrangements to resolve the matter. Claimant left Employer's premises at approximately 12:00 p.m., appreciative of the opportunity not to have to discuss the matter in front of co-workers on Employer's premises. On her

³ There is no dispute that the Controller's office is located on the courthouse premises. (*See* Employer's brief at 24, n.3).

time card that day, Claimant recorded her work hours as 8:00 a.m. to 12:00 p.m. (Findings of Fact Nos. 19-25, 31.)

On December 15, 2008, Employer's Chief Public Defender reviewed Claimant's time card for the period ranging from December 1 through December 12, 2008, and felt that it contained discrepancies. Specifically, the Chief Public Defender believed that Claimant worked from 9:00 a.m. to 12:00 p.m. on December 3, but had recorded 8:00 a.m. to 3:00 p.m. He also believed that Claimant worked from 8:00 a.m. to 11:00 a.m. on December 8, but had recorded 8:00 a.m. to 12:00 p.m. on her time card. On December 18, 2008, Employer discharged Claimant from employment for falsifying her time cards,⁴ in accordance with an Employer policy that provides for the immediate discharge of employees who falsify their payroll records. (Findings of Fact Nos. 27-29, 31-34.)

Claimant applied for unemployment compensation benefits, which the local job center granted, determining that Employer did not sustain its burden under section 402(e). Employer then filed a petition for appeal, and a hearing before a referee was held on February 20, 2009. At this hearing, Employer presented testimony that Claimant falsified her hours and that time spent in the Controller's office was not reportable for time card purposes. Claimant offered no testimony regarding whether she was entitled to payment for time spent in the Controller's

⁴ Although Employer believed Claimant's time card relating to December 4 contained discrepancies, Employer states that Claimant was formally terminated for discrepancies in her time card with respect to December 3 and 8; she was not discharged for any time card discrepancies relating to December 4. Therefore, we have not recounted those purported discrepancies here. (*See* Employer's brief at 7-8.)

office although at one point she admitted to leaving work early on December 8 to take care of a “personal matter.” (R.R. at 88a).

The referee credited Claimant’s testimony, determining that Employer’s evidence was, at times, inconsistent. Based on the credited evidence, the referee concluded that Employer failed to provide sufficient record evidence showing that Claimant knowingly falsified her time card in violation of Employer’s policy. Consequently, the referee held that Claimant was not ineligible for benefits under section 402(e). The UCBR affirmed, and Employer filed a petition for review with this court.⁵

Employer argues that the UCBR committed an error of law in awarding Claimant benefits because she admitted to reporting, for payment purposes, hours that she did not actually engage in work. Specifically, Employer asserts that the hours between 1:00 and 3:00 p.m. on December 3 and between 11:00 a.m. and 12:00 p.m. on December 8 did not constitute reportable working hours because Claimant was taking care of personal matters at those times and, thus, Claimant’s inclusion of these hours on her time card rose to the level of willful misconduct.

The Pennsylvania Supreme Court explained in *Temple University v. Unemployment Compensation Board of Review*, 565 Pa. 178, 772 A.2d 416 (2001),

⁵ Our scope of review is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with the law and whether the necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

that, while not defined by statute, willful misconduct has been defined in the case law as an act of wanton or willful disregard of the employer's interest, a deliberate violation of the employer's rules, a disregard of standards of behavior that an employer has a right to expect of an employee, or negligence indicating an intentional disregard of the employer's interest or of the employee's duties and obligations. Our supreme court further stated: "Pennsylvania Courts have consistently held that theft from an employer is a wrongful act disqualifying the employee from receiving benefits...." *Id.* at 182, 772 A.2d at 418 (citing cases).

Here, there is no dispute that Claimant recorded her end time at work on December 3, 2008, as 3:00 p.m.⁶ However, the fact finder credited Claimant's testimony that, at 1:00 p.m., she took her one-hour lunch break, which she always claimed,⁷ and then returned to the courthouse in an attempt to speak to someone at the Controller's office regarding her health insurance, leaving the courthouse premises at approximately 3:00 p.m. Although Employer maintains that Claimant's testimony does not support her contention that she was entitled to be paid until that time, Employer bore the burden of proving otherwise.⁸ Contrary to Employer's assertion,

⁶ Although the Chief Public Defender initially believed Claimant had worked only until 12:00 p.m. that day, Employer now centers its argument on the hours between 1:00 and 3:00 p.m. in asserting that Claimant committed willful misconduct by falsifying her time card. Presumably, this is because, among its other evidence, Employer introduced the testimony of an assistant public defender who stated Claimant was in Central Court on December 3, 2008, "until sometime between 12:00 and 1:00" but "[n]ot from 1:00 p.m. on." (R.R. at 78a-79a.)

⁷ The Chief Public Defender testified that "everybody" gets paid for lunch. (R.R. at 63a.)

⁸ The burden of proving discharge for willful misconduct is on the employer. *Roberts v. Unemployment Compensation Board of Review*, 977 A.2d 12 (Pa. Cmwlth. 2009).

the UCBR did not capriciously disregard Employer's evidence that Claimant was not to be paid for her time in the courthouse outside the public defender's office.⁹ Rather, because of the various inconsistencies strewn throughout Employer's evidence, the UCBR simply was unpersuaded by the evidence that Claimant falsified her time card.

It is well settled that the UCBR is the ultimate fact finder, authorized to resolve all conflicts in the evidence and to make all necessary credibility determinations. *Glenn v. Unemployment Compensation Board of Review*, 928 A.2d 1169 (Pa. Cmwlth. 2007). Because Employer's evidence of willful misconduct was rejected, Employer failed to meet its burden of proof. Similarly, the UCBR clearly weighed the evidence and further credited Claimant's testimony that she left the courthouse at 12:00 p.m. on December 8,¹⁰ once again unconvinced by Employer's contradictory evidence that Claimant falsified her time card with respect to hours actually worked. For this reason as well, Employer failed to meet its burden.

Accordingly, we affirm.

ROCHELLE S. FRIEDMAN, Senior Judge

⁹ See generally *Leon E. Wintermyer, Inc. v. Workers' Compensation Appeal Board (Marlowe)*, 571 Pa. 189, 812 A.2d 478 (2002), for a discussion of capricious disregard of evidence review.

¹⁰ Claimant agreed, in response to questioning, that, on December 8, 2008, she left the Public Defender's Office, went to the Controller's Office and then left the courthouse around 12:00 p.m. (R.R. at 95a).

