

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

India Y. West, :
 Petitioner :
 :
 v. :
 :
 :
Unemployment Compensation Board :
of Review, :
 Respondent :
 :

No. 1043 C.D. 2011
Submitted: December 2, 2011

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
 HONORABLE ROBERT SIMPSON, Judge
 HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FRIEDMAN

FILED: December 30, 2011

India Y. West (Claimant) petitions *pro se* for review of the May 11, 2011, order of the Unemployment Compensation Board of Review (UCBR), which affirmed the decision of a referee to deny Claimant unemployment compensation (UC) benefits under section 402(e) of the Unemployment Compensation Law (Law).¹ We affirm.

Claimant worked for UPMC Health System (Employer) as a cafeteria worker. Claimant was aware that Employer has a corrective and discharge policy that

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §802(e). Under section 402(e) of the Law, a claimant is ineligible for benefits for any week in which his or her unemployment is due to discharge from work willful misconduct.

is generally progressive in nature but that calls for discharge when there is a single occurrence of a serious offense. Claimant had received discipline in the nature of a suspension, so the next step in the disciplinary process for Claimant was discharge. (Findings of Fact, Nos. 1-3.)

Claimant was aware that she was not permitted to raise her voice or yell and was not permitted to question authority. Employer notified Claimant that it wanted to question her about whether she had properly delivered a tray to a patient. Claimant wrote an initial statement about the incident and, later, a second statement for clarification. Claimant also spoke with the nurse on the floor of the patient in question about supporting Claimant's conduct. (Findings of Fact, Nos. 4-7.)

Claimant met with Employer's human resources consultant on January 26, 2011.² The human resources consultant questioned Claimant about two witness statements that Claimant had provided. Claimant yelled and screamed at the human resources consultant. As a result, Claimant was suspended pending an investigation of Claimant's conduct. Claimant was discharged on February 16, 2011. (Findings of Fact, Nos. 8-12.)

Claimant applied for UC benefits, but her application was denied. Claimant filed an appeal, and the matter was heard by a referee. Claimant argued before the referee that her actions were justified because the human resources

² There is a discrepancy in the findings as to whether Claimant was suspended in January of 2010 or 2011. However, inasmuch as Claimant was discharged in February 2011, it is likely that Claimant was suspended in January 2011.

consultant raised her voice at Claimant and because Claimant suffers from bipolar disorder. However, the referee found credible the testimony of other witnesses, who stated that Claimant's voice was the only loud voice; moreover, the referee concluded that, assuming the human resources consultant did raise her voice, it did not justify Claimant's yelling and screaming. In addition, although the referee was not certain that Claimant suffers from bipolar disorder, the referee stated that, according to Claimant, her disorder was controlled by medication; thus, Claimant had no one to blame but herself if her yelling and screaming was due to her lack of medication.

Claimant appealed to the UCBR, which affirmed. In doing so, the UCBR expressly rejected Claimant's testimony that her bipolar disorder caused her to yell and scream at Employer's human resources consultant. Claimant now petitions this court for review.³ Claimant originally filed a letter with this court, asserting her desire to appeal the UCBR's decision because: (1) she did not yell and scream at the human resources consultant; and (2) "this was a set-up" – the witnesses were all friends who wanted Employer to fire her. (Claimant's May 15, 2011, Letter.)

This court informed Claimant in a letter that, in order to perfect her appeal, she needed to file a petition for review. This court provided a blank petition for review for Claimant to use. In her petition for review, Claimant makes two assertions: (1) she did not yell and scream at the human resources consultant; and (2)

³ 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.

she mistakenly stated that she failed to take her medication for her bipolar disorder. (Petition for Review.)

Claimant subsequently filed a brief. In the Statement of the Questions Involved portion of her brief, Claimant sets forth eight questions: (1) what was the original reason for the final reprimand, the tray incident or Claimant's behavior; (2) was willful misconduct truly presented; (3) when Claimant requested the presence of her representative at the meeting, why did Employer not continue the meeting; (4) why was there a need for staff members to give a second statement; (5) how can employees access Employer's policy manual on Employer's website; (6) why is there no evidence about Employer's training session regarding its policies; (7) why did the human resources consultant fail to call security if Claimant was so threatening; and (8) what about Claimant's right to be informed of the charges. (Claimant's Brief, Statement of Questions Involved.)

In her one-paragraph, single-page argument, Claimant argues that: (1) the referee's determination was not fair because she was unable to present new evidence that she suffers from bipolar disorder; (2) certain e-mails presented as evidence were hearsay; (3) certain witnesses lied about Claimant yelling and screaming at the human resources consultant; and (4) Claimant's director was prejudiced against her and was looking for a reason to fire her. (Claimant's Brief, Argument.)

The UCBR filed an application to quash Claimant's brief and dismiss her appeal. The UCBR asserted that: (1) Claimant's brief does not comply with Pa.

R.A.P. 2116(a) because Claimant fails to preserve in her Statement of Questions Involved any of the questions raised in her petition for review; (2) Claimant's brief does not comply with Pa. R.A.P. 2118 because Claimant fails to include a summary of her argument; (3) Claimant's brief does not comply with Pa. R.A.P. 2119(a) because Claimant fails to divide her argument into as many parts as there are questions, because her argument does not address the questions raised, because Claimant does not reference any legal authority and because Claimant does not develop any issue; (4) Claimant's brief does not comply with Pa. R.A.P. 124 because it is not double spaced and because it is not firmly bound;⁴ (5) Claimant's brief does not comply with Pa. R.A.P. 2111(a)(10) because it does not contain a copy of the UCBR's order; and (6) Claimant's brief does not comply with Pa. R.A.P. 121 and 122 because it has no certificate of service. Thus, the UCBR asked this court to quash Claimant's brief and dismiss her appeal under Pa. R.A.P. 2101.

In an order dated October 27, 2011, this court stated: “[I]t appearing that petitioner's brief, while inartful, is sufficient to allow appellate review in this matter, and it further appearing that the statement of questions in petitioner's brief is fairly subsumed in the issue stated in the petition for review, the motion to quash is denied.” (Order of 10/27/11.)

This court's order did not identify any particular issue that was capable of appellate review. Arguably, Claimant preserved as an issue whether the record contains substantial, credible evidence to support the UCBR's finding that Claimant

⁴ The pages of Claimant's brief are held together by a paper clip.

yelled and screamed at the human resources consultant.⁵ Claimant cannot prevail on this issue.

The human resources consultant credibly testified as follows:

EL Can you explain what happened to cause her discharge?

EW1 Well . . . I had to call her into the office to have a meeting with her regarding the two statements that human resources received from her because they were a little different from each other. When I called her into the office we sat down. I was reading the statements explaining to her that . . . there were a few differences. Not many but just a few. During that time when I was making those comments she was stating that no there was [sic] not any changes to it. I had asked her regarding the situation that the wrong tray was passed to a guest . . . she passed a wrong food tray to a guest at the hospital. . . . I had to do an investigation. . . .

EL She had provided two statements in conjunction with that investigation?

EW1 Yes. . . . When I was going to ask her what the protocol is when you deliver food trays to patients, I had asked her several times because I believed she wasn't understanding the question . . . Claimant became very, very loud and I just wasn't sure what was going to happen in the situation. I gave her different examples of the work protocol . . . and I wasn't getting anywhere. . . . She proceeded to continue to yell at this point leaning out of her chair, pointing towards the wall and yelling that [her supervisor] is trying to railroad her and then she stated that she didn't feel comfortable and she wanted [another person]

⁵ Claimant concedes in her petition for review that she mistakenly testified that she failed to take her medication for her bipolar disorder. Thus, Claimant no longer claims that her lack of medication caused her to yell and scream at the human resources consultant.

to be in the meeting and as she continued to yell, I then stopped the meeting at that time.

EL Okay. What was she yelling?

EW1 She was just yelling that she is an honest woman and she does her work and the fact that [her supervisor] is trying to railroad her and that her statements were not different and that she did pass the tray to the wrong individual and that she makes mistakes but she is a good employee and an honest one. . . .

EL Okay. Now you said that she was yelling. How loud was she speaking?

EW1 I mean she was yelling at the highest capacity. I mean she was really, really, yelling.

EL Okay. And what was her demeanor like while she was yelling?

EW1 She has [sic] more threatening body language. She had adjusted herself halfway out of the chair. She was throwing her arm towards the wall because [her supervisor's] office is towards that direction and so she was doing that while she was speaking of [her supervisor] and that she was just leaning forward in her chair and just screaming.

EL How would you describe her tone? Her tone of voice?

EW1 I would say her tone was very loud, very angry. I mean she was screaming very, very loud.

(N.T., 3/24/211, at 6-8.) This testimony, which was credited by the UCBR, supports the UCBR's finding that Claimant yelled and screamed at the human resources consultant.

Accordingly, we affirm.

ROCHELLE S. FRIEDMAN, Senior Judge

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ORDER

AND NOW, this 30th day of December, 2011, the order of the Unemployment Compensation Board of Review, dated May 11, 2011, is hereby affirmed.

ROCHELLE S. FRIEDMAN, Senior Judge