IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Michael Guzman, Petitioner	:	
v.	:	No. 1058 C.D. 2012
	:	Submitted: October 19, 2012
Unemployment Compensation Board of Review, Respondent	:	

BEFORE: HONORABLE DAN PELLEGRINI, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES GARDNER COLINS, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE SIMPSON **FILED: December 5, 2012**

In this appeal, Michael Guzman (Claimant) asks whether the Unemployment Compensation Board of Review (Board) erred in determining his former employer, Suburban EMS (Employer), presented sufficient evidence to prove he committed willful misconduct. See Section 402(e) of the Unemployment Compensation Law (Law).[1] Upon review, we affirm.

Claimant worked for Employer, which operates an ambulance service, as an emergency medical technician (EMT) for approximately six years. After his termination from employment, Claimant applied for unemployment compensation, which was initially granted. Employer appealed, and a hearing ensued before a referee.

[1] Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. §802(e).

At the hearing, Employer, represented by counsel, presented the testimony of its executive director and another EMT who oversaw the handling of Employer's "trip sheets," which memorialize the care an EMT provides for a patient after an ambulance arrives on scene. Reproduced Record (R.R.) at 44a. Claimant, representing himself, testified on his own behalf.

After the hearing, the referee issued a decision in which he denied unemployment compensation. Specifically, the referee determined Claimant committed willful misconduct by failing to comply with Employer's directive regarding two outstanding trip sheets. Claimant, through counsel, appealed.

> On appeal, the Board made the following findings:
>
> 1. The claimant was last employed as an emergency medical technician by Suburban EMS from October 31, 2005 at a final rate of $14.60 per hour and his last day of work was November 1, 2011.
>
> 2. The employer has a policy which requires all trip sheets, which are needed for billing and legal purposes, be completed within seven (7) days after services are provided.
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> 3. The employer did not enforce the seven-day rule strictly.
>
> 4. On March 1, 2011, the employer issued the claimant a written warning for failing to file trip sheets from 2010.
>
> 5. On or about October 18, 2011, the claimant applied for medical leave under the Family and Medical Leave Act (FMLA)[[2]] to provide care for his father.

[2] 29 U.S.C. §§2601-2654.

> 6. The employer approved the claimant's leave, effective November 1, 2011.
>
> 7. As of October 18, 2011, the claimant had approximately 24-25 outstanding trip sheets.
>
> 8. On October 18, 2011, the employer instructed the claimant to complete all outstanding trip sheets before going on FMLA.
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> 9. The claimant did not have the trip sheets completed before beginning FMLA.
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> 10. The claimant periodically reported to the employer's worksite during his FMLA period and worked on the trip sheets.
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> 11. At the beginning of December, the employer assigned an employee to monitor all the trip sheets and ensure that they were completed within the seven-day period.
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> 12. On December 12 or 13, the employee contacted the claimant about two trip sheets that remained outstanding.
>
> 13. The claimant explained that he did not have sufficient information to complete the trip sheets and the employer would need to recreate the documents.
>
> 14. On December 19, 2011, the employer discharged the claimant for failing to complete the trip sheets.

Bd. Op., 5/8/12, Findings of Fact (F.F.) Nos. 1-14. The Board further determined (with emphasis added):

> The claimant testified credibly, and the employer records support such testimony, that the claimant did not complete the trip sheets before November 1, 2011. The claimant reported to the worksite periodically during FMLA to complete the reports. At the beginning of December 2011, the employer assigned another employee to monitor all trip sheets to ensure that the seven-day requirement was met. The employee contacted the claimant about two remaining incomplete trip sheets. The

> Board resolves the conflict in testimony in favor of the employer and finds that the claimant did not complete the outstanding trip sheets. Given the need for the trip sheets and the amount of time the claimant had to complete them, the Board finds the directive to be reasonable. Therefore, the burden shifts to the claimant to demonstrate that he had good cause to not complete the trip sheets.
>
> The claimant alleges that he simply did not have enough work-time to complete the trip sheets. The Board discredits the claimant's testimony. The employer concedes that it did not enforce the seven-day rule for the completion of the forms, but the Board notes that the claimant was not discharged for a violation of that rule, but rather for failing to complete the outstanding forms.
>
> Based upon the totality of evidence and testimony, the Board concludes that the employer has met its burden and benefits are denied under Section 402(e) of the Law.

Bd. Op. at 3. Claimant now petitions for review to this Court.

As fact-finder, the Board is empowered to resolve conflicts in the evidence and to determine the credibility of witnesses. Lee v. Unemployment Comp. Bd. of Review, 33 A.3d 717 (Pa. Cmwlth. 2011). The Board may accept or reject the testimony of any witness, in whole or in part. Collier Stone Co. v. Unemployment Comp. Bd. of Review, 876 A.2d 481 (Pa. Cmwlth. 2005). The Board's findings are conclusive on appeal if the record, when viewed as a whole, contains substantial evidence to support those findings. Lee.

"The fact that [a party] may have produced witnesses who gave a different version of the events, or that [the party] might view the testimony differently than the Board is not grounds for reversal if substantial evidence supports the Board's findings." Stage Road Poultry Catchers v. Dep't of Labor &

Indus., Office of Unemployment Comp., Tax Servs., 34 A.3d 876, 886 (Pa. Cmwlth. 2011) (quoting Tapco v. Unemployment Comp. Bd. of Review, 650 A.2d 1106, 1108-09 (Pa. Cmwlth. 1994)). Similarly, even if evidence exists in the record that could support a contrary conclusion, it does not follow that the findings of fact are not supported by substantial evidence. Id. In determining whether substantial evidence exists, we view the record in the light most favorable to the party that prevailed before the Board, and give that party the benefit of all reasonable inferences that can be drawn from the evidence. Id.

On appeal,[3] Claimant argues the Board erred in determining that Employer proved he committed willful misconduct. To that end, Claimant asserts Employer did not establish the existence of a policy that Claimant allegedly violated so as to support a determination that he committed willful misconduct. Further, Claimant contends his failure to complete two trip sheets did not amount to willful misconduct. He also argues the accepted practice, as evidenced by Employer's logs, supports that he was timely in completing his trip sheets.

Section 402(e) of the Law provides, "[a]n employe shall be ineligible for compensation for any week … [i]n which his unemployment is due to his discharge … from work for willful misconduct connected with his work …." 42 P.S. §802(e). Although the Law does not define "willful misconduct," we construe it as: (1) a wanton or willful disregard of an employer's interests; (2) a deliberate

[3] Our review is limited to determining whether the necessary findings of fact were supported by substantial evidence, whether errors of law were committed, or whether constitutional rights were violated. Oliver v. Unemployment Comp. Bd. of Review, 5 A.3d 432 (Pa. Cmwlth. 2010) (en banc).

violation of an employer's rules/directives; (3) a disregard of the standards of behavior an employer can rightfully expect from an employee; and, (4) negligence demonstrating an intentional disregard of the employer's interest or the employee's duties and obligations. Scott v. Unemployment Comp. Bd. of Review, 36 A.3d 643 (Pa. Cmwlth. 2012). Whether a claimant's actions constitute willful misconduct is a question of law fully reviewable on appeal. Grieb v. Unemployment Comp. Bd. of Review, 573 Pa. 594, 827 A.2d 422 (2002).

Where an employee is discharged for refusing or failing to follow an employer's directive, both the reasonableness of the demand and the reasonableness of the employee's refusal must be examined. Dougherty v. Unemployment Comp. Bd. of Review, 686 A.2d 53 (Pa. Cmwlth. 1996). However, this Court has typically required "extraordinary circumstances" to justify a claimant's refusal to comply with a reasonable employer directive. Id. at 54.

Further, it is not necessary that an employer's reasonable directive be written in order for the Court to determine that an employee's violation of the directive constitutes willful misconduct. Graham v. Unemployment Comp. Bd. of Review, 840 A.2d 1054 (Pa. Cmwlth. 2004). An employer may deal with its employees on a non-written basis and expect its directives to be followed. Id.

Where an employee attempts to justify a refusal to carry out the employer's directive by showing the directive was unreasonable or his conduct was for good cause, the burden of proof shifts to the employee. Horton v. Unemployment Comp. Bd. of Review, 953 A.2d 851 (Pa. Cmwlth. 2008). If an

employee has good cause for refusing to comply with a directive of the employer, the refusal does not constitute willful misconduct. Id.

Here, Employer's executive director explained that Claimant requested leave under the FMLA on October 18, 2011. F.F. No. 5; R.R. at 44a. Employer granted Claimant's request effective November 1, and it instructed Claimant to submit his outstanding trip sheets prior to taking his leave. F.F. Nos. 6, 8; R.R. at 44a-45a. Claimant did not complete all of his required trip sheets within the specified timeframe. F.F. No. 9; R.R. at 49a, 54a. On December 12 or 13, Employer's EMT, who oversaw submission of the trip sheets, requested Claimant complete two outstanding trip sheets from October 2011. F.F. No. 12; R.R. at 57a. Claimant informed Employer he did not have the required information to complete the outstanding trip sheets. F.F. No. 13; R.R. at 58a. Approximately a week later, Employer terminated Claimant's employment for failure to submit the outstanding sheets. F.F. No. 14; R.R. at 49a.

Employer's executive director explained that timely completion of the trip sheets was necessary to: (1) maintain a record of a patient's history and treatment; (2) comply with Department of Health regulations; and, (3) ensure Employer received payment for the services it rendered. R.R. at 44a. Further, Claimant was responsible to retrieve the information necessary to complete the trip sheets. R.R. at 58a. Additionally, the record reveals that Employer previously reprimanded Claimant for failing to complete his trip sheets in a timely fashion in 2007 and 2011. R.R. at 50a-52a, 56a-57a; see also R.R. at 74a-78a.

While Claimant contends Employer did not establish the existence of a specific policy he violated, the Board credited Employer's evidence that Claimant violated Employer's directive by failing to complete the required trip sheets as instructed. Bd. Op. at 3. The Board's supported findings that Claimant did not comply with Employer's reasonable directive despite ample opportunity to do so, and Employer's explanation of the need to timely complete the trip sheets, support the Board's ultimate determination that Claimant committed willful misconduct.

In addition, in his brief to this Court, Claimant does not clearly explain how his failure to comply with Employer's directive was reasonable or that he had good cause for his failure to comply with the directive. In any event, the Board specifically discredited Claimant's testimony that he lacked sufficient work time to complete the outstanding trip sheets. Bd. Op. at 3.[4]

[4] Claimant also very briefly asserts that, while he was not the only employee with outstanding trip sheets, he was the only EMT Employer terminated based on a failure to complete the required sheets. See R.R. at 79a-80a.

To establish a disparate treatment defense, a claimant must show "(1) the employer discharged claimant, but did not discharge other employees who engaged in similar conduct; (2) the claimant was similarly situated to the other employees who were not discharged; and (3) the employer discharged the claimant based upon an improper criterion." Geisinger Health Plan v. Unemployment Comp. Bd. of Review, 964 A.2d 970, 974 (Pa. Cmwlth. 2009) (en banc).

Here, although Claimant asserts he was the only EMT that Employer terminated based on a failure to complete the required trip sheets, Claimant does not assert he was similarly situated to other employees who were not discharged, or that Employer discharged him based on an improper criterion. Also, Employer's witness testified that other employees who had outstanding trip sheets completed their sheets, and Employer did, in fact, terminate other employees who did not do so. R.R. at 53a, 59a-60a. Thus, Claimant cannot prevail on a disparate treatment defense.

Accordingly, we affirm.

ROBERT SIMPSON, Judge

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O R D E R

AND NOW, this 5th day of December, 2012, the order of the Unemployment Compensation Board of Review is **AFFIRMED**.

ROBERT SIMPSON, Judge