

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Brenda J. Kagarise, :
 : No. 1072 C.D. 2012
 Petitioner : Submitted: November 2, 2012
 v. :
 :
 Unemployment Compensation :
 Board of Review, :
 :
 Respondent :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, Judge
 HONORABLE P. KEVIN BROBSON, Judge
 HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
 BY SENIOR JUDGE FRIEDMAN

FILED: December 13, 2012

Brenda J. Kagarise (Claimant) petitions for review of the May 21, 2012, order of the Unemployment Compensation Board of Review (UCBR) affirming the decision of a referee to deny Claimant unemployment compensation benefits. The UCBR determined that Claimant was ineligible for benefits under section 402(e) of the Unemployment Compensation Law (Law)¹ because she was discharged from work for willful misconduct. We affirm.

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 “[i]n which his unemployment is due to his discharge . . . from work for willful misconduct connected with his work.” 43 P.S. §802(e).

Claimant worked as a full-time custodian for Everett Area School District (Employer) from November 18, 2004, through January 23, 2012. (N.T., 3/6/12, at 19; Findings of Fact, No. 1.)² Claimant knew that subcontractors were removing two farm houses and a barn from Employer's property so that Employer could expand the high school building. (Findings of Fact, No. 3.) While the subcontractors were working on the barn's roof, Claimant retrieved three pieces of barn wood lying near the building. (Findings of Fact, No. 4.) Claimant brought the pieces of wood into the school and leaned them up to dry. (Findings of Fact, No. 5.) Claimant and a co-worker later ripped the wood into smaller pieces so that Claimant could complete a craft project of making picture frames. (Findings of Fact, Nos. 6, 11.) Claimant had stacked the ripped wood on a table near Employer's woodshop equipment alongside one of the assembled picture frames. (Findings of Fact, No. 10.)

During Employer's initial investigation of the incident, Claimant's co-worker told her supervisors that she and Claimant had completed the craft project at night after completing their assigned work and during their breaks. (Findings of Fact, No. 8.) Claimant was present at this meeting but did not object to her co-worker's statement. (Findings of Fact, Nos. 8-9.)

Employer suspended, and later discharged, Claimant for using the material of a subcontractor, using district equipment without proper training or

² The UCBR adopted and incorporated the referee's findings of fact and conclusions of law in their entirety. Thus, any citations to the findings of fact may be found in the referee's March 13, 2012, decision.

permission, using district material for personal use, and misusing work time. (Findings of Fact, No. 2.)

Claimant filed a claim for unemployment benefits, which was granted by the local service center. Employer appealed to the referee. After an evidentiary hearing, the referee reversed the service center's decision. The referee concluded that Claimant's misappropriation of barn wood from Employer's property and use of Employer's woodshop equipment to complete a personal project was willful misconduct. Claimant timely appealed to the UCBR, which affirmed. Claimant now petitions for review of that decision.³

Claimant asserts that the UCBR's willful misconduct determination is unsupported by substantial evidence. We disagree.

"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, evil design, or an intentional and substantial disregard of the employer's interests or the employee's duties and obligations. *Oliver v. Unemployment Compensation Board of Review*, 5 A.3d 432, 438 (Pa. Cmwlth. 2010) (*en banc*).

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.

The employer bears the burden of proving that the discharged employee committed willful misconduct. *Id.*

Here, the UCBR determined that Claimant disregarded the standards of behavior that Employer had the right to expect of its employees. Specifically, the UCBR found that Claimant's unauthorized use of Employer's power saw and router to complete a personal project was inimical to Employer's best interests. *See Pettyjohn v. Unemployment Compensation Board of Review*, 863 A.2d 162, 165 (Pa. Cmwlth. 2004) (noting that "it is contrary to reasonable standards of behavior for an employee to use company property for personal activities without authorization, even absent a rule prohibiting such conduct") (citation omitted). Claimant's conduct was particularly egregious because of the inherent danger involved in operating the power saw without proper training or permission. Thus, the UCBR properly concluded that Claimant committed willful misconduct under the Law.

The UCBR also found that Claimant misappropriated barn wood from Employer's property without ascertaining its ownership or seeking Employer's permission. Claimant took the barn wood while Employer's subcontractors were working on the barn's roof. Claimant credibly testified that she did not remove the wood from a dumpster and that the wood was lying on the ground next to the barn. (N.T., 3/6/12, at 28.) Theft from an employer can constitute willful misconduct. *See, e.g., Gibson v. Unemployment Compensation Board of Review*, 760 A.2d 492 (Pa. Cmwlth. 2000); *Pedersen v. Unemployment Compensation Board of Review*, 459 A.2d 869 (Pa. Cmwlth. 1983). We agree with the UCBR that, by taking the

wood for her personal use without ascertaining its ownership or obtaining permission, Claimant disregarded the standards of behavior that Employer had the right to expect of its employees.

Accordingly, because we conclude that the UCBR's willful misconduct determination is supported by substantial evidence, we affirm.⁴

ROCHELLE S. FRIEDMAN, Senior Judge

⁴ In her brief, Claimant also argues that Employer failed to establish the existence of a work rule prohibiting her from using Employer's woodshop equipment. We need not address this claim, however, because the UCBR did not base its willful misconduct determination on a work rule violation.

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ORDER

AND NOW, this 13th day of December, 2012, we hereby affirm the May 21, 2012, order of the Unemployment Compensation Board of Review.

ROCHELLE S. FRIEDMAN, Senior Judge