IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Konstantine Argiriadi, Petitioner	:	
v.	:	No. 1268 C.D. 2008
Unemployment Compensation Board of Review, Respondent	:	Submitted: November 14, 2008

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY FILED: December 8, 2008

Konstantine Argiriadi (Claimant) petitions for review of the order of the Unemployment Compensation Board of Review (Board) reversing the decision of a Referee, and determining that Claimant is ineligible for unemployment compensation benefits pursuant to Section 402(e) of the Unemployment Compensation Law (Law).[1] 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, in pertinent part:

> An employe shall be ineligible for compensation for any week-
> * * *
> (e) In which his unemployment is due to his discharge or temporary suspension from work for willful misconduct

(Continued....)

Claimant filed a claim for benefits with the Scranton Unemployment Compensation Service Center upon the termination of his employment as a teacher with Bethesda Day Treatment Center. The Service Center representative concluded that Claimant had been discharged for reasons that do not constitute willful misconduct under Section 402(e) of the Law. As a result, unemployment compensation benefits were granted.

Employer appealed this determination and a hearing was conducted before a Referee. On April 17, 2008, the Referee issued a decision disposing of the appeal in which she determined that Claimant had been discharged for reasons that do not constitute willful misconduct under Section 402(e) of the Law. As a result, the Referee issued an order affirming the Service Center's determination granting unemployment compensation benefits.

On May 7, 2008, Employer appealed the Referee's decision to the Board. On June 10, 2008, the Board issued a decision in which it made the following relevant findings of fact: (1) Claimant was last employed as an alternative education teacher by Employer on December 14, 2007; (2) Employer operates an alternative education facility for students with emotional and behavior problems; (3) Claimant received training on safe crisis management and was aware of acceptable methods of physical restraint; (4) Claimant was monitoring a class for another teacher on December 12, 2007, when a student approached and began to verbally taunt Claimant; (5) Claimant directed the student to sit down, and he initially complied before again approaching Claimant and resuming his verbal assault; (6) Claimant stood up to face the student and he pushed the Claimant; (7)

> connected with his work, irrespective of whether or not such work is "employment" as defined in this act.

(Continued....)

Claimant directed the other students to clear the room in accordance with his training; (8) the disruptive student lowered his head and charged at Claimant; (9) Claimant placed his arms over the student's back and grabbed him around the waist; (10) Claimant and the student fell to the floor, and Claimant sat on the student and asked him if he was done; (11) Claimant allowed the student to get up after a few moments; (12) after the student resumed his verbal tirade, Claimant grabbed him by the chest and pushed him against the wall until he calmed down; (13) the student was 15 years old, was approximately five feet, six inches tall, and weighed approximately 155 pounds; (14) Claimant is approximately five feet, eleven inches tall, and weighed nearly 300 pounds at the time of the incident; (15) Claimant admitted that sitting on a student is not an acceptable means of physical restraint. Board Decision at 1-2.

Based on the foregoing, the Board concluded:

> The employer established that the claimant was aware of appropriate means of physical restraint when dealing with disruptive students. The claimant admitted to the incident and asserted that he merely acted to avoid injury to the student and himself. The Board accepts the claimant's explanation only in part. The Board agrees that while grabbing a student around the waist was not an approved method of physical restraint, the claimant acted instinctively to prevent the student from hitting the claimant or the wall. The Board further accepts that the momentum of the student's charge caused the claimant to fall on top of the student. What the Board does not accept is the claimant's act of sitting on the student as a means of calming the student down. The claimant was aware that sitting on a student was not an appropriate means of physical restraint. Further, given the physical size of the claimant in comparison to the student, the claimant could have caused injury to the student. The

Id.

> claimant could have immediately stood up after falling, but rather than doing so, he admittedly sat on the student for a few moments waiting for the student to calm down. The claimant's actions were not mere poor judgment, but an intentional violation of the employer's policies. The claimant has not established good cause for his actions. The employer has met its burden of proving willful misconduct in connection with the claimant's discharge.

Id. at 3. Accordingly, the Board issued an order reversing the Referee's decision and denying Claimant unemployment compensation benefits. Id. Claimant then filed the instant petition for review.[2]

In this appeal, Claimant contends[3]: (1) the Board's findings of fact are not supported by substantial evidence; and (2) the Board erred in determining that Employer had sustained its burden of proving that Claimant was ineligible for compensation benefits under Section 402(e) of the Law.

Claimant first contends that the Board's findings of fact are not supported by substantial evidence. More specifically, Claimant asserts that substantial evidence does not support the Board's findings that he violated Employer's policies regarding the physical restraint of students in the altercation with the disruptive student.

It is well settled that the Board is the ultimate finder of fact in unemployment compensation proceedings. Peak v. Unemployment Compensation

[2] This Court's scope of review in an unemployment compensation appeal is limited to determining whether an error of law was committed, whether constitutional rights were violated, or whether necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa.C.S. § 704; Hercules, Inc. v. Unemployment Compensation Board of Review, 604 A.2d 1159 (Pa. Cmwlth. 1992).

[3] In the interest of clarity, we reorder the allegations of error raised by Claimant in the instant appeal.

Board of Review, 509 Pa. 267, 501 A.2d 1383 (1985); Chamoun v. Unemployment Compensation Board of Review, 542 A.2d 207 (Pa. Cmwlth. 1988). Thus, issues of credibility are for the Board which may either accept or reject a witness' testimony whether or not it is corroborated by other evidence of record. Peak; Chamoun. Findings of fact are conclusive upon review provided that the record, taken as a whole, contains substantial evidence to support the findings. Taylor v. Unemployment Compensation Board of Review, 474 Pa. 351, 378 A.2d 829 (1977). This Court must examine the evidence in the light most favorable to the party who prevailed before the Board, and to give that party the benefit of all inferences that can be logically and reasonably drawn from the testimony. Id.

When viewed in a light most favorable to Employer, our review of the certified record in this case demonstrates that there is substantial evidence supporting the Board's findings that Claimant had violated Employer's policies regarding the physical restraint of students in the altercation with the disruptive student. See N.T. 4/11/08[4] at 6, 7-8, 8-9[5]; 67-68, 70.[6] As noted above, the Board

[4] "N.T. 4/11/08" refers to the transcript of the hearing conducted before the Referee on April 11, 2008.

[5] At the hearing, Employer's Dean of Students testified, in pertinent part, as follows:

> EL Okay. Can you just describe for the Referee what this document means? I've just, I've just stated the title of it. What, What does it mean? What is it?
>
> EW1 This is the safe crisis management physical skill assessment, which basically means when you train someone how to conduct a physical restraint in the event one becomes necessary, the proper precautions and the proper ways in which to do it, so you do not inflict bodily harm on the student.
>
> EL Okay. And who was the trainee listed here?
>
> EW1 Konstantine Argiriadi.

(Continued....)

EL Okay. That's the Claimant in this case?

EW1 That's correct.

* * *

EL Okay. All right. Now these are all different ways of, of physically dealing with students, is that correct?

EW1 Yes.

EL In terms, in terms of restraining them, is that correct?

EW1 That's correct.

EL Okay. All right. And are the, are, are the teachers trained with, with respect to these different restraints?

EW1 That's correct.

EL Are they trained to use these restraints on a regular basis?

EW1 They're trained and recertified every year.

EL Okay. All right. Now, however, are they, do they receive any other training other than physical restraint training to do before they have to get to….

EW1 Yes. They're trained in verbal escalation. And those, actually those methods are actually posted in every classroom.

EL Okay. And what is the preferred method to use with a, with a student that's causing a problem?

EW1 We use eight levels of confrontation, which ranges from a friendly non-verbal warning, to, in the event necessary, a physical restraint if that may be necessary.

EL Okay. Is that like a last resort then?

EW1 Yes.

EL Okay.

EW1 If you need all that, I can, be more than happy to tell you all the events you would need.

EL Okay. Now is this Mr. Argiriadi's signature on this document?

EW1 That's correct.

EL Okay. And the trainer's signature? Is that correct?

(Continued....)

EW1 That's correct.

* * *

EL Okay. Could you just describe that briefly for the Referee, a wrist lock? Oh, I'm sorry, waist lock. Excuse me.

EW1 Waist lock is….

EL I apologize.

EW1 There's no (inaudible) or any training involved with grabbing a student around their waist.

EL Okay. And are teachers ever permitted to physically sit on a student?

EW1 No.

EL Okay. And why are they not supposed to sit on students?

EW1 Because there could be damage to the chest and ribcage and lungs.

EL Okay. And is sitting on students shown anywhere on the safe crisis management physical skills assessment?

EW1 No it's not. The cradle is actually over them, but you're holding your arms and your body is not touching their body.

[6] At the hearing, Claimant testified, in pertinent part, as follows:

EL In your statement, I'm going down, it says I cleared the room, okay, and I grabbed [the student] in a waist lock and he did deescalate him to the floor. Now according to this statement, which was taken, which you wrote shortly after this incident, there's nothing else in here about, everything else that you just described for the Referee. You say I cleared the room and grabbed [the student]. What happened between clearing the room and grabbing [the student]?

C He came, he came charging at me.

EL Why isn't it in the incident report?

C Because if I put that in the incident report it would probably not go against the, the regulation policy of restraining a student, because I probably would have been questioned about that.

EL Well you didn't put it in there because it didn't happen,

(Continued....)

right?

C No, it did happen. Yes it did. I just forgot to put it in.

EL You just forgot. Okay. Then you say I sat on top of [the student].

C Yes.

EL Okay? So he's on the floor, right?

C Yes.

EL Okay. And you sat on top of him. Okay. And you asked him if he had cooled down yet. Is that correct?

C Mm-hmm.

EL Okay. So at that point you're in control. Right?

C Of the situation, yes.

EL Okay. So you're this 300 pound man, or nearly 300 pound man who is sitting on top of a 150 to 160 pound 15-year old. Is that correct?

C Yes.

EL Okay. All right. At that point was he, was there anything physical going on between the two of you?

C Just a lot of verbal words from his mouth.

EL Okay. And isn't it not true that you have been trained that you are not supposed to be sitting, sitting on students. Is that correct?

C That is correct. Yes.

EL Okay. All right. So you agree that's a violation. Correct?

C Yes. But I was trying to protect myself.

* * *

EL All right. You would agree that according to your policy and procedures that you're not supposed to put these kids in a waist lock. Is that correct?

C That is correct.

EL And you're not supposed to sit on them. Is that correct?

C Correct.

was free to credit the foregoing evidence regarding the violation of Employer's policies and to discredit evidence to the contrary. Peak; Chamoun. In addition, those findings are conclusive on appeal as they are supported by the foregoing substantial evidence. Taylor.

Moreover, the fact that there is evidence cited by Claimant in his appellate brief which contradicts the Board's determinations with respect to the violation of Employer's policies does not compel the conclusion that the Board's determinations in this regard should be reversed. See, e.g., Tapco, Inc. v. Unemployment Compensation Board of Review, 650 A.2d 1106, 1108-1109 (Pa. Cmwlth. 1994) ("[T]he fact that Employer may have produced witnesses who gave a different version of events, or that Employer might view the testimony differently than the Board, is not grounds for reversal if substantial evidence supports the Board's Findings."). In short, Claimant's allegation of error in this regard is without merit.

Finally, Claimant contends that the Board erred as a matter of law in determining that he was ineligible for benefits under Section 402(e) of the Law on the basis that his conduct rose to the level of willful misconduct. We do not agree.

As noted above, pursuant to Section 402(e) of the Law, an employee is ineligible for unemployment compensation benefits when he had been discharged from work for willful misconduct connected with his work. Guthrie v. Unemployment Compensation Board of Review, 738 A.2d 518 (Pa. Cmwlth. 1999). The burden of proving willful misconduct rests with the employer. Id. Whether an employee's conduct constitutes willful misconduct is a question of law subject to this Court's review. Id.

Although willful misconduct is not defined by statute, it has been described as: (1) the wanton and willful disregard of the employer's interests; (2)

the deliberate violation of rules; (3) the disregard of standards of behavior that an employer can rightfully expect from his employee; or (4) negligence which manifests culpability, wrongful intent, evil design, or intentional and substantial disregard for the employer's interests or the employee's duties and obligations. Id. (citing Kentucky Fried Chicken of Altoona, Inc. v. Unemployment Compensation Board of Review, 309 A.2d 165, 168-169 (Pa. Cmwlth. 1973)).

Thus, a violation of an employer's work rules and policies may constitute willful misconduct. Id. An employer must establish the existence of the work rule and its violation by the employee. Id. If the employer proves the existence of the rule, the reasonableness of the rule, and the fact of its violation, the burden of proof shifts to the employee to prove that he had good cause for his actions. Id. The employee establishes good cause where his actions are justified or reasonable under the circumstances. Id.

As outlined above, there is ample substantial evidence demonstrating the existence of Employer's policies regarding the physical restraint of students, the reasonableness of the policies, and the fact of their violation. See N.T. 4/11/08 at 6, 7-8, 8-9; 67-68, 70. As Employer satisfied its burden of proof in this regard, the burden then shifted to Claimant to establish good cause such that his actions were justified or reasonable under the circumstances. Guthrie.

Claimant testified extensively as to why he believed that his actions were justified and reasonable under the circumstances. See N.T. 4/11/08 at 49-54. Specifically, Claimant asserted that his actions were necessary for the protection of the student and for his own self defense. See Id.

However, as noted above, the Board is the ultimate finder of fact in unemployment compensation proceedings. Peak; Chamoun. In addition, issues of credibility are for the Board which may either accept or reject a witness' testimony

whether or not it is corroborated by other evidence of record. Id. Thus, although Claimant presented testimony which, if believed, could satisfy his burden of proof, the Board rejected his testimony and its determination in this regard is patently not subject to our review.

In addition, this Court considered a similar situation in which a teacher violated a policy against the corporal punishment of students in Bivins v. Unemployment Compensation Board of Review, 470 A.2d 662 (Pa. Cmwlth. 1984). In Bivins, a classroom altercation culminated in a teacher striking a student in the face with his hand. This Court rejected the teacher's argument that his actions did not constitute willful misconduct, stating the following:

> The claimant next asserts that the student's behavior was so bad that the claimant should not have been found to have been guilty of willful misconduct. The question of whether or not an employee's actions constitute willful misconduct is a question of law, subject to our review, and this determination must be made in light of all the circumstances, including the reasonableness of both the employer's expectations and the employee's conduct. If the employee's conduct was reasonable or justified under the circumstances, he cannot be said to have engaged in willful misconduct. The claimant's thesis was that he acted in self-defense and that there was no alternative to his striking the student. However, evidence of the students size and age, [that he was 15 years old, 5'3" tall and that he weighed 105 pounds,] and of the claimant's failure to seek assistance or otherwise avoid the confrontation, support the conclusion that his conduct was unreasonable.

Bivins, 470 A.2d at 664 (citation omitted).

Likewise, in the instant case, we reject Claimant's assertion that his actions were justified thereby precluding a finding of willful misconduct under

Section 402(e) of the Law. In short, Claimant's allegation in this regard is likewise without merit.[7]

Accordingly, the order of the Board is affirmed.

JAMES R. KELLEY, Senior Judge

[7] Moreover, even if we were to find that Claimant did not violate Employer's policies regarding the physical restraint of students, Claimant's actions would still constitute willful misconduct under Section 402(e) of the Law. See, e.g., Schneider v. Unemployment Compensation Board of Review, 523 A.2d 1202, 1204 (Pa. Cmwlth. 1987) ("Petitioner's second ground for appeal is that the employer did not meet its burden of establishing that his conduct was violative of its policy against corporal punishment. He asserts that employer must introduce a copy of that policy into the record and must prove that he violated this policy in order to establish willful misconduct. … Assuming that the referee based his willful misconduct determination on petitioner's discharge for violation of employer's rule against corporal punishment, employer should have introduced a copy of the policy. However, this conclusion does not require us to reverse the Board. 'A reviewing court may affirm an order if it is correct for any reason, regardless of the reasons given by the tribunal.' … The referee found that petitioner hit the student with a chisel, causing a head injury. We have already concluded that these findings are supported by substantial evidence. While in the case at bar the injury was not severe, hitting a student in the head with a chisel was clearly 'a disregard of the standard of behavior which the employer has a right to expect of an employee', and rises to the level of willful misconduct.") (citations and footnote omitted).

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Konstantine Argiriadi, Petitioner	:	
v.	:	No. 1268 C.D. 2008
Unemployment Compensation Board of Review, Respondent	:	

O R D E R

AND NOW, this 8th day of December, 2008, the order of the Unemployment Compensation Board of Review, dated June 10, 2008 at No. B-473215, is AFFIRMED.

JAMES R. KELLEY, Senior Judge