



fifteen minutes, and obtained the same result. Claimant explained the result by stating that he was an Irishman and had celebrated St. Patrick's Day. Nevertheless, Employer discharged Claimant pursuant to the alcohol policy. (UCBR's Findings of Fact, Nos. 1-8.)

Claimant filed an application for UC benefits, but the application was denied. Claimant filed an appeal, and a hearing was scheduled. However, Claimant did not appear at the hearing due to a "scheduling mix-up." (UCBR's op. at 2.) Based on the evidence presented by Employer, the referee denied Claimant benefits under section 402(e.1) of the Unemployment Compensation Law (Law),<sup>1</sup> which states, generally, that a claimant shall be ineligible for UC benefits for any week in which the unemployment is due to discharge from work for failure to pass a drug test conducted pursuant to an employer's established substance abuse policy.

Claimant appealed to the UCBR, requesting a remand to the referee to allow Claimant to present evidence. Claimant asserted that he was unable to attend the hearing due to a scheduling mix-up. The UCBR concluded that a scheduling mix-up did not constitute proper cause for a remand to the referee; thus, the UCBR denied the remand request. The UCBR also concluded that section 402(e.1) of the Law did not apply to an alcohol abuse policy. Nevertheless, the UCBR determined that Claimant's discharge was due to willful misconduct connected with his work, and, thus, he was not eligible for UC benefits under section 402(e) of the Law, 43 P.S. §802(e). The UCBR

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<sup>1</sup> Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §802(e.1).

affirmed the referee's denial of benefits, as modified. Claimant now petitions this court for review.<sup>2</sup>

Claimant argues that the UCBR should have remanded this case for a hearing on whether Claimant had proper cause for his non-appearance at the hearing before the referee. We disagree.

The regulation at 34 Pa. Code §101.51 states that “[i]f a party notified of the date, hour and place of a hearing fails to attend a hearing without proper cause, the hearing may be held in his absence.” The regulation at 34 Pa. Code §101.24(a) provides:

If a party who did not attend a scheduled hearing subsequently gives written notice, which is received by the tribunal prior to the release of a decision, and it is determined by the tribunal that his failure to attend the hearing was for reasons which constitute “proper cause,” the case shall be reopened. Requests for reopening, whether made to the referee or Board, shall be in writing; shall give the reasons believed to constitute “proper cause” for not appearing; and they shall be delivered or mailed....

The negligence of a disinterested third party may constitute proper cause for the non-appearance of a party at a hearing. *Verdecchia v. Unemployment Compensation Board of Review*, 657 A.2d 1341 (Pa. Cmwlth. 1995). However, the negligence of a party, or someone acting on the party's behalf, does not constitute proper cause for the non-

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<sup>2</sup> 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.

appearance of a party at a hearing. *Sanders v. Unemployment Compensation Board of Review*, 524 A.2d 1031 (Pa. Cmwlth. 1987).

Here, in his request to reopen the record, Claimant stated that he failed to appear at the hearing because of a “scheduling mix-up.” The UCBR understood that the scheduling mix-up was a result of Claimant’s own negligence. In his brief to this court, Claimant offers no other possible understanding, i.e., Claimant does not assert that, if the UCBR had remanded for a hearing, Claimant would have offered evidence to show that the scheduling mix-up was caused by the negligence of a disinterested third party. Because Claimant does not provide any indication as to the evidence he might have presented at a remand hearing, this court cannot conclude that the UCBR abused its discretion in denying Claimant’s request to reopen the record.

Accordingly, we affirm.

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ROCHELLE S. FRIEDMAN, Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Joseph F. Franey,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1619 C.D. 2009
	:	
Unemployment Compensation Board of	:	
Review,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 8th day of February, 2010, the order of the Unemployment Compensation Board of Review, dated July 21, 2009, is hereby affirmed.

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ROCHELLE S. FRIEDMAN, Senior Judge