

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Robert L. Collura, :
Petitioner :
 :
v. : No. 1647 C.D. 2007
 : Submitted: December 14, 2007
Unemployment Compensation Board of :
Review, :
Respondent :

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
SENIOR JUDGE FLAHERTY

FILED: March 7, 2008

Robert L. Collura (Claimant) petitions for review of the order of the Unemployment Compensation Board of Review (Board) which affirmed the referee's denial of benefits under Section 402(e) of the Unemployment Compensation Law (Law).¹

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. §802(e). This court has defined willful misconduct under Section 402(e) of the Law as:

[A] wanton and willful disregard of an employer's interest, a deliberate violation of rules, a disregard of standards of behavior which the employer can rightfully expect from its employee, or 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.

Brady v. Unemployment Compensation Board of Review, 544 A.2d 1085, 1086 (Pa. Cmwlth. 1988).

The facts as found by the Board are as follows:

1. The claimant was last employed as a forklift operator by Chelsea Building Products from February 2000, at a final rate of \$11.75 per hour and his last day of work was April 20, 2007.
2. The employer has a policy, of which the claimant was aware, prohibiting inappropriate behavior and offensive or abusive language.
3. Discipline for violation of the policy depends upon the measure and repetition of the incident as well as the employee's disciplinary history.
4. The claimant signed a last chance agreement in September 2006, acknowledging that he would be discharged for any future verbal harassment, insubordination or violation of any employer policy.
5. The claimant was annoyed by his coworkers listening to the Pittsburgh Penguins play-off games on the radio at a high volume.
6. The day after the Penguins were eliminated from the playoffs, the claimant brought a sign to work mocking the elimination and placed it on his forklift.
7. The claimant's supervisor asked the claimant to remove the sign because he did not want to see any disruption over it.
8. The claimant removed the sign and then proceeded to his supervisor's office where he yelled at his supervisor, calling him an "M-F-er, cheese head, son of a b----, piece of garbage."
9. The supervisor did not use profanity toward the claimant.
10. The supervisor asked the claimant to stop his rant or he would be sent home, but the claimant did not stop.

11. The claimant was sent home and subsequently discharged for directing profanity towards his supervisor in violation of the employer's policy.

Board's decision, August 6, 2007, Findings of Fact Nos. 1-10, at 1-2. The Board found in pertinent part as follows:

The Board resolves the conflicting testimony in favor of the employer and finds its witness' testimony to be more credible. The claimant was aware of the employer's policy prohibiting inappropriate behavior and offensive or abusive language. The claimant violated that policy when he directed profanity toward his supervisor. While it may have been common for employees to occasionally use curse words in the warehouse, it certainly was not acceptable to direct profanity toward a supervisor in the manner employed by the claimant. The claimant was not provoked and he has not otherwise justified his actions.

Board's decision at 2. The Board concluded that Claimant was "ineligible for benefits under the provisions of Section 402(e) of the...Law." Board's decision at 3.

Before our court, Claimant contends that the Board erred in determining that Claimant's use of abrasive language constituted willful misconduct and that the Board's findings of fact are not supported by substantial evidence.²

In the case of willful misconduct, an employer has the burden of proving that willful misconduct was committed by an employee. Hargley v. Unemployment Compensation Board of Review, 397 A.2d 477 (Pa. Cmwlth.

² Our review in this matter is limited to a determination of whether constitutional rights were violated, errors of law committed, and whether essential findings of fact are supported by substantial evidence. Brady.

1979). A review of the record reveals that Chelsea Building Products (Employer) met its burden of proving willful misconduct. Employer presented testimony that Claimant was terminated due to the fact that he used profanity towards his supervisor, that such conduct was in violation of Employer's policy prohibiting inappropriate behavior and offensive or abusive language and that Claimant had previously signed a "last chance" agreement in September 2006, which states that "in anytime in the future that Bob willfully disregards company policies or procedures that his employment will be terminated. This includes leaving work without notification, physical or verbal harassment, insubordination, and any other company policy in the teammate handbook..." Last Chance Agreement, at 1. Employer further testified that Claimant was aware of the policy prohibiting inappropriate behavior and offensive or abusive language.

Once the Employer has established willful misconduct, the burden shifts to Claimant to show "just cause" for his actions. Mulqueen v. Unemployment Compensation Board of Review, 543 A.2d 1286 (Pa. Cmwlth. 1988). Claimant stated that he did not address the profanity toward his supervisor and that he never called him a son of a bitch. The Board resolved all conflicting testimony in favor of the Employer. Board's decision at 2. All credibility determinations are made by the Board. The weight given the evidence is within the discretion of the factfinder. Fitzpatrick v. Unemployment Compensation Board of Review, 616 A.2d 110 (Pa. Cmwlth. 1992). The Board is the ultimate factfinder. Treon v. Unemployment Compensation Board of Review, 499 Pa. 455, 453 A.2d 960 (1982). The Board determined that Claimant was discharged for directing profanity towards his supervisor. This determination is supported by the

record. The Board's determination that Claimant was discharged for willful misconduct was supported by substantial evidence.

Accordingly, we affirm.

JIM FLAHERTY, Senior Judge

