IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Daniel R. Maday, Petitioner	:	
v.	:	No. 1735 C.D. 2007 Submitted: December 28, 2007
Unemployment Compensation Board of Review, Respondent	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE DAN PELLEGRINI, Judge
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE McCLOSKEY FILED: February 5, 2008

Daniel Maday (Petitioner) petitions for review, pro se, of an order of the Unemployment Compensation Board of Review (Board), affirming the decision of an Unemployment Compensation Referee (Referee), thereby denying unemployment compensation benefits to Petitioner. We now affirm.

On or about February 12, 2007, Petitioner sought unemployment compensation benefits after his employment with J. A. Reinhardt & Company, Inc. (Employer). On or about February 23, 2007, the Pennsylvania Department of Labor and Industry (Department) issued a notice of determination under Section 402(e) of the Unemployment Compensation Law (the Law), Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. §802(e), denying benefits for Petitioner. The Department found that Petitioner was discharged for insubordination as a result of using obscene, abusive and profane language with disrespect to a co-worker when he

was upset that he had not been notified prior to receiving his paycheck that his wages were being garnished.

Petitioner filed a timely appeal from the Department's determination. A hearing was conducted, at which time Petitioner testified on his own behalf and Jeffrey Greco, Employer's Director of Operations, testified on behalf of Employer. Employer's administrative assistant, to whom Petitioner's conduct was directed during the incident in question, did not testify.

On March 29, 2007, the Referee issued a decision affirming the Department's determination and denying benefits to Petitioner under Section 402(e) of the Law. The Referee found that Petitioner was discharged on February 9, 2007, after a verbal confrontation with Employer's payroll clerk[1] concerning the garnishment of his wages by the Internal Revenue Service (IRS). The Referee concluded that Petitioner's conduct of being loud, argumentative and pursuing the payroll clerk to complain about the IRS garnishment constituted willful misconduct for which no good cause had been shown.

Petitioner then filed an appeal to the Board. By decision and order dated July 17, 2007, the Board issued an order affirming the decision of the Referee. The Board found, in part, that Employer's policy prohibits gross insubordination, including threatening, intimidating, coercing or interfering with any person on company premises. Violation of the policy may result in disciplinary action, although Employer also has the discretion to terminate an employee without resorting to the discipline process. As to the incident in question, the Board found that Petitioner was handed his paycheck by Employer's administrative assistant. The paycheck contained deductions that the

[1] The Referee refers to this individual as Employer's "payroll clerk," and the Board refers to the individual as Employer's "administrative assistant."

administrative assistant completed per instructions from the IRS. Employer interpreted the IRS's statement that the garnishment should not be discussed with anyone as prohibiting Employer from informing Petitioner of the deductions in advance. Petitioner became upset with the deductions, and accused the administrative assistant of completing the deductions in an untimely manner. The administrative assistant then became upset and ran out of the room. Petitioner ran after her, demanding an answer and raising his voice. Petitioner and Employer differed as to their testimony regarding the use of profanity. The Board found that Employer alleged that Petitioner used profanity towards the administrative assistant. The Board further found that Petitioner denied using profanity and that Petitioner alleged that he became excited because he is a hyper person.

The Board found that the administrative assistant reported the incident to Mr. Greco,[2] and Mr. Greco left a message on Petitioner's phone informing him not to report to work until they spoke. Approximately one hour later, Petitioner telephoned Mr. Greco. The Board found that Petitioner began hollering and screaming and using profanity towards Mr. Greco. Mr. Greco then informed Petitioner that he was fired. Petitioner alleged that Mr. Greco yelled and screamed at him during the telephone conversation, and Petitioner admitted using profanity only after being told that he was fired.

The Board found that Employer discharged Petitioner for gross insubordination, specifically his actions towards the administrative assistant.

[2] The Board's findings do not specifically reference Mr. Greco. Rather, the findings are generalized and simply identify the person to whom the administrative assistant and Petitioner spoke as "Employer." However, a review of the testimony reveals that Mr. Greco was the individual to whom the Board referred. For purposes of clarity, we have distinguished between Mr. Greco and Employer, although the Board did not. This distinction does not impact the outcome of the case.

Furthermore, the Board found that Petitioner failed to prove good cause for the violation or that the policy was unreasonable.

The Board explained the basis for its determination as follows:

> [E]mployer established that [Petitioner] was discharged for gross insubordination on February 9, 2007, when he raised his voice at an administrative assistant after learning that deductions had been taken from his paycheck for the IRS. [Petitioner] asked the administrative assistant why she had not informed him of the deductions prior to receiving his paycheck. The administrative assistant became upset and ran out of the room. [Petitioner] allegedly used profanity towards the administrative assistant, which [E]mployer failed to substantiate through firsthand testimony. However, given [Petitioner's] admissions that he was angry, raised his voice, and ran after the administrative assistant demanding an answer, the Board finds that [Petitioner's] actions rose to the level of willful misconduct in connection with his work. [Petitioner] should have been aware of his financial obligations to the IRS and has not shown good cause for his actions.

(Board's opinion at 3, attached to Petitioner's brief).

Petitioner filed the subject petition for review with this Court.

On appeal,[3] Petitioner's statement of questions involved may be summarized as presenting two (2) distinct arguments.[4] Petitioner argues that the

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[3] In an unemployment compensation case, this Court's scope of review is limited to determining whether an error of law was committed, whether constitutional rights were violated or whether substantial evidence supports the findings of fact. Lindsay v. Unemployment Compensation Board of Review, 789 A.2d 385 (Pa. Cmwlth. 2001). Whether a claimant's conduct constitutes willful misconduct so as to render him ineligible for benefits is a question of law subject to review by this Court. See Harris v. Unemployment Compensation Board of Review, 447 A.2d 1060 (Pa. Cmwlth. 1982).

[4] Petitioner actually presents eight (8) questions for review. We have framed and summarized the relevant questions as presenting two (2) issues on appeal.

Board's findings of fact are not supported by substantial evidence. Petitioner further argues that the decision of the Board is contrary to law because Petitioner's conduct did not rise to the level of willful misconduct.

First, we will address whether the findings of fact are supported by substantial evidence. In unemployment compensation cases, the Board is the ultimate finder of fact, and questions of credibility and evidentiary weight are matters for the Board as factfinder and not for a reviewing court. Stringent v. Unemployment Compensation Board of Review, 703 A.2d 1084 (Pa. Cmwlth. 1997). As the ultimate finder of fact, the Board is also empowered to resolve conflicts in the evidence. DeRiggi v. Unemployment Compensation Board of Review, 856 A.2d 253 (Pa. Cmwlth. 2004). Findings of fact of the Board are conclusive and binding on this Court if we determine that there is substantial evidence in the record, when examined as a whole, to support those findings. See Kelly v. Unemployment Compensation Board of Review, 776 A.2d 331 (Pa. Cmwlth. 2001).

Petitioner essentially argues that there is not substantial evidence that he was abusive toward the administrative assistant.[5] Specifically, Petitioner disputes that sufficient evidence of record exists to support findings that he used profanity and ran after the administrative assistant, demanding an answer as to why he was not notified of the garnishment and raising his voice. Instead, Petitioner argues that he asked the administrative assistant a question and walked behind her to clock out.[6]

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[5] Petitioner surmises that the administrative assistant felt upset about having to be the person to deliver to him the paycheck with garnishments, which is the reason that she appeared upset and left. He states that she walked out passing the time clock, and he naturally had to follow her path in that direction because he had to clock out prior to leaving the premises.

[6] Petitioner also disputes that he began hollering and screaming at Mr. Greco during the telephone conversation. To the contrary, he argues that Mr. Greco first began hollering and screaming

(Footnote continued on next page…)

A review of the record reveals that Petitioner testified that he questioned the administrative assistant as to why she did not tell him about the garnishment. (R. at Tab 10 at 6-8).[7] He admitted that the administrative assistant became upset and he ran after her, continuing to question her about the garnishments. Id. He also admitted that he raised his voice, and he explained that he is a hyper person who gets excited. Id. The testimony of Petitioner himself constitutes substantial evidence of record to support the findings of the Board that the administrative assistant became upset and ran when Petitioner was questioning her and that Petitioner ran after her demanding an answer and raising his voice. (Board's decision at Findings of Fact Nos. 8-11, attached to Petitioner's brief). Hence, we cannot conclude that the Board's findings are not supported by substantial evidence.

As to Petitioner's contention that there is not sufficient evidence to support a finding that he used profanity, we note that the Board did not issue a finding that Petitioner directed profanity at the administrative assistant. When addressing the issue of Petitioner's alleged use of profane language, the Board noted that Petitioner "allegedly used profanity towards the administrative assistant, which [E]mployer failed to substantiate through firsthand testimony." (Board's decision at Finding of Fact No. 12, attached to Petitioner's brief) (emphasis added). Moreover, in determining that Petitioner engaged in willful misconduct, the Board made it clear that it did not rely on allegations of the use of profanity. The Board stated that it relied upon Petitioner's

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(continued…)

at him. However, we need not address the telephone conversation between Mr. Greco and Petitioner, as it was not considered by the Referee or the Board in reaching their decision as to whether Petitioner engaged in willful misconduct.

[7] "R." refers to the Original Record; Petitioner was excused from filing a Reproduced Record.

"admissions that he was angry, raised his voice, and ran after the administrative assistant demanding an answer." (Board's decision at 3, attached to Petitioner's brief). Therefore, we also cannot conclude that the Board erred in its handling of testimony regarding Petitioner's alleged use of profanity.

Next, we will address whether the decision of the Board is contrary to law because Petitioner's conduct did not rise to the level of willful misconduct. Petitioner contends that he simply asked a question and did not violate any rules or policies, presumably because he did not use profanity.

Section 402(e) of the Law provides that an employee shall be ineligible for compensation for any week "in which his unemployment is due to his discharge or temporary suspension from work for willful misconduct connected with his work, irrespective of whether or not such work is 'employment' as defined in the act…." While the term willful misconduct is not defined in the Law, the Pennsylvania Supreme Court has defined it, in relevant part, as a disregard of the standard of behavior which the employer has a right to expect of an employee or a deliberate violation of the employer's rules. Frumento v. Unemployment Compensation Board of Review, 466 Pa. 81, 351 A.2d 631 (1976). In a case where a claimant is discharged for a rule violation, the employer has the burden to prove the existence of a reasonable rule and that the claimant violated the rule.[8] Williams v. Unemployment Compensation Board of Review, 596 A.2d 1191 (Pa. Cmwlth. 1991). Once the employer establishes those elements, the burden then shifts to the claimant to show that she had good cause for her action. Williams. Good cause is established where the action of an employee is

[8] In addition, this Court has held that "[a]n employer need not have an established rule where the behavioral standard is obvious and the employee's conduct is so inimical to the employer's best interests that discharge is a natural result." Biggs v. Unemployment Compensation Board of Review, 443 A.2d 1204, 1206, n. 3 (Pa. Cmwlth. 1982).

justified or reasonable under the circumstances. Guthrie v. Unemployment Compensation Board of Review, 738 A.2d 518 (Pa. Cmwlth. 1999).

Employer's policy prohibits "intimidating … or interfering with any person on company premises at any time," and it is not argued that such a policy is unreasonable. There is no dispute that the administrative assistant was visibly upset as a result of her interaction with Petitioner, causing her to run out of the room. Petitioner then ran after her, continuing to confront her while raising his voice at her. Employer established that Petitioner violated Employer's policy, regardless of whether profanity was used or not, as his actions resulted in intimidation of the administrative assistant and/or interference with her ability to perform her job duties. Petitioner failed to establish that he had good cause for violating Employer's policy. While Petitioner may have had cause to question the manner in which the garnishments were accomplished, he did not have cause to act as he did in the workplace.

Accordingly, we must affirm the order of the Board.

JOSEPH F. McCLOSKEY, Senior Judge

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ORDER

AND NOW, this 5th day of February, 2008, the order of the Unemployment Compensation Board of Review is hereby affirmed.

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JOSEPH F. McCLOSKEY, Senior Judge