

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Dennis Cori, :  
 :  
 Petitioner :  
 :  
 v. : No. 1784 C.D. 2007  
 : Submitted: January 18, 2008  
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 Unemployment Compensation Board of :  
 Review, :  
 Respondent :

BEFORE: HONORABLE DORIS A. SMITH-RIBNER, Judge  
HONORABLE ROBERT SIMPSON, Judge  
HONORABLE JIM FLAHERTY, Senior Judge

*OPINION NOT REPORTED*

MEMORANDUM OPINION  
BY JUDGE SMITH-RIBNER

FILED: March 6, 2008

Dennis Cori (Claimant) petitions the Court for its review of the order of the Unemployment Compensation Board of Review (Board), which affirmed the referee's decision denying benefits to Claimant under Section 402(e) of the Unemployment Compensation Law (Law), Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §802(e) (willful misconduct). Claimant questions whether the Board correctly applied the law for determining the materiality of a false statement made in a job application under Section 402(e).

Claimant began full-time employment on February 15, 2007 as an information technology (IT) manager for Employer (Credit Union of New Jersey). Claimant was discharged on March 22, 2007 for falsifying his job application upon Employer's discovery that he misrepresented that he had an associate degree in computer science even though he knew that he did not have the degree due to incompleteness of the course requirements. The UC Service Center denied benefits under Section 402(e), and the referee and the Board affirmed the denial of benefits.

The Board made the following unchallenged findings of fact:

2. The claimant was required to complete a job application in order to obtain his position as an information technology manager.
3. The claimant indicated on his job application that he had an Associate Degree in Computer Science.
4. When the claimant completed his job application, he signed a document acknowledging that all of the answers given by him on the job application were true, accurate, and complete, and that he further understood that falsification, misrepresentation, or omission of fact on the application could result in his employment being terminated.
5. The claimant does not have an Associate Degree in Computer Science.
6. At the time that the claimant completed his job application, he was fully aware that he did not have an Associate Degree in Computer Science.

Board's Decision, p. 1. The Board reasoned that a deliberate falsification in a job application constitutes willful misconduct when the falsification is material to an employee's qualifications for the job. The Board emphasized that Claimant admitted to deliberately providing a false statement, and it concluded that having an associate degree in computer science is material to Claimant's qualifications because the position of an IT manager requires extensive knowledge of computers. Therefore, the falsification rose to the level of willful misconduct because it fell below standards of behavior that Employer had a right to expect from employees.<sup>1</sup>

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<sup>1</sup>The Court's review is limited to determining whether constitutional rights were violated, an error of law was committed, a practice or procedure of the Board was not followed or the findings of fact are supported by substantial evidence in the record. *Glenn v. Unemployment Compensation Board of Review*, 928 A.2d 1169 (Pa. Cmwlth. 2007). Also, the party prevailing below is to be given the benefit of any inferences reasonably drawn from the evidence. *Barnett v. Unemployment Compensation Board of Review*, 408 A.2d 195 (Pa. Cmwlth. 1979).

Claimant cites *Sill-Hopkins v. Unemployment Compensation Board of Review*, 563 A.2d 1288 (Pa. Cmwlth. 1989), for the proposition that Employer must establish that a misrepresentation of an employee's background information is material to the qualifications for the job. He argues that a misrepresentation is material if it affects the employee's ability to discharge his/her duties or violates a position of trust. He cites *Johnson v. Unemployment Compensation Board of Review*, 427 A.2d 724 (Pa. Cmwlth. 1981) (holding that omission of criminal record was material because claimant's inability to carry a weapon due to his criminal record would affect his performance as a security guard); and *Bruce v. Unemployment Compensation Board of Review*, 450 A.2d 1083 (Pa. Cmwlth. 1982) (holding that applicant's deliberate omission of his criminal history is inconsistent with position of trust as psychiatric aide supervising disabled patients).

Claimant contends that falsifying his educational qualifications was not material because he could perform all assigned duties and that his experience and training as an IT manager was the equivalent of an associate degree. Also, he was hired based upon his previous experience as an IT manager for a similar financial institution rather than on educational qualifications. Finally, Claimant asserts that because Employer failed to appear at the hearing there is no evidence from which the Board could find that the misrepresentation was material to his qualifications and that this Court may not presume that the associate degree was material absent affirmative evidence from Employer. Unlike in *Sill-Hopkins* or in *Bruce*, there is no evidence to show that Claimant would be disqualified from any necessary certification within his profession or from holding a position of trust within the company.

The Board argues that an applicant's deliberate misrepresentation of his educational qualifications is material and constitutes willful misconduct. The Board cites *Cecchini v. Unemployment Compensation Board of Review*, 146 A.2d 615 (Pa. Super. 1958), and *Scott v. Unemployment Compensation Board of Review*, 474 A.2d 426 (Pa. Cmwlth. 1984). In *Cecchini* the court concluded that an applicant's falsification of his educational qualifications was willful misconduct when the applicant knew that the falsification was material to his employment and would lead to his termination. In *Scott* the court held that the claimant's misrepresentation that he possessed a college degree in business administration was willful misconduct because the educational qualification was one of the hiring criteria. Citing *Curran v. Unemployment Compensation Board of Review*, 752 A.2d 938 (Pa. Cmwlth. 2000), the Board asks the court to infer that the falsification was material to Claimant's qualifications, given the obvious connection between a computer science degree and the qualifications for an IT manager. Citing *Sill-Hopkins*, the Board asserts that Claimant's misrepresentation was material to his qualifications regardless of whether he could perform the duties of an IT manager because an associate degree is higher than training courses and his misrepresentation could have encouraged Employer to select him over others.

The Court has defined willful misconduct as the wanton and willful disregard of an employer's interest; a deliberate violation of an employer's rules; a disregard for standards of behavior that an employer can rightfully expect of an employee; or negligence indicating an intentional and substantial disregard of the employer's interest or of an employee's duties or obligations. *See Guthrie v. Unemployment Compensation Board of Review*, 738 A.2d 518 (Pa. Cmwlth. 1999). Under the Law, an employee who is discharged for willful misconduct is ineligible

for benefits; the burden is on the employer to prove the willful misconduct; and once the employer meets its burden it shifts to the claimant to show good cause for his/her conduct. *Id.* Claimant does not assert that he had good cause.

Willful misconduct exists where an employee deliberately provides on a job application a false statement that is material to the employee's qualifications. *Sill-Hopkins; Scott*. A false statement may be material even if it does not pertain to a specific job prerequisite. *Scott; McKeon v. Unemployment Compensation Board of Review*, 169 A.2d 332 (Pa. Super. 1961) (holding that claimant's failure to disclose a previous firing was willful misconduct connected with his work). In *Sill-Hopkins* the claimant's omission of the fact that she was denied registration to sell securities in Michigan was material even though her specific job requirements did not include selling securities in Michigan because, among other reasons, the omission may have encouraged the employer to hire her over other applicants. The court in *Barnett v. Unemployment Compensation Board of Review*, 408 A.2d 195 (Pa. Cmwlth. 1979), stated that an employee's trustworthiness is essential in a job that requires supervision of other employees and valuable equipment and goods.

In the present case, Claimant admits that he deliberately falsified his educational qualifications on the job application. The false statement was material because Claimant's having a college degree in computer science is pertinent to the job of an IT manager. *Scott*. Further, it is reasonable to infer that Claimant's false statement may have encouraged Employer to select Claimant over other applicants; Claimant's candidacy for a management position would be much weakened had he stated truthfully that he never finished college. *Sill-Hopkins*. Lastly, honesty is material to the position of an IT manager who, it may be reasonably inferred, supervises valuable company equipment and information. *Barnett*.

Claimant nonetheless argues that *Scott* is distinguishable because the employer there provided evidence that possession of a college degree was a hiring criterion. This distinction notwithstanding, the facts remain that Employer's job application required disclosure of "Degree, Diploma or Credits Completed," and Claimant falsely responded. It would be reasonable to conclude that an applicant's educational qualification was a hiring criterion. Moreover, even if Claimant's contentions were true that he could perform satisfactorily without the associate degree, he still could not "give false information concerning any other factor which might encourage the employer to select him." *Scott*, 474 A.2d at 427. Also, the Board made no such finding that Claimant could perform satisfactorily without the degree. Lastly, the Board noted that a misrepresentation can be material to an employee's qualifications irrespective of whether the misrepresentation pertains to a specific job prerequisite, *Sill-Hopkins*, and it therefore was correct in finding that Claimant's misrepresentation was material under the facts presented here. Because Claimant admitted to falsifying his job application and the Board did not err in its consideration of the issues before it, the Court affirms the Board's order.

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DORIS A. SMITH-RIBNER, Judge

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Unemployment Compensation Board of	:	
Review,	:	
	:	
Respondent	:	

***ORDER***

AND NOW, this 6th day of March, 2008, the Court affirms the order of the Unemployment Compensation Board of Review.

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DORIS A. SMITH-RIBNER, Judge