

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Nanette DeDomenico, :
Petitioner :
v. :
Unemployment Compensation :
Board of Review, : No. 1809 C.D. 2007
Respondent : Submitted: February 8, 2008

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Judge
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY

FILED: March 19, 2008

Nanette DeDomenico (Claimant) petitions for review from an order of the Unemployment Compensation Board of Review (Board) that affirmed the referee's denial of benefits under Section 402(e) of the Unemployment Compensation Law (Law)¹, 43 P.S. § 802(e).

Claimant was employed as a full time administrative assistant for approximately one month by Second Wind Respiratory Care and Pharmacy (Employer). Her last day of employment was April 13, 2007. The Board adopted the referee's following pertinent findings of fact:

2. The employer has a work rule that requires employees to give notice of absence or tardiness to a supervisor at least one hour prior to the scheduled reporting time. The claimant was aware of the employer's work rule.

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended.

3. The employer provided the claimant with a list of telephone numbers by which to call the employer.
4. The claimant was scheduled to work on April 16 and 17, 2007.
5. On April 16, 2007, the claimant called the employer's answering service and left a message that she would be absent from work.
6. The claimant then called a non-supervisory employee and asked her to inform the employer that she would not be coming to work.
7. The claimant did not call the employer anytime later on August 16, 2007 to speak to a supervisor.
8. On April 17, 2007, the claimant did not call the employer and speak to a supervisor to report that [s]he would be absent.
9. The claimant was discharged for reason of violating the employer's work rule governing proper reporting of absenteeism.

Board's Decision, August 1, 2007, Findings of Fact (F.F.) Nos. 2-9 at 1. The Board affirmed the referee's denial of benefits.

On appeal², Claimant, proceeding *pro se*, contends that her actions did not constitute willful misconduct because she left a message on Employer's answering service that she would be absent due to illness and that she also asked a co-employee to report her absence to Employer.

² This Court's review in an unemployment compensation case is limited to a determination of whether constitutional rights were violated, whether errors of law were committed, or essential findings of fact are not supported by substantial evidence. Lee Hospital v. Unemployment Compensation Board of Review, 637 A.2d 695 (Pa. Cmwlth. 1994).

Whether a claimant's conduct rises to the level of willful misconduct is a question of law subject to this Court's review. Lee Hospital v. Unemployment Compensation Board of Review, 589 A.2d 297 (Pa. Cmwlth. 1991). The employer bears the burden of proving that it discharged an employee for willful misconduct. City of Beaver Falls v. Unemployment Compensation Board of Review, 441 A.2d 510 (Pa. Cmwlth. 1982). Finally, willful misconduct is defined as conduct that represents a wanton and willful disregard of an employer's interest, deliberate violation of rules, disregard of standards of behavior which an employer can rightfully expect from his or her employee, or negligence which manifests culpability, wrongful intent, evil design, or intentional and substantial disregard for the employer's interest or the employee's duties and obligations. Frick v. Unemployment Compensation Board of Review, 375 A.2d 879 (Pa. Cmwlth. 1977).

Here, Employer's policy is undisputed:

Employees are expected and required to report to their designated work locations in the prescribed manner and at the prescribed time that work activity is to commence. In the event an employee cannot report to work as scheduled, the employee must so notify supervisory personnel at least one hour prior to scheduled reporting time or be prepared to provide evidence of extenuating circumstances. In all cases of absence or tardiness, you must provide supervisory personnel with a truthful reason for the absence and, if applicable, the probable duration of absence. If circumstances render the absence duration speculative or unknown, you will be required to call supervisory personnel daily to report the status of the absence.

Absenteeism or tardiness that is unexcused or excessive in the judgment of Second Wind [Employer] is grounds

for disciplinary action, up to and including dismissal.
(emphasis added).

Employee Handbook, June 1, 2005, Attendance at 17; Certified Record (C.R.)
Employer Exhibit 1.

In the present controversy, Amy Williamson (Williamson), General Manager, testified that in addition to Employer's policy employees were given a phone list which included "every single person's home number, cell number" so that an employee could report any absences. Notes of Testimony (N.T.), May 23, 2007, at 16. Williamson continued that all employees were instructed to personally contact their respective supervisors on the phone list regarding any absence because the answering service was for "non-urgent message[s]" and "were not retrieved until 10:00 in the morning" N.T. at 16 and 18. Williamson stated that Claimant failed to comply with Employer's policy on April 16th and April 17th. Williamson personally contacted Claimant on April 17th and queried:

I asked her why she didn't contact me the day before [April 16th] which is what the voice mail had said for that Monday morning. She had said that she didn't have time. She was up all night. She was sick. I then let her know that . . . it's important that she would have called a supervisor which would have been myself and not left a voice mail, and let her know that it is not working out. We're in a situation where we have patients. We're on call 24/7 to find out day of via voice mail that someone supposed to be answering phone calls is not going to be in and not let us know, shows me that I can't depend on her. I let her know that

N.T. at 18.

Claimant admitted that she did not call her supervisor directly because “I only had the phone number to the office which is why I called and left a voice mail” N.T. at 19. Claimant also admitted that Employer provided her with a copy of Employer’s policy and a phone list. Claimant stated that “I did not know I was supposed to take it [phone list] home.”³ N.T. at 21. Claimant finally testified that after she called the answering service “I was like, how can I let them know because I know they’re not going to get this [until] after 10:00 . . . [a]nd that’s when I called Katie [a non-supervisory employee]” and asked Katie to report for me. N.T. at 23. Claimant never talked directly to her supervisor on April 16th. On April 17th, Claimant was discharged.

In Lyons v. Unemployment Compensation Board of Review, 533 A.2d 1144, 1145 (Pa. Cmwlth. 1987), this Court previously determined that “willful misconduct may be established where an employer proves that it has a company policy with respect to reporting absences, and that the employee was aware of that policy and failed to comply with it.”

³ Referee to Claimant:

Q: Did you ever get a copy of the phone numbers for the Employer? Did they ever give you a list of phone numbers?

A: They gave me a list. They told me to put it on my desk. I never took it home. I did not know I was supposed to take it home. I did not jot down any phone numbers. I thought that was just for the office use.

N.T. at 21.

Here, the evidence clearly established that Employer required all employees to report any absences to their respective supervisors and that Claimant was aware of its policy but failed to follow it. The Board did not err when it determined that Claimant was ineligible for unemployment compensation benefits as a result of willful misconduct.⁴

Accordingly, this Court affirms.

BERNARD L. MCGINLEY, Judge

⁴ Further, the Board adopted the referee's conclusion concerning the phone list:

The Referee does not give credence to the claimant's assertion that she did not have the employer's telephone numbers by which to contact her supervisor. The referee gives greater credence to the employer's testimony that she was hand-delivered a list of phone numbers to call if she were [sic] going to be absent. Moreover, the claimant has not presented a valid justification for failure to call the employer in accordance with its work rules, particularly on April 17, 2007, after she had been absent an entire day and failed to call the employer and speak to a supervisor the day before (emphasis added).

Referee's Decision/Order, June 6, 2007, Discussion at 2. In unemployment compensation proceedings, the Board is the ultimate fact-finding body empowered to resolve conflicts in evidence, to determine credibility of witnesses, and to determine the weight to be accorded the evidence. Unemployment Compensation Board of Review v. Wright, 347 A.2d 328 (Pa. Cmwlth. 1975).

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| Respondent | : |

ORDER

AND NOW, this 19th day of March, 2008, the order of the Unemployment Compensation Board of Review in the above-captioned matter is affirmed.

BERNARD L. McGINLEY, Judge