

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

|                           |   |                        |
|---------------------------|---|------------------------|
| Karen A. Hoch,            | : |                        |
|                           | : |                        |
| Petitioner                | : |                        |
|                           | : |                        |
| v.                        | : | No. 1913 C.D. 2007     |
|                           | : | Submitted: May 2, 2008 |
| Unemployment Compensation | : |                        |
| Board of Review,          | : |                        |
|                           | : |                        |
| Respondent                | : |                        |

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

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY JUDGE FRIEDMAN

FILED: July 10, 2008

Karen A. Hoch (Claimant) petitions for review of the August 15, 2007, order of the Unemployment Compensation Board of Review (UCBR), which reversed the decision of a referee and held that Claimant is ineligible for unemployment compensation benefits (UC benefits) pursuant to section 402(e) of the Unemployment Compensation Law (Law).<sup>1</sup> We affirm.

Claimant worked as a service advisor for Victory Auto Group (Employer) until April 25, 2007, when she was involuntarily discharged from her employment for violating a work rule. Subsequently, Claimant applied for UC benefits, which the local job center granted. Employer appealed the award of

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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).

benefits, and a referee held a hearing at which both Employer and Claimant appeared *pro se*.

Testifying on her own behalf, Claimant explained that she called off work on April 6, 2007, because her aunt had died, and she also asked to have April 10, 2007, off to attend the funeral. Claimant testified that, after she returned to work on April 11<sup>th</sup>, her supervisor, Joshua Deardorff, repeatedly asked her to provide documentation for the April 2007 absences. Claimant stated that, despite her efforts, she was unable to do so because: due to her aunt's various marriages, she did not recall her aunt's last name; her relatives did not return her phone calls; and she did not want to call her mother, who had been hospitalized since the aunt's death. Claimant also asserted that she did not violate Employer's absence policy because, according to Claimant, Employer's employee handbook requires an employee to submit documentation only if the employee is absent three consecutive days. However, Claimant acknowledged that, in the past, she always provided documentation for her absences, regardless of their length. (Referee's Findings of Fact, Nos. 1-9; N.T. at 7-10.)

Deardorff, testifying on behalf of Employer, stated that Claimant was discharged from her position because she failed to provide documentation to support her absences in April 2007. According to Deardorff, Employer has a work rule requiring such documentation, and Claimant was aware of this policy, as evidenced by the fact that, previously, she submitted documentation for every absence. Deardorff stated that he asked Claimant for documentation multiple times in connection with her April 2007 absences, but, each time, Claimant offered

a different excuse why she could not supply it. Deardorff testified that, after he discharged Claimant on April 25, 2007, Claimant gave him the name of the funeral home, and when he called, the funeral home director informed him that the funeral had taken place on April 11<sup>th</sup>, not April 10<sup>th</sup>. Moreover, Deardorff testified that the funeral home director directed Deardorff to the online obituary for Claimant's aunt, which indicated that the aunt had died on April 7<sup>th</sup>, not April 6<sup>th</sup>, and that the aunt had been married only once.<sup>2</sup> (UCBR's Findings of Fact, Nos. 1-14; N.T. at 4-6.)

Crediting Claimant's testimony regarding the content of Employer's work rule, the referee determined that Claimant did not violate that rule because she had not been absent for three consecutive days. Moreover, the referee held that Claimant's inability to obtain the requested documentation constituted good cause for failing to follow Employer's directive. Thus, the referee concluded that Claimant's conduct did not rise to the level of willful misconduct and affirmed the job center's award of benefits.<sup>3</sup>

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<sup>2</sup> Employer also submitted a copy of the aunt's obituary from the Internet and three written warnings regarding Claimant's conduct. The first, dated March 13, 2007, warned Claimant that her work was substandard. The second, dated April 11, 2007, warned Claimant about excessive absenteeism and included a list of the number of days that Claimant was not at work since January 1, 2007. The third, dated April 25, 2007, again warned Claimant about her excessive absenteeism and cited her uncooperativeness, as shown by the ongoing discussions between Claimant and Deardorff regarding Claimant's absences on April 6<sup>th</sup> and April 10<sup>th</sup>. (O.R. at Item 4.)

<sup>3</sup> Section 402(e) of the Law provides that an employee shall be ineligible for compensation for any week in which her unemployment is due to her discharge or temporary suspension from work for willful misconduct in connection with her work. 43 P.S. §802(e). Our supreme court in *Frumento v. Unemployment Compensation Board of Review*, 466 Pa. 81, 83-4, 351 A.2d 631, 632 (1976), defined "willful misconduct" as:

**(Footnote continued on next page...)**

Employer appealed to the UCBR, which reversed the referee's decision. Crediting Deardorff's testimony, the UCBR found that Employer's work rule requires employees to provide written documentation to explain all absences from work, that Claimant was aware of this rule and that Claimant violated this rule. The UCBR also found that: (1) Claimant called off on April 5<sup>th</sup> and 6<sup>th</sup>;<sup>4</sup> (2) Claimant's aunt died on April 7<sup>th</sup>, not April 6<sup>th</sup>; (3) the funeral was on April 11<sup>th</sup>, not April 10<sup>th</sup>; and (4) Claimant's aunt only had been married once. (UCBR's Findings of Fact, Nos. 1-7, 10-14.) Unlike the referee, the UCBR held that Claimant did not have good cause for her absences or for failing to provide Employer with documentation supporting those absences. Accordingly, the UCBR concluded that Claimant's violation of Employer's rule constituted willful

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**(continued...)**

an act of wanton or willful disregard of the employer's interest, a deliberate violation of the employer's rules, a disregard of standards of behavior which the employer has a right to expect of an employee, or negligence indicating an intentional disregard of the employer's interest or of the employee's duties and obligations to the employer.

The employer bears the burden of proving willful misconduct in order to disqualify a claimant from receiving benefits. *Docherty v. Unemployment Compensation Board of Review*, 898 A.2d 1205 (Pa. Cmwlth. 2006). Where the claimant's misconduct is based on the violation of an employer's rule or policy, the employer bears the burden of establishing both the existence of the rule or policy and its violation by the claimant. *Id.* Once the employer has satisfied its burden of proof, the burden shifts to the claimant to demonstrate either that the rule is unreasonable or that good cause existed to violate the rule. *Id.*

<sup>4</sup> It is clear from Claimant's time sheet that she worked on April 5<sup>th</sup>. (O.R. at Item 4.)

misconduct pursuant to section 402(e) of the Law, and, therefore, Claimant was ineligible for UC benefits. Claimant now petitions this court for review.<sup>5</sup>

Claimant first argues that the UCBR abused its discretion by reversing the referee's credibility determinations and accepting Deardorff's testimony as credible. Claimant acknowledges that the UCBR is the ultimate finder of fact in unemployment cases and, therefore, is entitled to make credibility determinations and findings that are different than those of the referee. *Peak v. Unemployment Compensation Board of Review*, 509 Pa. 267, 501 A.2d 1383 (1985). Nevertheless, citing *Treon v. Unemployment Compensation Board of Review*, 499 Pa. 455, 453 A.2d 960 (1982) (holding that the UCBR may not simply disregard a referee's findings that are based on uncontradicted evidence without stating its reasons for doing so), Claimant asserts that, because there was no conflict in the testimony, the UCBR abused its discretion where it failed to provide an explanation for rejecting the referee's credibility determinations and substituting its own. We disagree.

Contrary to Claimant's assertions, there is conflicting testimony regarding Employer's absentee policy. Claimant testified that the employee handbook required written documentation only when the employee was absent for

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<sup>5</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. Whether a claimant's conduct constitutes willful misconduct rendering the claimant ineligible for benefits is a question of law that is subject to plenary review by the court. *Docherty*.

three consecutive days, whereas Deardorff testified that Employer's policy was to require documentation for all employee absences. Disagreeing with the referee, the UCBR chose to resolve that conflict in Employer's favor. Questions of credibility and the resolution of conflicting evidence are within the sound discretion of the UCBR and are not subject to re-evaluation on judicial review. *Peak*. Thus, Claimant's first argument must fail.

Claimant next asserts that the UCBR erred in concluding that Claimant's failure to provide the required written documentation constituted willful misconduct that rendered her ineligible for benefits. According to Claimant, Employer did not satisfy its burden of proving willful misconduct because Employer failed to establish that employees knew of a written policy requiring documentation to substantiate a leave request for fewer than three consecutive days. Again, we disagree.

Deardorff credibly testified that Employer has a rule requiring employees to submit written documentation in support of any absence from work, that Claimant was aware of this rule and that Claimant failed to provide such documentation for her absences when requested. This credible testimony, particularly in conjunction with Claimant's admission that she always had provided documentation for absences of any length, provides ample support for the UCBR's findings and conclusions that Claimant violated a known work rule and that Claimant was discharged for that violation.

Finally, Claimant argues that, even if Employer had a policy requiring written documentation to support her absences, her testimony establishes that she had good cause for violating that policy, and, therefore, she is entitled to UC benefits.<sup>6</sup> However, because the UCBR did not accept Claimant's testimony as credible, she could not satisfy her burden of proving that she had good cause for violating the work rule.

Accordingly, we affirm.

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ROCHELLE S. FRIEDMAN, Judge

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<sup>6</sup> Whether a claimant has good cause to violate an employer's rule or policy is a question of law subject to this court's review and should be viewed in light of all the attendant circumstances. *Docherty*. A claimant has good cause if his or her actions are justifiable and reasonable under the circumstances. *Id.*

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ORDER

AND NOW, this 10th day of July, 2008, the order of the Unemployment Compensation Board of Review, dated August 15, 2007, is hereby affirmed.

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ROCHELLE S. FRIEDMAN, Judge