

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Brandon S. Williams, :
 :
 Petitioner :
 :
 v. : No. 937 C.D. 2020
 : Submitted: April 9, 2021
 Unemployment Compensation :
 Board of Review, :
 :
 Respondent :

BEFORE: HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE ELLEN CEISLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE WOJCIK

FILED: September 10, 2021

Brandon S. Williams (Claimant) petitions for review of the July 24, 2020 order of the Unemployment Compensation (UC) Board of Review (Board), which affirmed a referee’s decision finding Claimant ineligible for UC benefits under Section 402(e) of the UC Law (Law).¹ On appeal, Claimant argues that the Board erred by concluding that JDL Insurance Services LLC (Employer) met its burden of proving that Claimant’s unemployment was due to willful misconduct and that Claimant was not denied a full and fair UC hearing. For the following reasons, we affirm.

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §802(e) (providing that an employee shall be ineligible for compensation when his separation from employment is due to willful misconduct connected with his work).

I. Background

Claimant worked full-time as an exclusive agent for Employer from October 20, 2018, until September 23, 2019, earning \$17.00 per hour plus commission. Certified Record (C.R.), Item No. 10; Referee's 6/4/2020 Decision, Finding of Fact (F.F.) No. 1. By way of background, Employer operates an insurance agency/business that provides insurance for Allstate Corporation (Allstate). F.F. No. 2. Claimant worked for Employer as the agent of record for the business, which employment was contractually scheduled to end on October 20, 2019. F.F. No. 3. On September 12, 2019, Employer's owner requested access to documents that were exclusively available to Claimant, which Claimant refused to provide because it was against Allstate's company policy. F.F. Nos. 4-5. On September 23, 2019, Employer discharged Claimant for failing to provide the requested documents. F.F. Nos. 6-9.

Claimant applied for UC benefits. UC authorities requested information from both Claimant and Employer regarding Claimant's discharge. Based upon this information, the local service center resolved the conflict between whether Claimant quit or was discharged in Employer's favor, finding that Claimant initiated the separation and that, while he had a necessitous and compelling reason for quitting, he failed to exhaust all alternatives prior to quitting. Claimant was therefore determined to be ineligible for UC benefits under Section 402(b) of the Law, 43 P.S. §802(b) (relating to voluntary quit). C.R., Item No. 5.

Claimant appealed, and a referee held a hearing via telephone on May 27, 2020. Claimant and one witness for Employer testified at the hearing. Claimant testified, in relevant part, as follows. He did not initiate his separation from Employer but was discharged because he "refused to allow [Jessica Moore (Moore),

Employer's owner,] to use [his] laptop" C.R., Item No. 9, Referee's Hearing, 5/24/2020, Notes of Testimony (N.T.) at 7. Claimant explained that Moore wanted to use his laptop to access reports, but he refused her request because it is "against [Allstate's] policy" to allow another person to use one's Allstate account. *Id.* at 8-9. Claimant instead offered to give Moore the reports in paper form or by email, or to participate in the meeting in which the reports were needed, but Moore "refused all of those." *Id.* at 8. As Employer's owner, Moore "had a . . . vested interest in accessing" the reports, but she could not access them herself, as only Claimant could do so because he was the agent of record vis-à-vis Allstate. *Id.* at 10. Moore notified Claimant that she would terminate his employment if he did not provide the requested reports, which Moore did effective September 23, 2019. *Id.* at 15-16. Claimant stated that he "was terminated because [he] refused to do something against company policy." *Id.* at 26.

Moore testified on Employer's behalf, in relevant part, as follows. Claimant's last day at work was September 23, 2019. N.T. at 18. According to Moore, she did not terminate Claimant. Instead, he voluntarily separated from Employer "because [Moore] would no longer allow him to . . . manipulate or try to control the situation," which Claimant did not like. *Id.* When asked specifically what she meant, Moore explained that she needed documents for a meeting that only Claimant had access to, so she invited Claimant to attend the meeting with the documents, but "[h]e purposely called out that day so that he was not present for the meeting." *Id.* at 18-19. Claimant did not provide the documents at issue to Moore in hard copy form or by email. *Id.* at 20. When asked on cross-examination whether Claimant told Moore that he would allow her to view his computer screen, print or email the reports to her, or participate in the meeting in which the reports were

needed, Moore stated that “[Claimant] said that [he] would be a part of the meeting [in which the reports were needed], [but he] did[not] show up.” *Id.* at 24.

Following the hearing, the referee issued a decision on June 4, 2020, affirming, as modified, the local service center’s determination and denying benefits under Section 402(e) of the Law (relating to willful misconduct). In doing so, the referee made the following findings of fact:

1. [Claimant] was employed full-time as an Exclusive Agent with [Employer], earning \$17 per hour + commission. [Claimant] began employment on October 20, 2018[,] and last worked September 23, 2019.
2. [Employer] operates [an] agency that provides insurance for [Allstate].
3. [Claimant] began employment under contract with [Employer] as the agent of record for the business, which was contractual [sic] scheduled to cease on October 20, 2019. At which point the [Employer/owner] was scheduled to be slated as the agent of record.
4. On September 12, 2019, [Employer]/owner needed to have access to reports that were exclusively available to [Claimant], as the agent of record, and [Employer]/owner requested that [Claimant] provide them for a meeting to be held on September 15, 2019.
5. [Claimant] noted a violation of Allstate’s policy that usernames and passwords are not to be accessed by another person.
6. [Employer] informed [Claimant] that he should participate in the meeting, or provide copies of the documents, or send them via email.
7. [Claimant] did not report to the meeting, did not provide copies, and did not email the documents.

8. On September 23, 2019, [Employer] and [Claimant] attempted to discuss the issue, as the transition of “agent of record” was in progress to be switched by October 20, 2019; however, [Employer] found that [Claimant] did not wish to follow directives to share information.

9. [Employer] discharged [Claimant] from employment for failure to provide the requested documents.

Referee’s 6/4/2020 Decision, F.F. Nos. 1-9. The referee resolved the conflict in the testimony in favor of Employer, and found that Employer’s witness testified credibly to the following:

although it was understood that it may have be[en] against policy to provide [Claimant’s] username and password to access the records on his computer, [Claimant] had the ability to provide copies or email the requested documents. Furthermore, [Claimant] could have joined the meeting and provided the reports himself. [Claimant] argued that [Employer] wanted the username and password from his assigned computer, and he offered to copy or email the requested documents; however, he did not do so

Id. at 3. Based on the above, the referee determined that Employer provided a reasonable directive to Claimant, with which he did not comply, and that Employer discharged Claimant on that basis. The referee also determined that Claimant did not establish through his testimony or other evidence that his failure to comply with Employer’s directive was reasonable. Accordingly, the referee concluded that Claimant was ineligible for benefits under Section 402(e) of the Law because he was discharged for willful misconduct.

Claimant appealed to the Board. In a decision mailed on July 24, 2020, the Board adopted and incorporated the referee’s findings of facts and conclusions of law as its own and affirmed the referee’s decision denying Claimant benefits

under Section 402(e) of the Law. C.R., Item No. 13. Claimant then petitioned this Court for review of the Board's order.²

II. Discussion

On appeal,³ Claimant argues that the Board erred in concluding that he committed willful misconduct. Specifically, he claims that the Board erred in finding Employer's witness's testimony that Claimant failed to provide Employer access to reports that were exclusively available to him to be more credible than Claimant's contrary testimony and evidence, where Employer's witness's testimony was largely "false" and Claimant offered additional evidence to rebut that of Employer. He points to other Board findings, which are also based on Employer's witness's "false" testimony, and essentially claims that they are not supported by substantial evidence. Claimant also argues that the referee improperly limited Claimant's questioning of a witness at the UC hearing.

Claimant first argues that six of the Board's nine findings of fact are "false." Claimant's Brief (Br.) at 20. Specifically, Claimant contends that findings 3, 4, and 6 through 9, which are based on Employer's witness's testimony, are incorrect according to factual assertions Claimant makes in his brief and based on documentary evidence submitted at the UC hearing. For example, Claimant disputes

² "Our review is limited to determining whether the necessary findings of fact were supported by substantial evidence, whether errors of law were committed, or whether constitutional rights were violated." *Johns v. Unemployment Compensation Board of Review*, 87 A.3d 1006, 1009 n.2 (Pa. Cmwlth. 2014).

³ Claimant's "[s]tatement of the questions involved" in his brief lists 21 questions for this Court's review, which we have condensed for brevity and reordered for clarity. Specifically, Claimant challenges findings of fact nos. 3-4 and 6-9, which form the basis for the Board's conclusion that Claimant committed willful misconduct.

the accuracy of findings of fact 4, 6, and 7, stating that “[Employer] specifically requested unsupervised use of [Claimant’s] laptop/account, and refused [Claimant’s] offers to provide the documents via e-mail, print, or supervised use of [Claimant’s] laptop/account.” *Id.* at 20-21. Claimant maintains that portions of the record include email exchanges proving that his version of events is accurate.

The Board responds that, while Claimant argues that Employer’s witness’s testimony that Claimant failed to report to a meeting with the requested reports and did not provide Employer copies of the reports is false, the Board is the ultimate factfinder in UC cases and is empowered to make credibility and evidentiary weight determinations. Moreover, this Court is bound by the Board’s findings because Employer’s witness’s testimony constitutes substantial evidence to support them. Board’s Br. at 6. The Board explains that it credited Employer’s witness’s testimony over Claimant’s and did not find that Claimant offered to provide the documents or allow Employer to use his laptop while supervised. *Id.* at 7. The Board notes that, at the UC hearing, Claimant did not dispute that he failed to provide the reports that Employer requested. *Id.* Addressing Claimant’s argument, based on email correspondence between Claimant, an Allstate representative, and Moore, that Employer refused his offers to provide the reports by hard copy or email, the Board claims that, while Moore initially requested use of Claimant’s laptop, the “Board did not credit Claimant’s testimony that she refused the reports by other means.” *Id.* at 8. Accordingly, the Board maintains that its findings are supported by substantial evidence of record.

It is well-established that “[q]uestions of credibility and the resolution of evidentiary conflicts are within the sound discretion of the Board, and are not subject to re-evaluation on judicial review.” *Serrano v. Unemployment*

Compensation Board of Review, 149 A.3d 435, 439 (Pa. Cmwlth. 2016) (quoting *Peak v. Unemployment Compensation Board of Review*, 501 A.2d 1383, 1388 (Pa. 1985)). Here, Claimant’s primary argument is that the Board’s findings of fact are inaccurate because they rely on Employer’s witness’s testimony, which Claimant contends is false. We disagree, as the Board specifically noted a conflict between Employer’s witness’s and Claimant’s testimony and resolved such conflict in favor of Employer, which it was permitted to do. *See Serrano*, 149 A.3d at 439. We therefore decline to overturn the Board’s credibility determinations on appeal.

We also cannot agree with Claimant’s argument that the Board did not base its findings on substantial evidence. In UC cases, the Board’s findings of fact must be supported by “[s]ubstantial evidence[, which] is defined as ‘such relevant evidence which a reasonable mind would accept as adequate to support a conclusion.’” *Western & Southern Life Insurance Co. v. Unemployment Compensation Board of Review*, 913 A.2d 331, 334 n.2 (Pa. Cmwlth. 2006) (quoting *Guthrie v. Unemployment Compensation Board of Review*, 738 A.2d 518, 521 (Pa. Cmwlth. 1999)). “The Board’s findings are conclusive on appeal so long as the record, when viewed in its entirety, contains substantial evidence to support the findings.” *Western & Southern Life Insurance Co.*, 913 A.2d at 334 n.2. Moreover, “even if there is contrary evidence of record, the Board’s findings of fact are binding upon the Court where supported by substantial evidence.” *Borough of Coaldale v. Unemployment Compensation Board of Review*, 745 A.2d 728, 731 (Pa. Cmwlth. 2000). Because Moore’s testimony constitutes substantial evidence, the Board’s findings based thereon are conclusive on appeal. Moore testified that she needed documents for a meeting that only Claimant had access to, so she invited Claimant to attend the meeting with the documents, but “[h]e purposely called out that day so

that he was not present for the meeting.” N.T. at 18-19. In addition, Moore testified that Claimant did not provide the documents at issue in hard copy form or by email. *Id.* at 20. This testimonial evidence is sufficient to support the Board’s findings.

Claimant next contends that Employer did not meet its burden of proving that he committed willful misconduct because he could not have acquiesced to Moore’s request to view the reports using his computer, as it was against Allstate’s policy, and so he offered to give Moore the reports in hard copy form or by email, but she refused these alternatives. Claimant’s Br. at 14-15, 19.

The Board responds that Claimant’s actions amount to willful misconduct because he unjustifiably refused to follow Employer’s reasonable work request. Board’s Br. at 9. The Board argues that Employer’s request for the reports was reasonable, as Claimant testified that Moore had a “vested interest” in accessing the reports, and she suggested that Claimant attend a meeting where the reports were required so that he could provide the relevant information without sharing his Allstate account with others. *Id.* at 10-11. Moreover, the Board contends that, while Claimant testified that Moore refused his offers to provide the reports in hard copy form or by email, the Board did not credit Claimant’s testimony, and thus “Claimant failed to prove that his noncompliance was justifiable under the circumstances.” *Id.* at 11. Therefore, according to the Board, Claimant committed willful misconduct by refusing to provide the reports and by failing to show good cause for not doing so.

Section 402(e) of the Law provides that a claimant is ineligible for UC benefits when “his unemployment is due to his discharge or temporary suspension from work for willful misconduct connected with his work” 43 P.S. §802(e). “Whether or not an employee’s actions amount to willful misconduct is a question

of law subject to review by this Court.” *Gordon Terminal Service Co. v. Unemployment Compensation Board of Review*, 211 A.3d 893, 898 (Pa. Cmwlth. 2019) (citation omitted). In UC cases, the employer bears the burden of demonstrating that the claimant’s unemployment is due to willful misconduct. *Walsh v. Unemployment Compensation Board of Review*, 943 A.2d 363, 368 (Pa. Cmwlth. 2008). The Law does not define the term “willful misconduct;” however, our Supreme Court defined that term in *Caterpillar, Inc. v. Unemployment Compensation Board of Review*, 703 A.2d 452, 456 (Pa. 1997), as (1) “wanton or willful disregard for an employer’s interests;” (2) “deliberate violation of an employer’s rules;” (3) “disregard for standards of behavior which an employer can rightfully expect of an employee;” or (4) “negligence indicating an intentional disregard of the employer’s interest or an employee’s duties or obligations.”

In cases such as this one, in which an employer asserts that a claimant committed willful misconduct by unjustifiably refusing a reasonable work request, “we must evaluate not only the reasonableness of the employer’s request or directive under the circumstances, but also the employee’s reason for non[]compliance.” *Hager v. Unemployment Compensation Board of Review*, 482 A.2d 1368, 1371 (Pa. Cmwlth. 1984). If the employee acted in a justifiable or reasonable manner under the circumstances, then a finding of willful misconduct cannot lie. *Pryor v. Unemployment Compensation Board of Review*, 475 A.2d 1350, 1352 (Pa. Cmwlth. 1984).

Here, the record supports the Board’s conclusion that the refusal of Claimant to attend the meeting at which the reports were needed or provide the reports to Moore in advance of that meeting was the refusal of a reasonable request without good cause and that, therefore, Claimant’s refusal constituted willful

misconduct. First, we agree with the Board that Employer's request for the records was reasonable, as Claimant admitted that Moore had a "vested interest in accessing" the reports. N.T. at 10. Second, the weakness of Claimant's position that his failure to provide Moore access to the reports was justifiable "lies in his contentions based upon his, and not the Board's, interpretation of the facts[.]" *Hager*, 482 A.2d at 1371. Claimant argues that he offered to give Moore the reports in hard copy form or by email, but she refused these alternatives. Claimant's Br. at 19. Thus, Claimant's argument appears to be that his actions do not constitute willful misconduct or that his failure to provide the reports to Employer was justifiable under the circumstances. However, the Board did not credit Claimant's testimony, finding that

although it was understood that it may have be[en] against policy to provide [Claimant's] username and password to access the records on his computer, [Claimant] had the ability to provide copies or email the requested documents. Furthermore, [Claimant] could have joined the meeting and provided the reports himself. [Claimant] argued that [Employer] wanted the username and password from his assigned computer, and he offered to copy or email the requested documents; however, he did not do so

Referee's Decision at 3. Accordingly, based on the facts as found by the Board, Claimant has failed to establish that he had a reasonable reason for not complying with Employer's request that he provide Employer with access to the reports. Because Employer's request was reasonable under the circumstances and Claimant was not justified in failing to comply with the request, we conclude that Claimant's actions constitute willful misconduct.

Finally, Claimant contends that the referee improperly limited Claimant's questioning of Employer's witness at the UC hearing, thus limiting

Claimant's ability to refute Employer's claims. Claimant's Br. at 16. Claimant argues that the referee, citing time constraints, explained to Claimant that he could not ask many questions in response to Claimant's statement that "he had many questions and many objections" to Employer's witness's testimony. *Id.* at 22. Claimant maintains that the UC referee "refused to allow [him] to complete his questions uninterrupted at multiple points." *Id.*

The Board responds that UC referees are tasked with regulating hearings, "which includes active participation and controlling the process." Board's Br. at 12-13. The Board claims that the referee did not unfairly limit Claimant's questions and objections, but merely explained to Claimant that his questions had to be relevant, counseled him not to answer his own questions, and cautioned him that she would not entertain repetitive questions. This, the Board contends, was not improper. We agree with the Board.

We construe Claimant's argument that the referee improperly limited Claimant's questioning of Employer's witness at the UC hearing to be one implicating due process concerns. "The essential elements of due process are notice and an opportunity to be heard in a full and fair hearing before an impartial decision maker." *Leone v. Unemployment Compensation Board of Review*, 885 A.2d 76, 80 (Pa. Cmwlth. 2005). With regard to the conduct of UC hearings, Section 101.21(a) and (b) of the Board's regulations states, in relevant part, that:

(a) In a hearing the tribunal may examine the parties and their witnesses. Where a party is not represented by counsel[,] the tribunal before whom the hearing is being held should advise him as to his rights, aid him in examining and cross-examining witnesses, and give him every assistance compatible with the impartial discharge of its official duties.

(b) The tribunal shall determine the order in which the evidence shall be presented in hearings. *Within the discretion of the tribunal, the parties shall be permitted to present evidence and testimony which they believe is necessary to establish their rights.*

34 Pa. Code §101.21(a), (b) (emphasis added). Although UC “referees are not imbued with the same powers as a trial court, [] they are nevertheless authorized to regulate the course of hearings and to take other action necessary or appropriate to the discharge of the duties vested in them.” *Powell v. Unemployment Compensation Board of Review*, 157 A.3d 884, 893 n.11 (Pa. 2017) (citing 1 Pa. Code §35.187(1), (10)).

While we appreciate that the UC appeals process can be challenging, especially for *pro se* litigants, our review of the record and hearing transcript reveals that Claimant was afforded the opportunity to present his testimony and additional evidence at the UC hearing, and was permitted to ask questions of Employer’s witness. At the beginning of the hearing, the referee asked all of the parties if they received notice of the hearing explaining their rights, to which Claimant answered that he did. N.T. at 3. The referee then explained those rights and asked if Claimant understood those rights, and Claimant responded that he did. *Id.* Claimant presented his own testimony and evidence, *id.* at 6-17, and was given the opportunity to question Employer’s witness, *id.* at 23-26. In so questioning Employer’s witness, the referee merely explained to Claimant that his questions had to be relevant, counseled him not to answer his own questions, and cautioned him that she would not entertain repetitive questions. *Id.* at 23-26. These efforts to regulate the course of the UC hearing were within the referee’s sound discretion. 34 Pa. Code §101.21(b); *Powell*, 157 A.3d at 893 n.11. While Claimant asserts that the referee’s conduct limited his ability to refute Employer’s witness’s testimony, Claimant fails

to establish that he was prejudiced or that the referee's conduct prevented him from receiving a full and fair hearing. *Leone*, 885 A.2d at 80. To the contrary, in this case, Claimant had ample opportunity to present testimony, to submit evidence on his own behalf, and to question Employer's witness on matters relevant to the issue before the referee. Indeed, Claimant's assertion that the referee improperly limited his ability to refute Employer's witness's testimony is belied by Claimant's own testimony that he had no further questions of Employer's witness regarding his separation from employment. N.T. at 26. Thus, we conclude that Claimant received all the due process to which he was entitled.

III. Conclusion

For the foregoing reasons, we conclude that Employer met its burden of demonstrating that Claimant was discharged for willful misconduct. Specifically, Employer demonstrated that it provided Claimant a reasonable directive, he did not comply, and Claimant did not establish that his failure to comply was reasonable. Thus, Claimant is ineligible for UC benefits pursuant to Section 402(e) of the Law.

Accordingly, we affirm the Board's order.

MICHAEL H. WOJCIK, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Brandon S. Williams,	:
	:
Petitioner	:
	:
v.	: No. 937 C.D. 2020
	:
Unemployment Compensation	:
Board of Review,	:
	:
Respondent	:

ORDER

AND NOW, this 10th day of September, 2021, the order of the Unemployment Compensation Board of Review, dated July 24, 2020, is hereby AFFIRMED.

MICHAEL H. WOJCIK, Judge