

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

VaSone Snowden,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 2029 C.D. 2009
	:	Submitted: March 12, 2010
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FLAHERTY

FILED: July 23, 2010

VaSone Snowden (Claimant) petitions, *pro se*, for review from the 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 We affirm.

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. §802(e). Section 402 (e) of the Law provides that an employee shall be ineligible for compensation for any week:

(e) 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 this act....

Claimant was employed as a crew chief by McDonalds (Employer) for approximately six years. Claimant's last day of employment was February 3, 2009. The facts as found by the referee and adopted by the Board are as follows:

2. The claimant had a disciplinary history, and had been warned prior to her separation from employment that her job was in jeopardy.
3. On the final day of work, the claimant became involved in a heated discussion with the first assistant, a supervisor, regarding the claimant's use of the employer telephone.
4. The first assistant directed the claimant to go home.
5. The claimant responded, "I'm not going home. You're not my boss. You have no right to tell me that."
6. The claimant was advised by the first assistant that if she did not go home, she would be fired.
7. The claimant declined to go home.
8. The claimant was informed by the first assistant that she had been fired.

Referee's Decision, June 3, 2009 (Referee's Decision), Findings of Fact Nos. 2-8, at 1-2.

The referee found that Claimant's actions constituted willful misconduct and denied Claimant benefits. Claimant appealed to the Board

and the Board affirmed the referee's decision. Claimant now petitions this court for review.²

Claimant essentially contends that the Board erred in finding that she committed willful misconduct and that the referee's findings of fact as adopted by the Board, are not supported by substantial evidence.

An employer has the burden of proving that willful misconduct was committed by an employee. Hargley v. Unemployment Compensation Board of Review, 397 A.2d 477 (Pa. Cmwlth. 1979). Employer presented the testimony of Jennifer Bell (Bell), first assistant and a supervisor to Claimant. Bell testified that Employer had problems with Claimant in the past about not going home when told and that Claimant had been warned that her job was in jeopardy. Bell further testified that on February 3, 2009, Claimant was using Employer's telephone and, following a heated discussion between Bell and Claimant, Bell directed Claimant to go home. Claimant refused to go home and told Bell, "you're not my boss, you don't have the right to make me go home." (N.T. at 3). Bell warned Claimant that if she did not go home, she would be fired. (Id.). Claimant still refused, so Bell terminated Claimant's employment. (N.T. at 4). Janet Tritt (Tritt), a fellow crew chief, testified similarly to Bell. (N.T. at 4-5).

The testimony of record supports the Board's findings as to the events on February 3, 2009, as well as to a prior warning being given to Claimant.

² Our review in this matter is limited to a determination of whether constitutional rights have been violated, errors of law committed, or whether essential findings of fact are supported by substantial evidence. Brady v. Unemployment Compensation Board of Review, 544 A.2d 1085 (Pa. Cmwlth. 1988).

In Orend v. Unemployment Compensation Board of Review, 821 A.2d 659 (Pa. Cmwlth. 2003), our court determined that willful misconduct includes a disregard of standards of behavior that the employer has a right to expect from an employee. A work rule violation need not be shown 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. Tongel v. Unemployment Compensation Board of Review, 501 A.2d 716 (Pa. Cmwlth. 1985).

Where an employee is discharged for refusing or failing to follow an employer's directive, both the reasonableness of the demand and the reasonableness of the employee's refusal must be examined. Dougherty v. Unemployment Compensation Board of Review, 686 A.2d 53, 54 (Pa. Cmwlth. 1996). This court has typically required "extraordinary circumstances" to justify a claimant's refusal to comply with a reasonable employer directive. Id. A claimant's refusal to follow a supervisor's clear and simple instruction to leave the premises constitutes willful misconduct. Pearson v. Unemployment Compensation Board of Review, 954 A.2d 1260, 1263-1264 (Pa. Cmwlth. 2008).

In the present controversy, Claimant testified that there was a medical problem with her grandchild. As a result, she appeared for work late, and was on the telephone at least two times during the work day trying to get updates. Given these circumstances and Claimant's attitude toward Bell, it was reasonable for Bell to send Claimant home to calm down and take care of things. Dougherty. As Claimant refused to follow her supervisor's directive to leave the premises, willful misconduct was shown.

Once the Employer established willful misconduct, the burden shifted to Claimant to show “just cause” for her actions. Mulqueen v. Unemployment Compensation Board of Review, 543 A.2d 1286 (Pa. Cmwlth. 1988).

Claimant asserted that she had permission from Tritt to use the telephone, that Bell had the attitude, not Claimant, and that Claimant had a right not to go home if she did not want to, as another boss had told her that. Tritt, however, was not a supervisor. She was a crew chief, like Claimant, and, therefore, could not give Claimant “permission” to use the telephone. Further, Bell was the first assistant, i.e., second in charge, and a supervisor to Claimant. Claimant was obligated to follow reasonable directives from Bell. Further, Claimant’s testimony that she had been told by a supervisor that it was not necessary to adhere to a directive from another supervisor was rejected. Thus, Claimant failed to meet her burden.

All credibility determinations are made by the Board. The weight given the evidence is within the discretion of the factfinder. Fitzpatrick v. Unemployment Compensation Board of Review, 616 A.2d 110 (Pa. Cmwlth. 1992). The Board found Claimant insubordinate in refusing to comply with her supervisor’s reasonable directive, without good cause. The Board’s determination that Claimant was discharged for willful misconduct was supported by substantial evidence.

Accordingly, we affirm.

JIM FLAHERTY, Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

VaSone Snowden,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 2029 C.D. 2009
	:	
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 23rd day of July, 2010, the order of the Unemployment Compensation Board of Review in the above-captioned matter is affirmed.

JIM FLAHERTY, Senior Judge