IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Gregory J. Holt, Sr., Petitioner	:	
v.	:	No. 2065 C.D. 2009
Unemployment Compensation Board of Review, Respondent	:	Submitted: March 12, 2010

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE JOHNNY J. BUTLER, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY FILED: April 13, 2010

Gregory J. Holt, Sr. (Claimant) petitions for review, pro se, of the order of the Unemployment Compensation Board of Review (Board) affirming the decision of a Referee which determined that Claimant is ineligible for unemployment compensation benefits pursuant to 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, in pertinent part:

> An employe 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

(Continued....)

Claimant filed a claim for unemployment compensation benefits upon the termination of his employment as a truck driver with Bolus Freight Systems (Employer). The Scranton UC Service Center representative concluded that Claimant had been discharged for reasons that constitute willful misconduct under Section 402(e) of the Law based upon his failure to report an accident he was involved in while in Maryland. As a result, unemployment compensation benefits were denied.

Claimant appealed this determination and a hearing was conducted before a Referee at which Employer's safety director testified, but at which Claimant failed to appear. See N.T. 6/15/09[2] at 1-4. On June 18, 2009, the Referee issued a decision disposing of the appeal in which he determined that Claimant had been discharged for reasons that constitute willful misconduct under Section 402(e) of the Law. As a result, the Referee issued an order affirming the Service Center's determination denying Claimant unemployment compensation benefits.

On June 23, 2009, Claimant filed an appeal of the Referee's decision with the Board in which he requested another hearing. On August 5, 2009, the Board issued an order remanding the matter for a new hearing. On August 19, 2009, a remand hearing was conducted before a Referee acting as the Board's hearing officer. See N.T. 8/19/09[3] at 1-19.

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connected with his work, irrespective of whether or not such work is "employment" as defined in this act.

[2] "N.T. 6/15/09" refers to the transcript of the hearing conducted before the Referee on June 15, 2009.

[3] "N.T. 8/19/09" refers to the transcript of the hearing conducted before the Referee on August 19, 2009.

On September 16, 2009, the Board issued a decision in which it made the following relevant findings of fact: (1) Claimant was last employed as a truck driver by Employer on April 19, 2009; (2) Employer has a policy which requires drivers to report any accidents that occur with company vehicles; (3) Employer made Claimant aware of this policy; (4) on December 20, 2008, Claimant was involved in a minor accident that caused a minimal amount of damage; (5) Claimant failed to report the accident to Employer; (6) Employer's Director of Safety spoke with Claimant about the accident, and reiterated that all accidents must be reported to Employer's Safety Department; (7) on April 14, 2009, Claimant drove away from a fueling station in Maryland with the hose still connected to his vehicle; (8) Claimant drove back to Employer's garage in Scranton with the hose hanging from his vehicle; (9) another employee in Employer's garage discovered the hose connected to his truck; (10) Claimant did not report the April 14, 2009 incident to Employer's safety department; and (11) Employer discharged Claimant for the April 14, 2009 incident in which he failed to report the accident to Employer's safety department. Board Decision at 1-2.

Based on the foregoing, the Board concluded:

> The Board notes the conflicts in the testimony and finds the testimony of the employer witness credible that he informed the claimant after the first incident that all accidents must be reported to the safety department. The claimant contends that he believed that the co-worker's discovery of the hose connected to the truck amounted to reporting of the incident of April 14, 2009. The claimant never made a report to the safety department himself and there is no evidence that the co-worker had any obligation to do so.
>
> The claimant did not have good cause for violating the employer's reasonable policy. Benefits are denied under Section 402(e) of the Law.

Board Decision at 3. Accordingly, the Board issued an order affirming the Referee's decision denying Claimant unemployment compensation benefits. Id. Claimant then filed the instant petition for review.[4]

In this appeal, Claimant contends the Board erred in determining that Employer had sustained its burden of proving that Claimant was ineligible for compensation benefits under Section 402(e) of the Law. More specifically, Claimant asserts: (1) there is not sufficient evidence demonstrating the existence of a work policy requiring the reporting of accidents to Employer's safety department or that Claimant was aware of such a policy[5]; and (2) that he was excused from notifying Employer's safety department of the accident because he reasonably believed that Employer's policy did not require more than the notification received by the employee in Employer's garage after he had returned his truck.

As noted above, pursuant to Section 402(e) of the Law, an employee is ineligible for unemployment compensation benefits when he had been discharged from work for willful misconduct connected with his work. Guthrie v. Unemployment Compensation Board of Review, 738 A.2d 518 (Pa. Cmwlth.

[4] This Court's scope of review in an unemployment compensation appeal is limited to determining whether an error of law was committed, whether constitutional rights were violated, or whether necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa.C.S. § 704; Hercules, Inc. v. Unemployment Compensation Board of Review, 604 A.2d 1159 (Pa. Cmwlth. 1992).

[5] As a corollary to this allegation of error, Claimant also contends that the Board erred in considering his minor accident in December of 2008 in determining that his actions constituted willful misconduct. However, as outlined above, the Board determined that Claimant was discharged for failing to notify Employer of the accident which took place on April 14, 2009, and not for failing to notify Employer of the accident that occurred in December of 2008. As a result, Claimant's allegation of error in this regard is patently without merit.

1999). The burden of proving willful misconduct rests with the employer. Id. Whether an employee's conduct constitutes willful misconduct is a question of law subject to this Court's review. Id.

Although willful misconduct is not defined by statute, it has been described as: (1) the wanton and willful disregard of the employer's interests; (2) the deliberate violation of rules; (3) the disregard of standards of behavior that an employer can rightfully expect from his employee; or (4) negligence which manifests culpability, wrongful intent, evil design, or intentional and substantial disregard for the employer's interests or the employee's duties and obligations. Id. (citing Kentucky Fried Chicken of Altoona, Inc. v. Unemployment Compensation Board of Review, 309 A.2d 165, 168-169 (Pa. Cmwlth. 1973)).

Thus, a violation of an employer's work rules and policies may constitute willful misconduct. Id. An employer must establish the existence of the work rule and its violation by the employee. Id. If the employer proves the existence of the rule, the reasonableness of the rule, and the fact of its violation, the burden of proof shifts to the employee to prove that he had good cause for his actions. Id. The employee establishes good cause where his actions are justified or reasonable under the circumstances. Id.

In addition, it is well settled that the Board is the ultimate finder of fact in unemployment compensation proceedings. Peak v. Unemployment Compensation Board of Review, 509 Pa. 267, 501 A.2d 1383 (1985); Chamoun v. Unemployment Compensation Board of Review, 542 A.2d 207 (Pa. Cmwlth. 1988). Thus, issues of credibility are for the Board which may either accept or reject a witness' testimony whether or not it is corroborated by other evidence of record. Peak; Chamoun. Findings of fact are conclusive upon review provided that the record, taken as a whole, contains substantial evidence to support the findings. Taylor

v. Unemployment Compensation Board of Review, 474 Pa. 351, 378 A.2d 829 (1977). This Court must examine the evidence in the light most favorable to the party who prevailed before the Board, and to give that party the benefit of all inferences that can be logically and reasonably drawn from the testimony. Id.

Claimant contends that there is not sufficient evidence demonstrating the existence of a work policy requiring the reporting of accidents to Employer's safety department, or that he was aware of such a policy, and that he was excused from notifying Employer's safety department of the accident because he reasonably believed that Employer's policy did not require more than the notification received by the employee in Employer's garage after he had returned his truck. However, when viewed in a light most favorable to Employer, our review of the certified record in this case demonstrates that there is substantial evidence supporting the Board's findings regarding the existence of Employer's policy requiring the reporting of accidents, the reasonableness of the policy, and the fact of its violation. See N.T. 6/15/09 at 3-4[6]; N.T. 8/19/09 at 15-16, 18.[7] More

[6] In particular, Employer's director of safety testified, in pertinent part, as follows:

> R Okay. Before we go any further it may be obvious you have a policy about if you're in an accident you have to report it?
>
> EW Yes, sir. It's in the company policy that [Claimant] signed.
>
> R Okay.
>
> EW It's based on points. In there some of those things say direct termination; some put you at 11 points. Eleven points meaning it's my judgment.
>
> R Okay.
>
> EW I can either – you know I don't have to terminate someone. I can basically give them a warning and say, "hey you know anytime you get into an accident you need to report it to safety."
>
> R Okay. So, this is a relatively minor accident on December

(Continued....)

20th, so that merited just a warning?

EW Yes it was. And I think the total damage done to the vehicle was $333.

R Okay.

EW So, not a major accident, but still it needs to be reported to safety.

* * *

R Okay.

EW Around 4/14 of '09 [Claimant] was down in Maryland fueling his truck at a truck stop. Prior to pulling away [Claimant] didn't take the hose out of the tank and ended up ripping the fuel hose off the pump. And then drove all the way back to Scranton with it hanging out.

R Wow. No one noticed that?

EW He didn't.

R Okay.

EW The garage did when he pulled in with the hose hanging out of the tank. Company procedure is anytime you're involved in an accident you need to fill out an accident report. [Claimant] didn't do that. He took the hose out of the tank, put the cap on and drove home. I called him the following morning and had him bring his truck to the yard. And let him know that he was terminated for not reporting accidents.

* * *

R Okay. Sure. Sure. Have any explanation as to why he didn't report that last accident or even the one in December? Was there any explanation as to why he didn't report it?

EW He didn't give me one, sir.

[7] Employer's director of safety later testified, in pertinent part, as follows:

R We don't know if it happened but he said he told the dispatcher. So your testimony would be if he told a dispatcher the dispatcher would tell him to fill out an accident report?

EW Then I would get a phone call.

R And you would get a phone call. Okay.

(Continued....)

specifically, the testimony of Employer's director of safety support the Board's findings in this regard. Id.

As noted above, the Board was free to credit the foregoing evidence regarding the violation of Employer's policies and to discredit evidence to the contrary. Peak; Chamoun. In addition, those findings are conclusive on appeal as they are supported by the foregoing substantial evidence. Taylor. As Employer satisfied its burden of proof in this regard, the burden then shifted to Claimant to establish good cause such that his actions were justified or reasonable under the circumstances. Guthrie.

> EW No matter what time of day I would get a phone call.
>
> R Okay even on a minor accident like this?
>
> EW Even a minor accident. Because there's certain steps that we have to take in the trucking industry depending on the severity of the accident. (Inaudible) depending on the severity, if there's an injury, if there is a citation issued or if there is a tow there is only so much time I have to get that driver breathalyzed and drug tested.
>
> * * *
>
> R All right well that's an issue of credibility and that's up to the Board now to decide whether or not you're cred[ible] or he's cred[ible]. Okay so you're saying everybody gets the training. You're supposed to fill out a report. That was the first incident about the one in December. Your testimony from the first hearing was that resulted in a warning to him, correct?
>
> EW Correct. I let him know the procedure, the proper procedure and gave him the benefit of the doubt.
>
> * * *
>
> CL So isn't it true that when [Claimant] reported the accident to the person in the yard that he felt it was apparent as to what happened with the accident?
>
> EW No ma'am, because I had told him in December that he needed to notify safety.

In support of his burden, Claimant cites to evidence supporting his assertion that he was not aware of the policy, and that his actions did not constitute willful misconduct. See Appellant's Brief at 13-18. However, in its opinion, the Board specifically stated, "[t]he Board notes the conflicts in the testimony and finds the testimony of the employer witness credible that he informed the claimant after the first incident that all accidents must be reported to the safety department…", and that "[t]he claimant did not have cause for violating the employer's reasonable policy…." Board Opinion at 3.

As noted above, the Board is the ultimate finder of fact in unemployment compensation proceedings. Peak; Chamoun. In addition, issues of credibility are for the Board which may either accept or reject a witness' testimony whether or not it is corroborated by other evidence of record. Id. Thus, the fact that there is evidence cited by Claimant in his appellate brief which contradicts the Board's determinations with respect to the violation of Employer's policy does not compel the conclusion that the Board's determinations in this regard should be reversed. See, e.g., Tapco, Inc. v. Unemployment Compensation Board of Review, 650 A.2d 1106, 1108-1109 (Pa. Cmwlth. 1994) ("[T]he fact that Employer may have produced witnesses who gave a different version of events, or that Employer might view the testimony differently than the Board, is not grounds for reversal if substantial evidence supports the Board's Findings.").

In short, there is ample substantial evidence demonstrating the existence of Employer's policy regarding the reporting of accidents, the reasonableness of the policy, and the fact of its violation. In short, we will not accede to Claimant's request to revisit the Board's credibility determinations in this regard, and the Board did not err in determining that Claimant was ineligible for benefits pursuant to Section 402(e) of the Law by violating Employer's policy.

See Jefferis v. Unemployment Compensation Board of Review, 422 A.2d 1232, 1233 (Pa. Cmwlth. 1980) ("We believe that the claimant's testimony, standing alone, constituted sufficient evidence for the Board to find him to have been involved in, and to be aware of the accident concerned. Moreover, the Board specifically rejected, on the basis of lack of credibility, the claimant's contention that he had not been so involved. Because there is substantial evidence to support this finding and because this finding ultimately depends upon a resolution of credibility as to which the Board is the sole and final arbiter, we must dismiss the claimant's argument. Because there is no question that the claimant failed to notify the employer of the accident as required by the employer's rules, we must conclude that the claimant was discharged for willful misconduct and is ineligible for unemployment benefits.") (citation omitted).

Accordingly, the order of the Board is affirmed.

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JAMES R. KELLEY, Senior Judge

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O R D E R

AND NOW, this 13th day of April, 2010, the order of the Unemployment Compensation Board of Review, dated September 16, 2009 at No. B-488712, is AFFIRMED.

JAMES R. KELLEY, Senior Judge