

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Christopher W. Lewis,	:	
Petitioner	:	
	:	
v.	:	No. 2071 C.D. 2009
	:	SUBMITTED: June 4, 2010
Unemployment Compensation	:	
Board of Review,	:	
Respondent	:	

BEFORE: **HONORABLE BONNIE BRIGANCE LEADBETTER**, President Judge
 HONORABLE P. KEVIN BROBSON, Judge
 HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER**

FILED: August 6, 2010

Christopher W. Lewis (Claimant) petitions this court for review of the order of the Unemployment Compensation Board of Review (Board) determining that he was ineligible for unemployment compensation benefits due to willful misconduct under Section 402(e) of the Unemployment Compensation Law (Law).¹ After review, we affirm.

Claimant was employed as a full-time over-the-road truck driver with B & R Trucking, Inc. (Employer), when he was discharged on April 30, 2009, for

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. § 802(e). This section provides that an employee shall be ineligible for compensation for any week in which his unemployment is due to his discharge or temporary suspension from work for willful misconduct connected with his work.

failure to timely turn in his driver logs to Employer. Claimant filed a claim for unemployment benefits with the Indiana Unemployment Center (UC), which denied benefits on the basis that he had voluntarily terminated his employment without necessitous and compelling reason.² Claimant appealed and a hearing was held before a referee at which Claimant and Employer's president, Barbara Trout, appeared and testified. The referee found that Claimant "continually failed to turn in his daily logs on a timely basis" and that he "had been warned about his failure to turn in paperwork on time." Referee's Decision/Order, dated July 2, 2009, Findings of Fact Nos. 6 and 8. The referee concluded that Claimant was discharged for willful misconduct connected with his work and denied benefits under Section 402(e).³ Claimant appealed the referee's decision to the Board, which, after adopting the findings of the referee, found that the "claimant was aware of DOT regulations and the employer's policy requiring drivers to turn in logs, the claimant was repeatedly warned of the necessity to turn in logs, and the claimant repeatedly failed or refused to turn in the required logs." Board's Order, Decision No. B-488990, dated September 22, 2009, at 1. The Board found the Claimant not credible and that his clear insubordination amounted to willful misconduct. The Board therefore affirmed the decision of the referee. Claimant now appeals to this court.

Claimant raises a single issue in this appeal, specifically whether his action in not turning in his driver's logs on a timely basis was willful misconduct

² The UC service center considered Claimant's eligibility under both Sections 402(b) and 402(e) due to a conflict over whether he had been discharged or quit. Based on the available information, the UC service center determined that Claimant had initiated the separation and that he had not shown necessitous and compelling reasons for quitting. Therefore, it denied benefits under Section 402(b) of the Law, 43 P.S. § 802(b).

³ 43 P.S. § 802(e).

under the Law. Claimant argues that he had an understanding with Employer that if he turned in his log books late, he would be punished only by not receiving his paycheck until such time as he turned in the log books. Claimant testified that Employer never informed him that his failure to turn in his log books on time could lead to his termination. Claimant further argues that because his conduct was accepted by Employer and Employer never notified him that failure to turn in his log books on time would result in his discharge, his conduct does not constitute willful misconduct under the Law.

Willful misconduct is defined as an act of wanton or willful disregard of an employer's interests; a deliberate violation of its rules; a disregard of the standards of behavior that an employer has the right to expect of an employee; or negligence that indicates an intentional disregard of an employer's interests or a disregard of the employee's duties and obligations to the employer. *Dep't. of Transp. v. Unemployment Comp. Bd. of Review*, 755 A.2d 744 (Pa. Cmwlth. 2000). In order for an employer to prove willful misconduct by showing a violation of a work rule or policy, the employer must show the existence of the rule or policy, the employee's knowledge of the rule or policy, and that it was violated. *Walsh v. Unemployment Comp. Bd. of Review*, 943 A.2d 363 (Pa. Cmwlth. 2008). The employer bears the burden of proving willful misconduct, which, if proven, shifts the burden to the claimant to prove that he had good cause for his actions. *Id.*

At the hearing, Employer's witness, Barbara Trout, testified that as a commercial driver's license holder, Claimant was aware of the Department of Transportation (DOT) regulation which requires truck drivers to turn in their daily log books within 13 days of returning home from a delivery. Ms. Trout testified that Employer's policy was that the driver had to turn in his logs and paperwork at

the end of his load. Ms. Trout stated that on at least six occasions, she verbally warned Claimant that he needed to turn in his logs on time and that it caused a problem with the payroll department if he did not turn the logs in on time. Ms. Trout testified that Claimant's pay would be withheld if he did not comply with the company directive to turn in the logs on time and that he was warned "weekly" to turn in his paperwork.

Claimant testified that when he was fired, it was for refusing to take a load and nothing was said about his paperwork. Claimant testified that Employer did not give drivers enough time to complete a load – from picking up the load, to delivery, to returning the truck, and that was why his paperwork was late. However, Claimant admitted that he often turned in his log books late, that he was aware that DOT regulations require that he turn in the log books within 13 days of returning from a delivery and that he had had his pay withheld as a result of not turning in his log books/paperwork on time. Claimant testified that it was the routine established between himself and Employer for many years, that "[t]hey would hold my pay as an incentive to turn the paperwork in." Hearing of June 22, 2009, Notes of Testimony (N.T.), at 26-27. Finally, Claimant testified that he was never warned by Employer that he would be fired if he did not turn in his paperwork. *Id.*

Employer established the existence of its policy with respect to the timely filing of a driver's paperwork, Claimant's knowledge of the policy, and that Claimant violated its policy. Claimant's reasons for not following Employer's policy were not credited by the Board. The Board is the ultimate fact finder and is, therefore, entitled to make its own determinations as to witness credibility and evidentiary weight. *Walsh*, 943 A.2d at 368. The fact that Claimant's failure to

follow the rule on other occasions only led to his paycheck being withheld does not constitute good cause for violating the rule, nor preclude Employer from terminating him for his continued disobedience. It is clear from Employer's testimony that such conduct was not condoned, and that Claimant was warned repeatedly about not turning in his paperwork on a regular basis. It is well settled that, in general, "an employee's repeated direct refusal to perform an assigned duty or to follow an employer's instructions constitutes willful misconduct." *White v. Unemployment Comp. Bd. of Review*, 431 A.2d 1161, 1162 (Pa. Cmwlth. 1981) (citation omitted). The fact that Employer fired Claimant after repeated violations of its policy without first warning him that this was a possible consequence is irrelevant. Employer was not required to prove that it warned Claimant that he would be fired if he continued to file his paperwork late. *See Graham v. Unemployment Comp. Bd. of Review*, 840 A.2d 1054 (Pa. Cmwlth. 2004) (noting that the claimant was aware that his job required him to relocate and that his failure to do so was willful misconduct; employer did not have to show that he was warned that he would be fired if he did not comply with the relocation requirement).

Claimant knew the rule and repeatedly violated the rule. This is enough to establish willful misconduct under the Law. Accordingly, we affirm the order of the Board denying Claimant benefits on the basis that he is ineligible due to his willful misconduct.

BONNIE BRIGANCE LEADBETTER,
President Judge

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Board of Review,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 6th day of August, 2010, the order of the Unemployment Compensation Board of Review in the above- captioned matter is hereby AFFIRMED.

BONNIE BRIGANCE LEADBETTER,
President Judge