

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Joyce A. Pellegrini, :
Petitioner :
 :
v. : No. 210 C.D. 2012
 : Submitted: July 13, 2012
Unemployment Compensation :
Board of Review, :
Respondent :

BEFORE: HONORABLE DAN PELLEGRINI, President Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE LEAVITT

FILED: October 26, 2012

Joyce A. Pellegrini (Claimant) petitions for review of an adjudication of the Unemployment Compensation Board of Review (Board) denying her claim for unemployment compensation benefits. In doing so, the Board affirmed the decision of the Referee that Claimant was not eligible for benefits under Section 402(e) of the Unemployment Compensation Law¹ (Law) because of her willful

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §802(e). It provides, in relevant part, as follows:

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 connected with his work....

misconduct in not completing specific work assignments in accordance with her employer's directives. Claimant contends that the Board erred in light of Claimant's testimony that she worked to the best of her ability but was simply unable to complete her assigned tasks. Discerning no merit to this argument, we affirm.

Claimant was employed by Aston Medical Clinic (Employer) as a full-time Medical Secretary and Receptionist from April 2010 until May 2011.² Part of Claimant's job was to contact patients after their clinic appointments to make sure that they were undergoing whatever medical tests may have been ordered. Claimant was required to document her patient contact efforts, using specific procedures. On May 31, 2011, Employer terminated Claimant's employment because she had failed to contact patients, despite multiple prior and written warnings that she must do so.

Claimant applied for unemployment benefits. The Duquesne UC Service Center denied benefits and Claimant appealed. A Referee held a hearing where both Claimant and Employer appeared and presented evidence.

Employer's Practice Administrator, Melizza Dimat, testified on behalf of Employer. She explained that Employer's medical malpractice insurer requires Employer to have a patient follow-up tracking system. All employees are instructed on the proper follow-up and documentation procedures to use in this effort. These procedures are crucial because Employer could be vulnerable to a lawsuit should a patient not go for a required medical test and Employer was unable to document its effort to follow-up with the patient about testing.

² In October 2000, Claimant was employed by Employer's predecessor, Aston Medical Center, which was sold to the new owners, *i.e.*, Employer, in April 2010.

Dimat personally audits Employer's computer tracking system to ensure that employees are following up with patients and properly documenting their follow-ups. On December 10, 2010, Dimat gave Claimant a verbal warning after her audits revealed that Claimant was not documenting all of her follow-ups. This was followed one week later with a written warning.

Dimat testified that Claimant "was doing well" and complying with the office follow-up and documentation procedure after the December 2010 written warning. Reproduced Record at 16a (R.R. ____). However, Dimat issued a second written warning on April 12, 2011, after an audit showed that Claimant was again failing to document patient follow-ups. This warning informed Claimant that any further infractions would result in immediate termination. After the April warning, Claimant "was doing okay again" and was properly documenting her follow-ups for a time. R.R. 18a. However, when Dimat performed an audit on May 27, 2011, she uncovered, again, an absence of required documentation, causing Employer to terminate Claimant's employment.

Claimant testified in support of her claim. Claimant acknowledged the existence of Employer's follow-up and documentation policy and that she had received written warnings in December 2010 and April 2011 for failing to conform to the policy. Claimant testified, however, that Employer's office was very busy and her job entailed more than patient follow-ups. She was also responsible for answering the telephone; calling insurance companies; scanning documents; pre-sorting test orders; submitting referrals to specialists; and pulling office notes and diagnostic test results from patient files to give to specialists. In addition, when one of Employer's two other employees was out of the office, Claimant had to do

that employee's job duties in addition to her own. Because she was so busy, she did not always have time to do the patient follow-ups.

Claimant had one week of vacation scheduled beginning May 20, 2011. Claimant testified that she was supposed to complete eight patient follow-ups before leaving for vacation. Claimant did three but ran out of time to do the rest. Claimant spent her last day in the office before her vacation scanning documents because she did not want this burden to fall on the other employees while she was away. Claimant printed out a report showing her incomplete follow-ups and told the other two employees that she was leaving the report on her desk. Claimant "assumed" that Dimat would complete the follow-ups for Claimant while she was away. When Claimant returned from vacation, she was fired. Claimant testified that she worked to the best of her ability given her workload.

The Referee found that Claimant had the ability to do the work as required, because she had successfully done so after prior warnings. The Referee further found that Claimant's actions could have exposed Employer to legal liability. Based on these findings, the Referee concluded that Claimant's actions amounted to willful misconduct. Accordingly, the Referee denied benefits under Section 402(e) of the Law.

Claimant appealed. The Board adopted the Referee's findings of fact and conclusions of law and affirmed the Referee's decision. The Board explained its decision on the fact that Claimant knew her job was in jeopardy for failing to complete patient follow-ups, but went on vacation leaving behind "incomplete

documentation without attempting to ensure that it was completed.” R.R. 1a. Claimant now petitions this Court for review.³

On appeal, Claimant presents one issue for our consideration, namely, that the Board erred in concluding that Claimant engaged in willful misconduct. Claimant argues that the Board failed to consider evidence in the record showing that Claimant worked to the best of her ability at all times and that her failure to do and document every assigned patient follow-up was justifiable and reasonable under the circumstances.

We begin with a review of the law on willful misconduct. An employee who engages in willful misconduct is ineligible for unemployment compensation benefits under Section 402(e) of the Law. The employer has the burden of proving willful misconduct on the part of a discharged employee. *Pettyjohn v. Unemployment Compensation Board of Review*, 863 A.2d 162, 164 (Pa. Cmwlth. 2004).

Although not statutorily defined, the Pennsylvania Supreme Court has defined willful misconduct to include a “deliberate violation of the employer’s rules.” *Rebel v. Unemployment Compensation Board of Review*, 555 Pa. 114, 117, 723 A.2d 156, 158 (1998). The employer must show that it had a reasonable work rule or that it made a reasonable request of the claimant, but the claimant did not comply. *ATM Corporation of America v. Unemployment Compensation Board of Review*, 892 A.2d 859, 865 (Pa. Cmwlth. 2006). The burden then shifts to the claimant to show that she had good cause for her actions, *i.e.*, that her actions were

³ In unemployment compensation appeals, our review is limited to determining whether the Board’s adjudication is in violation of constitutional rights, whether errors of law were committed, or whether findings of fact are supported by substantial evidence. *Kirkwood v. Unemployment Compensation Board of Review*, 525 A.2d 841, 843 (Pa. Cmwlth. 1987).

“justifiable or reasonable under the circumstances.” *Department of Corrections v. Unemployment Compensation Board of Review*, 943 A.2d 1011, 1015 (Pa. Cmwlth. 2008) (quoting *Frumento v. Unemployment Compensation Board of Review*, 466 Pa. 81, 87, 351 A.2d 631, 634 (1976)). “The reasonableness of the employer’s request and good cause for the employee’s actions are evaluated in light of all the attendant circumstances.” *Department of Corrections*, 943 A.2d at 1015-16. Whether a claimant’s actions constitute willful misconduct and whether a claimant proved good cause are both questions of law fully reviewable by this Court. *Id.* at 1016.

Claimant acknowledges that Employer had a patient follow-up policy; that she was instructed on the policy; and that she occasionally violated the policy. Claimant argues that the Board erred by ignoring her testimony that her occasional lapses were not her fault. She points out that Employer never refuted the fact that her burdensome workload made it impossible for her to complete all of her assigned tasks. Claimant argues that the Board further erred by not considering the reasonableness of Claimant’s conduct in light of her heavy workload.

Claimant asserts that the Board’s finding that Claimant went on vacation leaving behind “incomplete documentation without attempting to ensure that it was completed” is not supported by substantial evidence. R.R. 1a. To the contrary, Claimant printed out a list of outstanding follow-ups and left it on her desk, assuming Dimat would complete them. Further, it was Dimat’s job to cover for Claimant in her absence.

The Board responds that Employer had warned Claimant twice because of problems with her patient follow-ups, and Claimant knew that any further infractions would result in termination. Under those circumstances,

Claimant's failure to at least tell her supervisor that she had not completed the follow-ups rose to the level of willful misconduct.

There is no dispute that Claimant's workload included many different responsibilities. However, Employer did not fire Claimant for failing to keep up with her workload in general. If it had, Claimant's evidence that she worked to the best of her ability may have been adequate to rebut a claim of willful misconduct.⁴ Instead, Claimant was fired, specifically, for leaving for vacation without completing her patient follow-ups after receiving a final written warning that any further violation of the follow-up policy would result in immediate termination.

Claimant does not contend that she could not have completed the follow-ups before her vacation. Instead, Claimant spent her last day before vacation scanning documents, lest that job fall on the other employees in her absence.⁵ Simply put, Claimant faced a choice between completing her follow-ups, a chore that if left undone would result in termination, and scanning

⁴ Being discharged for failing to complete work tasks does not always disqualify an employee from receiving unemployment compensation benefits. Mere incompetence, inexperience or inability to perform a job generally does not constitute willful misconduct. *Culbreath v. Unemployment Compensation Board of Review*, 426 A.2d 1267, 1268 (Pa. Cmwlth. 1981). On the other hand, as this Court has explained:

[I]t is well-established that an employee's failure to work up to his or her full, proven ability, especially after multiple warnings regarding poor work performance, must be construed as willful misconduct because such conduct demonstrates an intentional disregard of the employer's interest or the employee's obligations and duties.

Scott v. Unemployment Compensation Board of Review, 36 A.3d 643, 648 (Pa. Cmwlth. 2012).

⁵ Claimant testified:

I wanted to get all my scanning done so the other two girls in the office would not have to do that part of my job while I was away.... I did not want to leave the burden to my two co-workers.

R.R. 23a.

documents, a chore not given any particular priority by Employer. Inexplicably, Claimant gave scanning the higher priority, but her choice was not “justifiable or reasonable” in light of Employer’s explicit directive and warning.

Finally, Claimant takes issue with the Board’s factual finding that she left for vacation without ensuring that the required follow-ups would be completed. Claimant points out that she printed out a report of the unfinished follow-ups and told her co-workers she was leaving it at her desk. The Board’s finding is accurate. Claimant did not speak to Dimat about the list. “Assuming” that Dimat would find the list and know what to do with it is hardly securing completion of the follow-ups.

In short, Claimant failed to show that she had good cause for failing to complete the patient follow-ups as instructed. Employer made clear, by written warnings and threat of termination, that follow-ups were a priority. Claimant had the ability to follow Employer’s explicit instructions, but she opted not to, a choice that was not “justifiable or reasonable under the circumstances.” Therefore, Claimant’s conduct constituted willful misconduct, and the Board did not err in denying benefits.

Accordingly, the order of the Board is affirmed.

MARY HANNAH LEAVITT, Judge

