

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Michael E. Gribbin,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
Unemployment Compensation	:	
Board of Review,	:	No. 219 C.D. 2011
	:	
Respondent	:	Submitted: October 7, 2011

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER

FILED: October 31, 2011

Michael E. Gribbin (Claimant) petitions this Court for review of the January 14, 2011 order of the Unemployment Compensation Board of Review (UCBR) affirming the decision of a Referee denying benefits. Claimant essentially presents one issue for this Court's review: whether Claimant engaged in willful misconduct. For the reasons set forth below, we affirm the UCBR's order.

Claimant was hired as a maintenance manager for C.W. Thomas (Employer) beginning December 28, 2005 and ending August 31, 2010. Claimant was promoted to electro mechanic on August 16, 2010. Employer has specific policies against insubordination, concerted or deliberate restriction of output, refusal to accept work assignments, and gross negligence. All of these policies provide for possible termination for the first offense. Claimant was aware of these policies.

On August 30, 2010, Richard Pomfret, the Director of Operations for Employer, asked Claimant to weld some brackets in a rear warehouse. Claimant refused stating that he needed a welder, however, he had his own welder with him. Claimant's job description requires him to do some welding and to use his own tools. Mr. Pomfret told Claimant to remove his equipment from the property and leave for the day. On August 31, 2010, Mr. Pomfret gave Claimant a written reprimand for his refusal to follow instructions. Claimant refused to sign the written reprimand and used profanity towards Mr. Pomfret. Claimant was discharged the same day.

Claimant applied for Unemployment Compensation (UC) benefits. On September 29, 2010, the Philadelphia UC Service Center denied benefits under Section 402(e) of the Unemployment Compensation Law (Law).¹ Claimant appealed, and a hearing was held before a Referee. On November 22, 2010, the Referee affirmed the decision of the UC Service Center. Claimant appealed to the UCBR. On January 14, 2011, the UCBR affirmed the decision of the Referee. Claimant appealed, pro se, to this Court.²

Claimant argues that he did not engage in willful misconduct. Specifically, he contends that he never refused to do the work, he merely said that he did not have the proper welder to do the work; and he did not use profanity, he merely used the term "BS."

This Court has defined the term 'willful misconduct' to mean:

¹ Act of December 5, 1936, Second Ex.Sess., P.L. (1937) 2897, *as amended*, 43 P.S. § 802(e).

² This Court's review is limited to determining whether the findings of fact were supported by substantial evidence, whether constitutional rights were violated, or whether errors of law were committed. *Johnson v. Unemployment Comp. Bd. of Review*, 869 A.2d 1095 (Pa. Cmwlth. 2005).

(1) the wanton and wilful disregard of the employer's interest, (2) the deliberate violation of rules, (3) the disregard of standards of behavior which 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.

Geisinger Health Plan v. Unemployment Comp. Bd. of Review, 964 A.2d 970, 973-74 (Pa. Cmwlth. 2009) (quoting *Kentucky Fried Chicken of Altoona, Inc. v. Unemployment Comp. Bd. of Review*, 309 A.2d 165, 168-69 (Pa. Cmwlth. 1973)). “The burden of proving willful misconduct rests with the employer.” *Geisinger Health Plan*, 964 A.2d at 974 (quoting *Walsh v. Unemployment Comp. Bd. of Review*, 943 A.2d 363, 368 (Pa. Cmwlth. 2008)). “If the employer seeks to satisfy its burden of proof by showing that a claimant violated the employer's work rule, the employer must also show that the rule existed and that the claimant violated that rule.” *Geisinger Health Plan*, 964 A.2d at 974.

Here, Employer's witness, Mr. Pomfret, specifically testified that Claimant refused to do the work because: “[Claimant was] not going to use his equipment on the job.” Original Record (O.R.), Item No. 8 at 8. Further, Mr. Pomfret testified that when he advised Claimant to sign the reprimand, Claimant responded: “F you, I am not going to sign it.” O.R., Item No. 8 at 10. The UCBR is the ultimate fact finder and makes all credibility determinations. *Docherty v. Unemployment Comp. Bd. of Review*, 898 A.2d 1205 (Pa. Cmwlth. 2006). The UCBR is free to accept or reject the evidence presented. *Van Duser v. Unemployment Comp. Bd. of Review*, 642 A.2d 544 (Pa. Cmwlth. 1994). Clearly, the UCBR accepted the testimony of Mr. Pomfret, and rejected Claimant's testimony.

“Substantial evidence is defined as such relevant evidence which a reasonable mind would accept as adequate to support a conclusion.” *Bruce v. Unemployment Comp. Bd. of Review*, 2 A.3d 667, 670 n.3 (Pa. Cmwlth. 2010)

(quotation marks omitted). It is undisputed that Employer's work rules prohibited insubordination, work refusal, and use of profanity, and that Claimant signed an acknowledgement of receipt of the handbook containing said rules. Thus, given Mr. Pomfret's testimony, there is substantial evidence supporting the conclusion that Claimant engaged in willful misconduct. Accordingly, Employer met its burden of proof.

For all of the above reasons, the UCBR's order is affirmed.

JOHNNY J. BUTLER, Judge

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ORDER

AND NOW, this 31st day of October, 2011, the January 14, 2011 order of the Unemployment Compensation Board of Review is affirmed.

JOHNNY J. BUTLER, Judge