

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Violet K. Draine,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 2233 C.D. 2007
	:	SUBMITTED: June 13, 2008
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER**

FILED: July 24, 2008

Violet K. Draine, *pro se*, petitions this court for review of an Unemployment Compensation Board of Review (Board) order finding her ineligible for benefits under Section 402(e) of the Unemployment Compensation Law (Law), Act of December 5, 1936, Second Ex. Sess., P.L. 1937 (2897), *as amended*, 43 P.S. § 802(e) [relating to discharge or temporary suspension from work for willful misconduct in connection with her work].

Initially, the local job center denied Draine benefits under Section 402(e) of the Law. Draine filed a late appeal from this determination and, after a hearing, a referee dismissed her appeal. Draine then appealed to the Board, which remanded for further hearing on the merits of the case. After a hearing at

which both parties testified, the Board accepted Draine's appeal as timely, but denied her claim under Section 402(e).

The Board found in pertinent part as follows. Draine last worked as a support counselor for Lifepath, Inc. (Employer) from January 30, 2006. Her last work day was March 2, 2007. Employer operates group homes for disabled persons. Each home has a vehicle for program use. Employer has a policy, of which Draine knew, prohibiting personal use of its vehicles. Due to large gas purchases on consecutive days, Employer's fiscal department suspected that somebody was misusing Employer's vehicle. Employer investigated and found discrepancies with the vehicle's actual mileage as compared to mileage that would have been incurred by program use. Employer's investigation uncovered that Draine was working on two of the questionable dates in January and February. Employer confronted Draine and she admitted to using the vehicle for personal reasons in January. She also had the employer's vehicle over the weekend in February. Draine was discharged for violating Employer's policy against personal use of its vehicles. *See* Board's Findings of Fact Nos. 1-9, Decision mailed October 15, 2007 at 1-2. The Board stated that it found Employer's witnesses' testimony more credible than Draine's testimony, and that Draine, without good cause, violated Employer's known policy against personal use of its vehicles. Draine now appeals to this court.

We explained in *Glenn v. Unemployment Compensation Board of Review*, 928 A.2d 1169, 1172 (Pa. Cmwlth. 2007):

The Court has defined willful misconduct as the wanton and willful disregard for an employer's interests; a deliberate violation of an employer's rules; a disregard for standards of behavior which an employer can rightfully expect of an employee; or negligence

indicating an intentional and substantial disregard of the employer's interest or an employee's duties or obligations.

The Board, as the ultimate fact-finder, resolves any evidentiary conflicts and makes all necessary credibility determinations. *Id.* On appeal, its findings are conclusive so long as there is substantial evidence in the record to support them. *Id.*

In the statement of facts portion of her brief, which is unclear at best, Draine appears to assert that, in January, Kim Schumacher, her program supervisor, called early one morning, asking Draine to pick her up from a bar where Schumacher had taken one of Employer's cars. Draine indicates that Schumacher was intoxicated and had lost the car's keys; she further indicates that she drove Schumacher back home and, after a couple of days of going back and forth trying to locate the keys, they were finally successful in obtaining them from a barmaid. Draine does not state whether she drove one of Employer's other cars to pick up Schumacher, or if she drove her own car. With respect to the February incident, Draine states that, in contravention of the testimony of one of Employer's witnesses, she could not have had the vehicle from Employer's Saybrook site because she was working at the employer's Orange Street site during the relevant time period.

Moreover, Draine's entire argument on the merits of the matter is as follows:

[I]t is clear that Claimant had a necessitous and compelling reason for being terminated from her employment. She was subjected to being wrongfully accused of using the job vehicle and gas card. Claimant was not the only person using the vehicle or gas card. Claimant supervisor Kim Schumacher was not very professional when it came to her job staff and

clients, while intoxicated when Claimant was working. Claimant again was very upset for being terminated without substantial evidence and then later terminated for something that happened two months early [sic] before Claimant termination [sic].

See Argument section, Draine's brief at 11.

Our review of the record satisfies us that Draine never testified to having to rescue Schumacher from a bar in January, because she was stranded with Employer's car. Rather, Draine testified only that she could not remember anything about the January incident for which she was terminated, while Ken Leach, Employer's senior associate director, credibly testified that Draine admitted to him that she had used Employer's vehicle for personal reasons that month. Draine's assertions as to why the Board erred in finding her ineligible for benefits under Section 402(e) of the Law are not only unconvincing, they amount to nothing more than disagreeing with the Board's findings of fact. Because those findings are amply supported in the record, we must affirm.

BONNIE BRIGANCE LEADBETTER,
President Judge

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ORDER

AND NOW, this 24th day of July, 2008, the order of the Unemployment Compensation Board of Review in the above-captioned matter is hereby AFFIRMED.

BONNIE BRIGANCE LEADBETTER,
President Judge