

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Shirley A. Douglas,	:	
Petitioner	:	
	:	
v.	:	No. 2237 C.D. 2007
	:	SUBMITTED: April 25, 2008
Unemployment Compensation	:	
Board of Review,	:	
Respondent	:	

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE DAN PELLEGRINI, Judge
HONORABLE MARY HANNAH LEAVITT, Judge**

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER**

FILED: June 5, 2008

Shirley Douglas petitions for review of the order of the Unemployment Compensation Board of Review (Board), which affirmed the referee's denial of unemployment benefits under Section 402(e) of the Unemployment Compensation Law¹ due to her discharge for willful misconduct. After review, we affirm.

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 her unemployment is due to her discharge or temporary suspension from work for willful misconduct connected with her work.

Douglas was employed by Heartland Healthcare and Hospice (Employer) as a full-time Volunteer Coordinator from October 19, 2005 until July 17, 2007. Douglas was suspended pending an investigation by Employer into a complaint it received that Douglas was spending a lot of time on the computer. Employer found personal documents of Douglas' on her work computer that totaled approximately 50 pages of various school assignments. Douglas had previously received her third and final written warning on May 4, 2007, and was aware that her job was in jeopardy if she violated an Employer rule. Employer discharged Douglas on July 23, 2007 for printing personal documents at work without permission. Douglas' subsequent application for unemployment benefits was denied, after which she appealed and a hearing was held before a referee.

At the hearing, Laura Wright, an Administrator with Employer, testified that Douglas was terminated for using the computer for personal reasons during work hours. Wright testified that this was Douglas' third and final warning and that Douglas was terminated after an investigation that yielded over 50 pages of personal documents on Douglas' computer. Wright further testified that she was only able to determine that the personal documents had been updated during work hours but not how much time Douglas had spent working on them during work hours. Wright testified that Douglas used the company printer to print her personal documents, and that Douglas did not have approval or authorization to do so. Wright did admit that on one occasion six months previously, she had given Douglas permission to "print off a couple pages." Hearing of 9/17/07, Notes of Testimony (N.T.), at 7.

Florence Lewis, the Director of Professional Services for Employer, agreed that the reasons given to Douglas for her termination were for misuse of

Employer's computer and printer on company time. Lewis also testified that during the meeting at which Douglas was terminated, she recalled Douglas stating to Wright that she [Douglas] had in the past asked if she could print a document. However, Lewis further testified that Wright's response to Douglas was, "you had asked to . . . print a particular document . . . you did not ask permission to do that [print] on an ongoing manner." *Id.* at 13. Lewis did not remember Douglas asking Wright whether she was allowed to open and print personal e-mail, only that Douglas said "everybody receives personal e-mail." *Id.* at 14.

In rebuttal, Douglas testified that when she was first confronted by Wright, she was told it was because she had written a six page school paper on company time. When she went to the meeting with Wright and Lewis on July 23, 2007, Douglas stated she was then told that the reason she was being terminated was for misuse of office supplies. In particular, Douglas testified that she asked Wright about her investigation and whether Wright had found out whether she "was innocent and she [Wright] said well that doesn't matter . . . because we saw on the printer that you typed - - that you printed out nearly a hundred sheets and that's misuse of office supplies." *Id.* at 16. Douglas testified that she used her e-mail at work because she did not have a personal e-mail address at that time and that she "never realized that I was not allowed to accept personal e-mails . . ." *Id.* at 17. By way of further explanation, she stated that:

it never occurred to me because . . . I've seen other employees do it so I just thought it was something that was allowed to be done because there [are] people in my same office who have done the same thing so I never questioned that just me alone wouldn't be allowed to do that.

Id. Douglas testified that she would never have written or typed her school paper at work, but that she thought she had permission to print her personal e-mails. She also acknowledged that she had received an employee handbook containing the rule prohibiting an employee from misusing Employer's time, equipment, or supplies.

The Referee determined that Employer established the existence of its rule prohibiting misuse of its equipment and supplies and that Douglas had violated the rule when she printed out her school documents without authorization. The Referee also concluded that Douglas did not have an adequate explanation for violating Employer's rule and, therefore, denied benefits on the basis that her termination from employment was due to willful misconduct under Section 402(e) of the Law.

On further appeal, the Board affirmed the decision of the Referee, concluding that while it found Douglas' testimony credible that she did not actually write her school paper at work, it also found her testimony that she believed she had implied consent from Employer to print her personal documents at any time not credible. Douglas now appeals to this Court, raising the issue of whether the evidence supports a finding of willful misconduct when Douglas and other employees had traditionally been allowed to use Employer's computers and printers for personal use in the past.

Section 402(e) of the Law provides that an employee will be ineligible for compensation benefits in any week in which her unemployment is due to her discharge from work for willful misconduct connected with her work. Although the term "willful misconduct" is not defined in the Law, it has been defined by the courts as an act of wanton or willful disregard of the employer's interests, a

deliberate violation of the employer's rules, a disregard of the standards of behavior which the employer has a right to expect of an employee, or negligence indicating an intentional disregard of the employer's interests or of the employee's duties and obligations to the employer. *Navickas v. Unemployment Comp. Review Bd.*, 567 Pa. 298, 304, 787 A.2d 284, 288 (2001)[quoting *Caterpillar, Inc. v. Unemployment Comp. Bd. of Review*, 550 Pa. 115, 703 A.2d 452, 456 (1997)]. Employer bears the burden of proving willful misconduct. *Id.* If the employee can prove that she had good cause for her conduct, it will not be considered willful misconduct. *McClean v. Unemployment Comp. Bd. of Review*, 476 Pa. 617, 620, 383 A.2d 533, 535 (1978).

In concluding that Douglas was ineligible for benefits due to willful misconduct, the Board determined that:

[a]lthough [we] find[] credible the claimant's testimony that she did not type the documents at issue while at work, she did print them on the employer's printer. The claimant did so without prior employer approval. The claimant was aware of the employer's prohibition against personal use of its equipment, and, as she did on prior occasion, should have sought and obtained such approval before she printed the personal documents. The claimant's alleged belief that the approval she received several months earlier was blanket approval to print personal documents and that other employees printed personal documents without prior permission are found not credible. Therefore, the claimant is ineligible for benefits under Section 402(e) of the Law.

Board's Decision and Order, November 9, 2007, pp. 2-3.

It is clear from the evidence that Douglas' conduct in printing multiple school documents using Employer's computer and printer without prior approval or permission from Employer is a violation of Employer's rule

prohibiting such conduct. Moreover, the fact that Douglas knew enough to seek permission on a prior occasion before printing out a school paper, belies her assertions to the contrary that she didn't think she needed to obtain permission since Employer had given her permission once before and that she did not know of the rule until recently. Therefore, after careful consideration of all of the circumstances surrounding Douglas' termination and her asserted reasons for violating Employer's rule, we conclude that Douglas' conduct rose to the level of willful misconduct and, as such, she is ineligible for benefits under Section 402(e) of the Law due to her willful misconduct connected with her work.

Accordingly, we affirm the order of the Board denying benefits.

BONNIE BRIGANCE LEADBETTER,
President Judge

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Board of Review,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 5th day of June, 2008, the order of the Unemployment Compensation Board of Review in the above-captioned matter is hereby AFFIRMED.

BONNIE BRIGANCE LEADBETTER,
President Judge