

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Talaina M. Peterson,	:	
Petitioner	:	
	:	
v.	:	
	:	
Unemployment Compensation	:	
Board of Review,	:	No. 2243 C.D. 2007
Respondent	:	Submitted: April 11, 2008

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Judge
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY

FILED: May 12, 2008

Talaina M. Peterson (Claimant) petitions for review of the order of the Unemployment Compensation Board of Review (Board) which affirmed the referee’s denial of benefits under Section 402(e) of the Unemployment Compensation Law (Law).¹

The facts, as initially found by the referee and adopted by the Board, were as follows:

1. The Claimant began working for Mercy Hospital of Pittsburgh on July 31, 2006 and last worked on May 23, 2007 as a full-time Lab Information Associate at a final rate of \$10.25 per hour.

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

2. On May 18, 2007, the Claimant was working a shift from 10:00 p.m. on May 18, 2007 through 6:00 a.m. on May 19, 2007.
3. At approximately 4:00 a.m. in the morning, the Claimant notified her coworker that the Claimant had received a telephone call informing her that someone had broken into her home.
4. At that time, the Claimant informed her coworker that she was taking a break and going home to check on the situation.
5. The Claimant called her coworker again at 4:30 a.m. and stated that she expected to return within fifteen to twenty minutes.
6. A relative of the Claimant was found murdered outside her home that morning.
7. The Claimant returned to work at 5:00 a.m.
8. The Claimant punched out and left for the day because she was upset by the situation.
9. The Employer's policies allowed for the Claimant to leave her shift early if work was completed and leaving was agreeable with coworkers.
10. The Claimant complied with the Employer's policy for leaving early.
11. The Claimant's coworker reported the situation to the supervisor, believing that the Claimant might be eligible for some type of compensable leave for the time taken in the situation.
12. The Employer discovered that the Claimant had not punched out on the time clock until she left at 5:00 a.m.
13. The Employer repeatedly asked the Claimant what time she left the building for the first time.

14. The Claimant repeatedly answered that the first time she left the building was 5:00 a.m.

15. The Employer's policy requires employees to punch off the clock anytime they take a break away from their immediate work area.

16. The Claimant had previously received warning on this policy.

17. The Employer's policy also provides for discharge for falsification of records/dishonesty.

18. The Claimant was entitled to a fifteen-minute break and a thirty-minute lunch break.

19. The Claimant's justification was that she believed that she did not have to punch off the clock to take her breaks.

20. The Employer discharged the Claimant for falsification of her time.

21. The Employer's policy on punching out was subject to a progressive disciplinary policy.

22. The conditions of that progressive discipline policy were not met in this case.

Referee's Decision, August 10, 2007, (Decision), Findings of Fact Nos. 1-22 at 1-2.

The Board adopted the referee's reasoning that Employer established that it had a policy for providing for discharge for falsification of time records/dishonesty. The referee further reasoned:

Claimant's statements, upon questioning about her time of leaving, were deliberate lies and misleading and if relied upon by the Employer would have resulted in payment of wages to which the Claimant was not

entitled. By validating the inaccurate punch out times, the Claimant effectively falsified her time records and engaged in conduct which falls below the level an Employer could reasonably expect of its employees even in the absence of a written policy. The burden thus shifts to the Claimant to show either that the Employer's policy was unreasonable or that the Claimant was justified in violating the policy.

. . . . The Claimant testified at hearing that she was justified because she did not believe that she was required to punch out. . . . The Employer provided competent testimony that the Claimant had previously been counseled on the punch out procedures. The Referee finds the Employer's testimony credible as it was generally corroborated by testimony and evidence in the record including the Claimant's admission that there had been an incident involving failure to punch out. Based on the conflict between the Claimant's testimony and the competent and credible evidence in the record, the Referee does not credit the Claimant's justification that she did not know that she had to punch out. Further, even if the Claimant's testimony were believed, it does not explain why the Claimant would deliberately mislead the Employer as to the time she left the premises. The deliberate miscommunication by the Claimant infers that she was attempting to cover up the situation and in and of itself falls below the standards the Employer can reasonably expect of its employees.

Decision at 2-3.

Claimant contends that the Board's finding that Claimant's actions constituted a violation of Employer's policy against falsification of records was not supported by substantial evidence and that her actions did not rise to the level of willful misconduct.²

² This Court's review in an unemployment compensation case is limited to a determination of whether constitutional rights were violated, errors of law were committed, or **(Footnote continued on next page...)**

Initially, Claimant contends that Employer failed to prove that her actions constituted falsification of records because the term “falsification” is not defined in Employer’s policy manual.

The Board found that Claimant punched out at 5:00 a.m. even though she left Employer’s premises at approximately 4:00 a.m. As the time clock is designed to measure the hours an employee actually worked, this Court finds that the Board’s finding that Claimant falsified time records was supported by substantial evidence. Further, Joann Weber (Weber), a coworker of Claimant, testified that Claimant informed her that she had to leave Employer’s premises “right after 4:00, like 4:02 or 4:03.” Notes of Testimony, August 9, 2007, (N.T.) at 9. Laurel A. Stollar, laboratory director for Employer, testified that Claimant’s time card indicated that Claimant punched out at 5:05 a.m. She further testified that the time card did not indicate that Claimant left Employer’s premises at approximately 4:00 a.m. Stollar also testified that it is considered a falsification of records if an employee does not “clock out and clock back in, if you . . . leave the hospital premises.” N.T. at 18. The Board found Employer’s witnesses including Weber and Stollar credible. In unemployment compensation proceedings, the Board is the ultimate fact-finding body empowered to resolve conflicts in evidence, to determine the credibility of witnesses, and to determine the weight to be accorded evidence. Unemployment Compensation Board of Review v. Wright,

(continued...)

essential findings of fact were not supported by substantial evidence. Lee Hospital v. Unemployment Compensation Board of Review, 637 A.2d 695 (Pa. Cmwlth. 1994).

347 A.2d 328 (Pa. Cmwlth. 1975). The credible testimony of Weber and Stollar provides substantial evidence for the determination that Claimant falsified records.

Claimant next contends that her actions did not constitute willful misconduct.

Willful misconduct is defined as conduct that represents a wanton and willful disregard of an employer's interest, deliberate violation of rules, disregard of standards of behavior in which an employer can rightfully expect from his employee, or negligence which manifests culpability, wrongful intent, evil design, or intentional and substantial disregard for the employer's duties and obligations. Frick v. Unemployment Compensation Board of Review, 375 A.2d 879 (Pa. Cmwlth. 1977). The employer bears the burden of proving the existence of the work rule and its violation. Once the employer establishes that, the burden then shifts to the claimant to prove that the violation was for good cause. Peak v. Unemployment Compensation Board of Review, 509 Pa. 267, 501 A.2d 1383 (1985). Willful misconduct may be established where the employer establishes a company policy with respect to reporting absences, and that the employee was aware of that policy and failed to comply with it. Yerger v. Unemployment Compensation Board of Review, 457 A.2d 1333 (Pa. Cmwlth. 1983).

Employer established that it had a work rule forbidding the falsification of records through the submission of its Human Resources Policies and Procedures Corrective Disciplinary Action. Employer introduced the Receipt of Policies and Procedures signed by Claimant which indicated Claimant read the

Corrective Disciplinary Action. Employer also established through the testimony of its witnesses that Claimant falsified her time card by punching out approximately one hour after she left work. Though Claimant testified that she did not believe she had to punch out when she left, the Board found that Employer's policy required an employee to punch out when they took a break off premises. The Board did not believe Claimant's attempted justification. The Board did not err when it found Claimant committed willful misconduct.³

Accordingly, this Court affirms.

BERNARD L. McGINLEY, Judge

³ Although Claimant argues that she should at most receive a second warning for failure to punch out after she previously received a warning under Employer's progressive discipline policy, Claimant ignores the Board's determination that Claimant was discharged for falsifying records.

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ORDER

AND NOW, this 12th day of May, 2008, the order of the Unemployment Compensation Board of Review in the above-captioned matter is affirmed.

BERNARD L. McGINLEY, Judge