

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Monica R. Galiyas,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 2317 C.D. 2010
	:	
Unemployment Compensation	:	Submitted: February 25, 2011
Board of Review,	:	
	:	
Respondent	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE COHN JUBELIRER**

FILED: August 10, 2011

Monica R. Galiyas (Claimant), pro se, petitions for review of an Order of the Unemployment Compensation Board of Review (Board), which found her ineligible for benefits under Section 402(e) of the Unemployment Compensation Law (Law)¹ after her driver’s license was suspended for one year as a result of her guilty plea to driving under the influence of alcohol (DUI). On appeal, Claimant: (1) takes issue with the Board’s credibility determination in favor of Allegheny County (Employer);

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

and (2) argues that she is entitled to unemployment compensation under the Law. 43 P.S. § 802(e).

Claimant applied for unemployment compensation benefits after becoming separated from her employment with Employer. The Unemployment Compensation Service Center (Service Center) issued a determination finding Claimant ineligible for benefits under Section 402(e) of the Law. Claimant appealed the Service Center's determination, and an evidentiary hearing was held before the Unemployment Compensation Referee (Referee). During the hearing, Claimant testified on her own behalf. Additionally, Employer's Administrative Officer of the Department of Administrative Services, Division of Property Assessment, testified on behalf of Employer. Following the hearing, the Referee affirmed the Service Center's determination of ineligibility under Section 402(e). Claimant appealed to the Board, the Board affirmed the Referee's determination, and made the following findings of fact:

1. [C]laimant was last employed as a property assessor by Allegheny County until March 17, 2010.
2. [C]laimant's position required her to maintain a valid driver's license.
3. [C]laimant utilized her personal vehicle in the performance of her duties, which were primarily to assess various properties.
4. In late 2009, [C]laimant was cited with driving under the influence [(DUI)] of alcohol.
5. [C]laimant pleaded guilty to the above charge. As a result her driving privileges were suspended for one[]year.

6. [C]laimant's driver's license suspension began February 24, 2010.
7. [C]laimant initially told the employer that she believed her license suspension was only for 60 days.
8. [E]mployer attempted to accommodate [C]laimant by allowing her to train other employees or by doing office work. Neither task required her to drive.
9. In or about mid-March 2010, [E]mployer became aware that [C]laimant's license suspension was not for 60 days, but for a year.
10. [C]laimant may have been eligible for an occupational limited license at 60 days, but that was not guaranteed.
11. [C]laimant was discharged for failing to maintain a driver's license in accordance with her job description.

(Board Decision, Findings of Fact (FOF) ¶¶ 1-11.) In affirming the Referee's determination finding Claimant ineligible for benefits, the Board specifically credited the testimony of Employer that Claimant's job required that she maintain a valid driver's license. (Board Decision at 2.) Thus, because Claimant admitted to having her license suspended for one year as a result of entering a guilty plea to a DUI charge, the Board concluded that Claimant committed willful misconduct. Claimant now petitions this Court for review of the Board's Order.²

² "The Court's review is limited to determining whether constitutional rights were violated, whether an error of law was committed, whether a practice or procedure of the Board was not followed or whether the findings of fact are supported by substantial evidence in the record." Western & Southern Life Insurance Co. v. Unemployment Compensation Board of Review, 913 A.2d 331, 334 n.2 (Pa. Cmwlth. 2006).

Preliminarily, we note that Claimant’s brief does not conform to the Pennsylvania Rules of Appellate Procedure, particularly Rules 2119(a) (requiring that a brief include citations to the record and precedential authority) and 2119(c) (requiring, among other things, that a brief must make “reference to the place in the record where the matter referred to appears”). Pa. R.A.P. 2119(a),(c). Deficiencies in the brief can result in issues being waived on appeal. See, e.g., Tyler v. Unemployment Compensation Board of Review, 591 A.2d 1164, 1167 (Pa. Cmwlth. 1991) (noting that when a Claimant appeals an issue, but fails to address the issue in the brief, the issue is waived); Hubert v. Greenwald, 743 A.2d 977, 981 (Pa. Super. 1999) (noting that arguments lacking citation to pertinent legal authority are deemed waived on appeal). However, our Court is generally inclined to construe pro se filings liberally. Robinson v. Schellenberg, 729 A.2d 122, 124 (Pa. Cmwlth. 1999). Because Claimant’s non-compliance with the Rules of Appellate Procedure does not completely impair our ability to discern her major issues and arguments, or otherwise preclude meaningful appellate review, we will not quash Claimant’s Petition for Review on these grounds.

We discern that Claimant essentially raises these two issues: (1) Claimant essentially takes issue with the credibility determination of the Board that Claimant needed a valid driver’s license to do her job as a property assessor; and (2) that she is eligible for unemployment compensation benefits under the Law.

We first address whether the Board erred in finding there was sufficient evidence that Claimant needed a valid driver’s license to do her job as a property assessor. The Board credited Employer when it found that Claimant’s position

required her to maintain a valid driver's license and that Claimant used her personal vehicle in the performance of her duties, including assessing properties. (FOF ¶¶ 2, 3.) The Law is clear that the Board is the ultimate finder of fact and arbiter of witness credibility. Peak v. Unemployment Compensation Board of Review, 509 Pa. 267, 269-70, 276-77, 501 A.2d 1383, 1385, 1388 (1985). Thus, as long as the Board's factual findings are supported by substantial evidence, those findings are conclusive on appeal. Geesey v. Unemployment Compensation Board of Review, 381 A.2d 1343, 1344 (Pa. Cmwlth. 1978). At the hearing, Employer testified that Claimant was terminated when she failed to meet one of the minimum requirements of her job position - that she maintain a valid driver's license. (Hr'g Tr. at 5, R. Item 8.) Employer presented the job description for Claimant's property assessor position and it explicitly requires the maintenance of a valid Pennsylvania driver's license. (Hr'g Tr. at 5, Employer's Ex. 3, R. Item 8.) Employer additionally testified that Claimant would need to drive during the course of her duties as an assessor and that "the majority of the[] day is spent in the field visiting properties." (Hr'g Tr. at 6, R. Item 8.) Claimant testified that she has driven when she does her job, but it is not necessary, seemingly referring to the fact that she could obtain bus rides or other rides. (Hr'g Tr. at 14, R. Item 8.) She also acknowledged that her job description required a valid driver's license to be hired, but never before required that one be maintained after hiring. (Hr'g Tr. at 14, R. Item 8.) When asked whether she received a job description at the time she was hired, Claimant stated that she did not, but looked it up online and all job descriptions on the internet say the "same exact thing." (Hr'g Tr. at 14, R. Item 8.) When asked a second time whether she received a copy of this job description for her job upon being hired or whether she was not sure that she received it or not, Claimant said, "No," but added, "I would have it in

my file.” (Hr’g Tr. at 14, R. Item 8.) Claimant further testified that when her license was first suspended, she “could go out with one of the . . . employees as they would drive me to do my properties,” and that she, in fact, did ride out to inspect properties with them and “could train them in the process.” (Hr’g Tr. at 9, 10, R. Item 8). In response to this, Employer explained that this accommodation was made when it was Employer’s belief that Claimant’s license suspension would be for sixty days only, but once it was learned that the suspension would be for one year, Claimant was terminated. (Hr’g Tr. at 15-16, R. Item 8.)

Although Claimant prefers her version of the facts, the Board resolved all conflicts in the evidence in Employer’s favor. That Claimant may have given “a different version of the events, or . . . might view the testimony differently than the Board, is not grounds for reversal if substantial evidence supports the Board’s findings.” Tapco, Inc. v. Unemployment Compensation Board of Review, 650 A.2d 1106, 1108-09 (Pa. Cmwlth. 1994). Our review of the record confirms that substantial evidence supports the Board’s findings that Claimant needed to maintain a valid driver’s license to be able to perform the functions of her job that involved much travelling to properties for assessments to be conducted. When there was a conflict in testimony between Claimant and Employer, the Board, as the arbiter of credibility, credited the Employer’s testimony. Notwithstanding the dispute about whether the job description, at the time Claimant was hired, contained the requirement of *maintaining* a valid driver’s license, there is no dispute that it contained the requirement of possessing a valid driver’s license as a job requirement. Additionally, we have considered the testimony of both parties and conclude that there is substantial evidence that a valid driver’s license was necessary for Claimant

to be able to drive to any property to be assessed, whenever necessary, in order to perform her job.

Next, Claimant argues that the Board erred in concluding that she is ineligible for benefits under the provisions of Section 402(e) of the Law. Section 402(e) of the Law provides that a claimant will not be eligible for unemployment compensation benefits when “his unemployment is due to his discharge or temporary suspension from work for willful misconduct connected with his work.” 43 P.S. § 802(e). Although Section 402(e) does not define the term “willful misconduct,” the Supreme Court has defined it as:

an act of wanton or willful disregard of the employer's interest, a deliberate violation of the employer's rules, a disregard of standards of behavior which the employer has a right to expect of an employee, or negligence indicating an intentional disregard of the employer's interest or of the employe's duties and obligations to the employer.

Frumento v. Unemployment Compensation Board of Review, 466 Pa. 81, 83-84, 351 A.2d 631, 632 (1976) (quoting Moyer v. Unemployment Compensation Board of Review, 110 A.2d 753, 754 (Pa. Super. 1955)). The employer has the burden of proving that an employee was discharged for willful misconduct. Graham v. Unemployment Compensation Board of Review, 840 A.2d 1054, 1056 (Pa. Cmwlth. 2004). Once the employer has established a showing of willful misconduct, “the burden then shifts to the claimant to establish good cause for [his] actions.” Bruce v. Unemployment Compensation Board of Review, 2 A.3d 667, 671 (Pa. Cmwlth. 2010). “A claimant has good cause if his . . . actions are justifiable and reasonable under the circumstances.” Docherty v. Unemployment Compensation Board of Review, 898 A.2d 1205, 1208-1209 (Pa. Cmwlth. 2006). “Whether a claimant’s

conduct rises to the level of willful misconduct is a question of law reviewable by this Court.” Orend v. Unemployment Compensation Board of Review, 821 A.2d 659, 661 (Pa. Cmwlth. 2003).

Here, Claimant admitted that she pleaded guilty to a charge of DUI and that a one year license suspension was imposed. (Hr’g Tr. at 9.) This Court has held that where one of the requirements for employment is the possession of a driver’s license, and there is a connection between the work to be performed and the necessity to have a driver’s license, the employee is ineligible for unemployment compensation benefits where he or she loses the license as a result of a DUI. Williams v. Unemployment Compensation Board of Review, 651 A.2d 708, 710 (Pa. Cmwlth. 1994) (citing Varmecky v. Unemployment Compensation Board of Review, 432 A.2d 635 (Pa. Cmwlth. 1981)); see also Manross v. Unemployment Compensation Board of Review, 572 A.2d 49 (Pa. Cmwlth. 1990) (holding that a truck driver, who was convicted for DUI while off-duty and relied upon a valid driver’s license to perform his job, was ineligible for unemployment compensation benefits pursuant to willful misconduct under Section 402(e) of the Law); Kelly v. Unemployment Compensation Board of Review, 747 A.2d 436 (Pa. Cmwlth. 2000) (holding that claimant’s testimony that she did some driving to pick up meals for the prison, as a corrections officer, was sufficient to establish willful misconduct to disqualify her from receiving unemployment benefits after her driver’s license was suspended as a result of a DUI). Because Claimant was required to maintain a valid driver’s license in order to perform her job, and her license was suspended for one year when she pled guilty to DUI, the Board correctly found Claimant ineligible for benefits based on willful misconduct.

Accordingly, we must affirm the Order of the Board.

RENÉE COHN JUBELIRER, Judge

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Board of Review,	:	
	:	
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ORDER

NOW, August 10, 2011, the Order of the Unemployment Compensation Board of Review in the above-captioned matter is hereby **AFFIRMED**.

RENÉE COHN JUBELIRER, Judge