

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Lynn Miracle,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 250 C.D. 2008
	:	SUBMITTED: July 18, 2008
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE ROCHELLE S. FRIEDMAN, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER **FILED: October 20, 2008**

Lynn Miracle (Claimant) petitions for review of the order of the Unemployment Compensation Board of Review (Board) affirming the referee’s order denying benefits pursuant to Section 402(e) of the Unemployment Compensation Law (Law).¹ Claimant argues that the Board erred as a matter of law in finding that Claimant’s conduct rose to the level of willful misconduct. The Board has in turn filed a motion to quash Claimant’s brief and to dismiss her appeal.

Claimant was employed as an MRI Technologist I at the University of Pittsburgh Medical Center (Employer). Claimant was performing an MRI on a

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. § 802(e). Pursuant to Section 402(e), an employee is ineligible for compensation for any week in which his unemployment is due to willful misconduct connected with his work.

patient and noticed the patient's IV leaking. Concerned there was an infiltrate, Claimant unsuccessfully attempted to call the nurse on duty. After the nurse on duty did not answer the call, Claimant left the MRI room to seek the assistance of a more experienced technologist. Claimant and the other technologist returned to find that the patient lost blood through the IV leak. The other technologist fixed the leak, the result of a dislodged hub, and cleaned up the patient and the area. A third technologist informed Claimant that a nurse wanted Claimant to report the incident in Employer's Risk Master computer program. Claimant did not report the incident in the program. After the incident, the patient had to return for another MRI and made it clear that he did not want to have any contact with Claimant. Claimant was informed of the patient's wish. Despite this, she went back to see the patient in order to give him his watch back. Employer discharged Claimant for three reasons: (1) leaving a patient alone while she went to look for assistance; (2) not entering the incident in the Risk Manager program as she was instructed to do; and (3) visiting a patient to return his watch after he had requested that she have no further contact with him.

Following her dismissal, Claimant filed an application for unemployment compensation benefits, which was subsequently denied. Claimant filed an appeal. A hearing was held before a referee and both parties presented witnesses. The referee affirmed the decision denying Claimant benefits on the basis that leaving the patient alone rose to the level of willful misconduct. Claimant then appealed to the Board, which remanded the matter to the referee to allow Employer the opportunity to present the testimony of witnesses who were not available during the original hearing. After the additional testimony, the Board issued an order affirming the referee's denial of benefits pursuant to Section 402(e)

of the Law because Claimant's failure to follow directives to enter the incident in Risk Manager and to have no further contact with the patient rose to the level of willful misconduct. The Board, however, concluded that Claimant's decision to leave the patient alone while she sought help did not amount to willful misconduct. Claimant's appeal of this decision is now before us.

We will first address the Board's motion to quash Claimant's brief and dismiss the appeal. The Board argues that Claimant's brief is devoid of citation to authority and, therefore, violates Rule of Appellate Procedure 2119(a), which provides:

The argument shall be divided into as many parts as there are questions to be argued; and shall have at the head of each part – in distinctive type or in type distinctively displayed – the particular point treated therein, followed by such discussion and citation of authorities as are deemed pertinent.

The Board further argues that Claimant's brief should be quashed and her appeal dismissed because Rule of Appellate Procedure 2101 states that, "if the defects are in the brief or reproduced record of the appellant and are substantial, the appeal or other matter may be quashed or dismissed."

An examination of Claimant's brief reveals that, although it does not contain citations to case law, it does contain citations to the Unemployment Compensation statute. *See* Claimant's brief at 9, 10, 16. Moreover, the arguments articulated are sufficient to allow the court to engage in appellate review. As such, the Board's argument lacks merit. The motion to quash Claimant's brief and dismiss her appeal is denied.

With respect to the substantive issues, Claimant first argues that the Board erred in finding that her failure to follow the directive to record the incident in the Risk Master program rose to the level of willful misconduct.

While willful misconduct is not defined by statute, it has been judicially described as: (1) the wanton and willful 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.

Guthrie v. Unemployment Comp. Bd. of Review, 738 A.2d 518, 521 (Pa. Cmwlth. 1999) [citing *Kentucky Fried Chicken of Altoona, Inc. v. Unemployment Comp. Bd. of Review*, 309 A.2d 165, 168-69 (Pa. Cmwlth. 1973)]. More specific to this case, we have previously held that a refusal to comply with an employer's reasonable work request constitutes willful misconduct unless the employee has good cause for refusal. *Eckenrode v. Unemployment Comp. Bd. of Review*, 533 A.2d 833 (Pa. Cmwlth. 1987). The employer has the burden of proving that the demand was reasonable, after which the burden falls on the claimant to prove that her response was justified or reasonable under the circumstances. *See Guthrie*.

At the hearing, Marilyn Emrick, an MRI Technologist with Employer, testified that Amy O'Brien, the Radiology Charge Nurse, instructed her to have Claimant enter the incident in the Risk Master program. Notes of Testimony (N.T.) of April 20, 2007, at 12. She further testified that after she relayed this instruction to Claimant, Claimant did not respond to the request. *Id.* O'Brien stated that she saw Claimant after this exchange and she again instructed Claimant to enter the incident in the Risk Master program. Specifically, O'Brien testified:

So while I was in RPU with the patient [Claimant] came out and said that this other technician had told her that I said, for her to write it up as an incident and I said, yes I did, and she said she never had to do that before and I said, well we're going to do it this time.

N.T. of September 7, 2007, at 4. Risk Master is a program used by Employer that tracks procedural failures in order to prevent them in the future. N.T. of May 8, 2007, at 33. It is not difficult to see that such a program would be useful, especially to avoid a repetition of the incident that brought about the case *sub judice*. It is certainly reasonable for Employer to direct Claimant, one of the primary actors in the incident, to report it in Risk Manager.

In support of her claim that it was reasonable for Claimant not to follow the directive, Claimant testified that her direct supervisor, Kim Huggins, told her that she did not need to enter the incident in Risk Manager. *Id.* at 52-53. She repeats this argument in her brief. However, the Board did not find her testimony in this regard credible. Board's op. at 4. "Where there is a conflict in testimony, credibility determinations and the resolution of evidentiary conflicts are within the [Board's] discretion and are not subject to reevaluation on judicial review." *Duquesne Light Co. v. Unemployment Comp. Bd. of Review*, 648 A.2d 1318, 1320 (Pa. Cmwlth. 1994) (citation omitted). Therefore, Claimant failed to meet her burden and unemployment benefits were properly denied,² and we affirm the order of the Board.

BONNIE BRIGANCE LEADBETTER,
President Judge

² Although Claimant challenges both of the Board's findings of willful misconduct, only one finding of willful misconduct is necessary to deny benefits. Therefore, we need not address Claimant's argument that the Board erred in ruling that she committed willful misconduct when she returned a watch to the patient despite his request that she no longer have contact with him.

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 Unemployment Compensation :
 Board of Review, :
 Respondent :

ORDER

AND NOW, this 20th day of October 2008, Respondent's Motion to Quash Petitioner's Brief and Dismiss Her Appeal in the above captioned matter is hereby DENIED. The order of the Unemployment Compensation Board of Review in the above-captioned matter is AFFIRMED.

BONNIE BRIGANCE LEADBETTER,
President Judge