IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Kim M. Triplie, Petitioner	:	
v.	:	No. 2575 C.D. 2009
	:	Submitted: May 28, 2010
Unemployment Compensation Board of Review, Respondent	:	

BEFORE: **HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge**
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE BROBSON **FILED:** September 1, 2010

Petitioner Kim M. Triplie (Claimant) petitions *pro se* for review of an order of the Unemployment Compensation Board of Review (Board). The Unemployment Compensation Referee (Referee) granted Claimant unemployment compensation benefits. The Board reversed and denied Claimant unemployment compensation benefits pursuant to Section 402(e) of the Unemployment Compensation Law (Law)[1] based on willful misconduct. For the reasons set forth below, we affirm.

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

Claimant applied for unemployment compensation benefits after being discharged from her employment as an assistant manager at Latsha & Fisher Inc./Kentucky Fried Chicken (Employer). The Altoona UC Service Center (Service Center) issued a determination, denying benefits under Section 402(e) of the Law for willful misconduct based on insubordination. Claimant appealed the Service Center's decision. Following a hearing, the Referee reversed the Service Center determination and granted unemployment compensation benefits to Claimant. Employer subsequently appealed to the Board. The Board reversed the Referee's decision, thereby denying benefits under Section 402(e) of the Law. Claimant now petitions this Court for review.

During the hearing before the Referee, Claimant testified to the circumstances and events leading to her discharge on July 6, 2009. (Certified Record (C.R.), Item No. 8.) Claimant testified that when she came into work her shift on July 6, Marsha Reed (Reed), the General Manager and Claimant's supervisor, asked Claimant to come into Reed's office. (*Id.* at p.6.) Claimant testified that she did not know why she had been called into Reed's office because, according to Claimant, Reed just kept talking about a prior incident when Claimant apparently worked for Reed due to a family emergency. (*Id.* at pp.6-7.) Claimant said that she kept cutting off Reed and told Reed that "if you have something to say to me concerning the job then say it." (*Id.* at p.7.) Thereafter, Claimant walked out of the office only to be recalled to the office by Reed with a shift supervisor and another employee present as witnesses. (*Id.*) At this second meeting, Reed and Claimant went "back and forth" in reference to Reed's prior family emergency. (*Id.*) Again, Claimant told Reed to "just say what you have to

say . . . say what's on your mind." (*Id.*) Reed then fired Claimant. (*Id.*) Claimant then testified that she used profanity only *after* she had been fired. (*Id.* at p.8.)

Employer countered Claimant's testimony with that of Reed. Reed testified that she called Claimant into her office to discuss Employer's policy that any absence on a holiday required a doctor's excuse, referring to Claimant calling off of work on July 4, 2009. (*Id.* at p.3.) During this first meeting, Claimant "became very ignorant [sic] . . . with me, being rude." (*Id.*) Reed testified that this first meeting only lasted about two minutes because of Claimant's attitude, and that she told Claimant "if you're going to have this attitude today then you can just go ahead and leave." (*Id.* at p.4.) According to Reed, Claimant then said in front of other employees that "I could go F myself and F this job." (*Id.*) Reed testified that she had no intention of firing Claimant at this point, but she still wanted to discuss the July 4 absence with Claimant. (*Id.*) When Claimant came back to the office for the second meeting, with the shift supervisor and other employee present, Claimant "kept . . . belligerently talking to me and [talking to me] rudely." (*Id.*) Furthermore, Reed testified that Claimant "did not want to cooperate and she kept telling me to just say what I had on my mind." (*Id.*) At this point, Reed told Claimant that she was fired. (*Id.*) Reed testified that she fired Claimant for insubordination. (*Id.* at p.5.)

The Board made the following findings of fact:

> 1. The claimant was last employed as an assistant manager by Kentucky Fried Chicken from November 16, 2007 until July 6, 2009 at a final hourly rate of $9.50.
>
> 2. The claimant called off on July 4, 2009, Independence Day.

3. The employer's policy requires employees to present a doctor's excuse for absences during a holiday such as Independence Day.

4. On July 6, 2009, the claimant's manager asked her to come into the manager's office to discuss her July 4 absence.

5. During the conversation, a disagreement between the claimant and the manager ensued, during which the manager asked the claimant to leave the work site.

6. The claimant walked out of the office and indicated that she was returning to work rather than leaving work during her shift.

7. When the manager called the claimant in for a second meeting with witnesses present, the claimant used foul language, repeatedly interrupted the manager, and was uncooperative.

8. The claimant was discharged on July 6, 2009 for her uncooperative and inappropriate behavior.

(C.R., Item No. 12 at pp.1-2.)[2]

Based on these facts, the Board concluded that Employer presented competent evidence and testimony that Claimant's behavior was tantamount to willful misconduct in connection with her work. (*Id.* at p.2.) In particular, the Board found that Claimant's uncooperative behavior, use of foul language, and

[2] In unemployment compensation matters, the Board is the ultimate finder of fact and determines the credibility of witnesses. *Leone v. Unemployment Comp. Bd. of Review*, 885 A.2d 76, 79 n.2 (Pa. Cmwlth. 2005). In making the credibility determinations, the Board may accept or reject the testimony of any witness in whole or in part. *Greif v. Unemployment Comp. Bd. of Review*, 450 A.2d 229 (Pa. Cmwlth. 1982).

repeated interruptions of her manager during their discussions "demonstrated a disregard of the standards of behavior which the employer has a right to expect of an employee." (*Id.*) As such, the Board determined Claimant to be ineligible for benefits under Section 402(e) of the Law. (*Id.*)

On appeal to this Court,[3] Claimant argues that the Board erred when it determined that she engaged in willful misconduct. Specifically, Claimant asserts that her conduct during the argument with her supervisor did not rise to the level of willful misconduct because it was merely an argument and was not a violation of any known rule of Employer.

Under Section 402(e) of the Law, "[a]n employe shall be ineligible for compensation for any week . . . [i]n which his unemployment is due to his discharge or temporary suspension from work for willful misconduct connected with his work." While the Law does not define "willful misconduct," this Court has repeatedly held that willful misconduct is "the wanton and willful disregard of the employer's interests; the deliberate violation of rules; the disregard of standards of behavior which an employer can rightfully expect of its employee; or 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." *Leone v. Unemployment Comp. Bd. of Review*, 885 A.2d 76, 78 (Pa. Cmwlth. 2005) (citing *Navickas v. Unemployment Comp. Bd. of Review*, 567 Pa. 298, 787 A.2d 284 (2001)).

[3] This Court's standard of review is limited to determining whether constitutional rights were violated, whether an error of law was committed, or whether necessary findings of fact are supported by substantial evidence. 2 Pa. C.S. § 704. Substantial evidence is relevant evidence that a reasonable mind might consider adequate to support a conclusion. *Hercules, Inc. v. Unemployment Comp. Bd. of Review*, 604 A.2d 1159, 1161 (Pa. Cmwlth. 1992).

This Court has held that abusive, vulgar, or offensive language addressed to a supervisor may support a finding of willful misconduct, so long as it is not provoked or *de minimis*.[4] *Allen v. Unemployment Comp. Bd. of Review*, 638 A.2d 448, 451 (Pa. Cmwlth. 1994). Even a single instance of vulgarity directed to, and unprovoked by, a supervisor is sufficient for a finding of willful misconduct. *Losch v. Unemployment Comp. Bd. of Review*, 461 A.2d 344, 345 (Pa. Cmwlth. 1983). Furthermore, insubordination in general may constitute willful misconduct. *Losch*, 461 A.2d at 345.

In this case, the testimony of Reed, which the Board found to be credible, constituted substantial evidence[5] to support the Board's findings that Claimant used foul language, acted uncooperatively, and repeatedly interrupted Reed during their meetings. Specifically, Reed testified that Claimant told her to "go F yourself," acted belligerently, spoke rudely to her and kept interrupting her.

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[4] *See, e.g., Blount v. Unemployment Comp. Bd. of Review*, 466 A.2d 771 (Pa. Cmwlth. 1983) (holding that threat by claimant found to be off-hand utterance in nature of joke was not willful misconduct); *Luketic v. Unemployment Comp. Bd. of Review*, 386 A.2d 1045 (Pa. Cmwlth. 1974) (finding justified and not to be willful misconduct claimant's statement that employer was being less than honest); *Horace W. Longacre, Inc. v. Unemployment Comp. Bd. of Review*, 316 A.2d 110 (Pa. Cmwlth. 1974) (holding allegedly offensive remark by claimant to be provoked and *de minimis*).

[5] Substantial evidence is relevant evidence upon which a reasonable mind could base a conclusion. *Johnson v. Unemployment Comp. Bd. of Review*, 502 A.2d 738 (Pa. Cmwlth. 1986). In determining whether there is substantial evidence to support the Board's findings, this Court must examine the testimony in the light most favorable to the prevailing party, giving that party the benefit of any inferences that can logically and reasonably be drawn from the evidence. *Id.* A determination as to whether substantial evidence exists to support a finding of fact can only be made upon examination of the record as a whole. *Taylor v. Unemployment Comp. Bd. of Review*, 474 Pa. 351, 378 A.2d 829 (1977). The Board's findings of fact are conclusive on appeal only so long as the record, taken as a whole, contains substantial evidence to support them. *Penflex, Inc. v. Bryson*, 506 Pa. 274, 485 A.2d 359 (1984).

Based upon these findings, the Board did not err in concluding that Claimant committed willful misconduct in connection with her employment. Claimant's actions certainly "demonstrated a disregard of the standards of behavior which the employer has a right to expect of an employee." *Leone*, 885 A.2d at 78. In particular, we note that Claimant's statement to Reed to "go F yourself" certainly falls into one, if not all three, categories of vulgar, abusive, or offensive language. Such language alone establishes grounds for willful misconduct, as the situation indicates that it was neither provoked nor *de minimis*. *Losch*, 461 A.2d at 345.

Accordingly, the order of the Board is affirmed.

P. KEVIN BROBSON, Judge

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O R D E R

AND NOW, this 1st day of September, 2010, the order of the Unemployment Compensation Board of Review is hereby AFFIRMED.

P. KEVIN BROBSON, Judge