

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Jacqueline M. Campbell,	:	
Petitioner	:	
	:	
v.	:	No. 259 C.D. 2011
	:	SUBMITTED: July 1, 2011
Unemployment Compensation	:	
Board of Review,	:	
Respondent	:	

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES R. KELLEY, Senior Judge**

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER**

FILED: November 1, 2011

Jacqueline M. Campbell petitions *pro se* for review of the order of the Unemployment Compensation Board of Review (Board) that denied her benefits pursuant to Section 402(e) of the Unemployment Compensation Law,¹ 43 P.S. § 802(e). We affirm.

According to the referee's findings,² which were adopted by the Board, Campbell worked for Mercy Hospital Home Health (Employer) as a home health nurse; she was paid \$20.00 per patient visit and averaged four patients a

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

² Employer did not appear at the hearing.

day. Campbell did not want to travel any distance unless she was scheduled to see at least four patients. She called-off of work on a number of days because she had not been scheduled to see enough patients. Employer discharged Campbell due to “multiple call-offs when scheduled for work.” Notes of Testimony (N.T) at 9, Hearing of November 10, 2010; Referee’s Finding of Fact No. 6 (decision mailed November 10, 2010). The referee concluded that Campbell’s refusal to accept work assignments constituted willful misconduct disqualifying her from the receipt of benefits. Campbell appealed and the Board affirmed.³

In her *pro se* petition for review filed with this court, Campbell set forth the following grounds for her appeal:

1. Employer states frequent absenteeism, but no warning ever given.
2. Employer questionnaire not filled out but I was interviewed via phone without employer rep. present.
3. No paperwork from employer received for above allegations.
4. On the claimant questionnaire sheet, there is no information given by UCBR.
5. My dates of employment are wrong as well as my pay rate. Enclosed you will find a copy of the original employment contract which clearly states my rate of pay and my sign-on bonus (which I received neither of these.) A copy of this agreement is enclosed as the one you will receive from UCBR is not legable [sic].

³ Other than the references to her dates of employment and pay rate, Campbell does not challenge any of the Board’s findings of fact and, therefore, they are not subject to our review. For background purposes, however, we note that Campbell testified that she drives approximately 58 miles to and from work and that she needed to be scheduled for at least four patients for it to be “worth [her] while.” Notes of Testimony (N.T) at 5, Hearing of November 10, 2010. According to Campbell, she explained to the head nurse that she needed to see a minimum of four patients. Apparently, she called-off of work on two separate days because she was scheduled to see only two patients. She testified, however, that she had worked on other days when she was scheduled to see two or three patients.

Petition for Review. Other than the statement in her appellate brief that, “[n]o prior warnings were provided to Campbell by her employer prior to her termination from employment,”⁴ Campbell’s brief does not address any of the issues set forth in her petition for review. Rather, she suggests in her brief that Employer did not meet its burden of establishing willful misconduct because she informed Employer that she needed to be scheduled for a minimum of four clients per day otherwise she wouldn’t work. She also contends that the cost of her transportation was prohibitive and that she would lose money if she was not scheduled for at least four clients. Therefore, she believes that her actions were justified under the circumstances, defeating a conclusion of willful misconduct.

Although we are sympathetic to the situation described by Campbell, her arguments must be rejected. First, it is well settled that an employer’s failure to provide a warning prior to termination does not defeat a finding of willful misconduct. *Reed v. Commonwealth, Unemployment Comp. Bd. of Review*, 414 A.2d 172 (Pa. Cmwlt. 1980); *Jackamonis v. Commonwealth, Unemployment Comp. Bd. of Review*, 408 A.2d 581 (Pa. Cmwlt. 1979). Moreover, “a single act may constitute willful misconduct if it is in open disregard of the employer’s reasonable expectations.” *Roberts v. Commonwealth, Unemployment Comp. Bd. of Review*, 436 A.2d 1052, 1053 (Pa. Cmwlt. 1981). Thus, there is no merit to Campbell’s suggestion that the failure to provide a prior warning precludes a finding of willful misconduct.

The remaining arguments, that Campbell did not commit willful misconduct because she informed her employer that she would not work unless she was scheduled to see at least four patients and, that, the cost of her transportation

⁴ Campbell’s brief at 8.

provided her with good cause to refuse inadequate work assignments, have been waived for failure to raise them in her petition for review. *See* Pa. R.A.P. 1513(d); *see also Maher v. Unemployment Comp. Bd. of Review*, 983 A.2d 1264, 1266 (Pa. Cmwlth. 2009), *appeal denied*, 606 Pa. 674, 996 A.2d 493 (2010) (stating: “[The court] will not consider issues raised in a party’s brief when they are not sufficiently addressed in the petition for review”). Here, as noted, Campbell’s petition for review fails to set forth any statement or issue addressing whether her actions constituted willful misconduct or whether she had good cause for her refusal to accept certain work assignments, thereby precluding a conclusion of willful misconduct.⁵ Accordingly, the issues raised in her brief have been waived.

Based upon the foregoing, the order of the Board is affirmed.

BONNIE BRIGANCE LEADBETTER,
President Judge

⁵ In fact, while Campbell testified to the distance of her drive and that she needed to be scheduled for at least four patients in order for the trip to be “worth her while,” she never testified that the cost of her transportation was prohibitive or that she would not earn enough to cover the cost of her trip if she was scheduled for fewer than four patients. Accordingly, Campbell’s assertions regarding the cost of her trip have been waived for failure to raise them before the referee.

Even if we were to address the merits of Campbell’s case, we would conclude that the Board and referee properly denied benefits. An employee’s refusal to accept work assignments constitutes willful misconduct absent establishment of good cause for the refusal. *New v. Commonwealth, Unemployment Comp. Bd. of Review*, 558 A.2d 602 (Pa. Cmwlth. 1989). The desire for greater compensation, which may be justified from the employee’s point of view, does not justify a refusal to do assigned tasks. *See generally Am. Racing Equipment, Inc. v. Unemployment Comp. Bd. of Review*, 601 A.2d 480 (Pa. Cmwlth. 1991); *Howard v. Commonwealth, Unemployment Comp. Bd. of Review*, 379 A.2d 1085 (Pa. Cmwlth. 1977).

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ORDER

AND NOW, this 1st day of November, 2011, the order of the Unemployment Compensation Board of Review is affirmed.

BONNIE BRIGANCE LEADBETTER,
President Judge