

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Miriam Y. Cerrato, :
Petitioner :
 :
v. : No. 2810 C.D. 2010
 : Submitted: November 18, 2011
Unemployment Compensation :
Board of Review, :
Respondent :

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE ROBERT SIMPSON, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE PELLEGRINI

FILED: December 16, 2011

Miriam Y. Cerrato (Claimant) appeals *pro se* from an order of the Unemployment Compensation Board of Review (Board) affirming the decision of the Referee denying her unemployment compensation benefits because she was guilty of willful misconduct pursuant to Section 402(e) of the Unemployment Compensation Law (Law)¹ for fighting with a coworker. Because Claimant was

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §802. That section provides, in relevant part:

An employe shall be ineligible for compensation for any week –

(e) In which his unemployment is due to his discharge or temporary suspension from work for willful misconduct connected

(Footnote continued on next page...)

guilty of willful misconduct making her ineligible for benefits, we affirm the Board.

Claimant was a full-time employee of Marcho Farms, Inc. (Employer) for approximately seven years. Employer has a zero-tolerance policy providing for the immediate termination of employees who fight while on company property. On May 20, 2010, Claimant was performing her job duties in an area where a coworker, Leonardo Jarquin (Jarquin), was cleaning a table with a high-pressure hose. While Jarquin cleaned the table, Claimant was sprayed with water from the hose. Believing that Jarquin sprayed her with water intentionally, Claimant approached Jarquin and had a physical altercation with him. As a result, Employer terminated Claimant's employment.

Claimant filed for unemployment compensation benefits with the UC Service Center which denied benefits. Claimant appealed, and a hearing was held before a Referee. Kurt Smith (Smith), Employer's Director of Human Resources, testified that Employer had a zero-tolerance policy for fighting, explaining that

(continued...)

with his work, irrespective of whether or not such work is "employment" as defined in this act.

Willful misconduct has been defined 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. *Sheetz, Inc. v. Unemployment Compensation Board of Review*, 578 A.2d 621 (Pa. Cmwlth. 1990).

“we work in an environment that’s very fast-paced, a lot of pressure, and people carry dangerous weapons. And we won’t tolerate anyone fighting for fear of what could escalate.” (September 1, 2010 Hearing Transcript at 22.)

Coworker Jarquin testified that he did not spray Claimant on purpose, but because “When I was cleaning, she was just in front of it. It’s – the, the water just spread because of the pressure. That’s the reason she got wet.” (September 1, 2010 Hearing Transcript at 16.) Jarquin further testified that after Claimant was sprayed with water, Claimant made verbal threats, then grabbed the hose and slapped him three times. Jarquin stated that he did not retaliate after Claimant struck him.

Claimant’s former supervisor, Stephen Hill (Hill), testified that upon entering the room, “I see [sic] [Claimant] going towards [Jarquin]. She reached down to grab the hose that he was using to wash the table. He kind of pulled it away so she won’t [sic] grab it. She moved, moved forward to him. And, as she swung once, it looks [sic] like it missed from my angle. The second time she swung, it looked like a hit.” (September 1, 2010 Hearing Transcript at 10.) After the incident, Hill asked Claimant if she hit Jarquin, and she replied that she did in order to defend herself.

Claimant testified that Jarquin sprayed water directly in her face because he believed that she had dirtied the table he was cleaning. Claimant admitted that she tried to get the hose from Jarquin in an attempt to defend herself. Claimant did not recall whether she made contact with Jarquin at that time, stating,

“I don’t know if I touched him. But I was trying to get the hose.” (September 1, 2010 Hearing Transcript at 20.) Claimant denied slapping or hitting Jarquin.

Finding Employer’s witnesses more credible, the Referee found that after being sprayed with water from the hose used by Jarquin, Claimant struck Jarquin in the face twice. The Referee determined that because management was present at the time of the incident, Claimant should have spoken with management about the issue rather than confront Jarquin directly. Because Claimant could have attempted to resolve this issue differently, but instead chose to strike Jarquin, the Referee concluded that Claimant’s action constituted willful misconduct. Claimant appealed to the Board, which adopted the findings of the Referee and affirmed the denial of benefits.²

On appeal, Claimant contends that the Board erred in denying benefits because the Board’s determination that Employer’s witnesses were more credible than Claimant was not based on substantial evidence because she presented persuasive testimony demonstrating that she did not intend to hit Jarquin and that her actions were in self-defense.

What Claimant is asking us to do is adopt her version of events, which we are not free to do. As we have stated over and over and over again, the Board

² Our scope of review of the Board’s decision is limited to determining whether an error of law was committed, constitutional rights were violated, or necessary findings of fact were supported by substantial evidence. *Frazier v. Unemployment Compensation Board of Review*, 833 A.2d 1181 (Pa. Cmwlth. 2003).

is the ultimate fact finder and determiner of credibility in unemployment compensation cases. In making those determinations, the Board may accept or reject the testimony of any witness in whole or in part. *McCarthy v. Unemployment Compensation Board of Review*, 829 A.2d 1266 (Pa. Cmwlth. 2003). In this case, because the testimony of Employer's witnesses constituted sufficient evidence upon which to find willful misconduct on the part of Claimant, we will not disturb the Board's determinations.³

Accordingly, the order of the Board is affirmed.

DAN PELLEGRINI, JUDGE

³ Claimant also argues that Employer singled her out and used this incident to terminate her employment without having to pay her unemployment compensation benefits. However, the Referee and Board determined that the record contained no evidence that Claimant was treated in any disparate fashion, and our review of the record indicates the same.

