IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Joyce J. Henry,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 2843 C.D. 2010
	:	
Unemployment Compensation Board of Review,	:	Submitted: June 10, 2011
	:	
Respondent	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE COHN JUBELIRER **FILED: October 17, 2011**

Joyce J. Henry (Claimant), pro se, petitions for review of the Order of the Unemployment Compensation Board of Review (Board) that adopted the determination of an Unemployment Compensation Referee (Referee), which found Claimant ineligible for unemployment compensation (UC) benefits pursuant to Section 402(e) of the Unemployment Compensation Law (Law).[1] Claimant argues that the Board erred in finding her ineligible for UC benefits because certain findings

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

of fact are not supported by substantial evidence and her actions did not constitute willful misconduct.

On July 23, 2010, Claimant was discharged from her position as a teacher's assistant by Carson Valley Children's Aid (Employer). Claimant applied for UC benefits, which the Scranton UC Service Center (Service Center) denied based on Section 402(e) of the Law. Claimant appealed, and the matter was assigned to the Referee for a hearing. At the hearing, Claimant presented her own testimony, as well as the testimony of two other witnesses, and Employer presented four witnesses. Based on that hearing record, the Referee made the following findings of fact.

1. The claimant was last employed as a Teacher's Assistant by Carson Valley Children's Aid from October 25, 2004, through July 23, 2010, at the final rate of pay of $12.38 per hour.

2. This employer is a residence and school for referred children with severe mental health problems.

3. The employer has a policy which states "The care of our residents/clients is a personal matter. You are never permitted to discuss any resident/client's situation with persons other than those directly involved with his/her case. . . . [E]mployees who discuss or divulge confidential information of the nature outlined above are subject to immediate discharge."

4. The employer also has a policy which prohibits "Behavior unsuitable in the childcare environment or acts which in the judgment of the Executive Director, are detrimental to the best interest of the children[], families, or the Agency."

5. The claimant was, or should have been, aware of the aforestated employer policies.

6. The claimant and her sister were co-workers.

7. The claimant's sister used her cell phone to take a video of an emotionally disturbed young resident while the resident was in the time-out area for acting out.

8. In a non-work related situation the claimant's sister showed the claimant the video of the emotionally disturbed child.

9. On or about July 12, 2010, the claimant attempted to show the video of the emotionally disturbed child to a male co-worker. At the time the male co-worker was not directly involved with the child.

10. The claimant told the male co-worker that the video was of the child "acting like a fool and was screaming and hollering".

11. The claimant's male co-worker refused to look at the video.

12. The claimant told a female co-worker that the video was of the child "acting crazy."

13. Neither the claimant [n]or her sister informed anyone in authority that the video existed.

14. The following day the claimant's male co-worker reported the video to the employer and the employer initiated an investigation.

15. As a result of the investigation, July 23, 2010, the claimant was discharged for violating the aforestated employer policies.

16. The claimant's sister was also discharged for her participation in the incident.

(Referee's Findings of Fact (FOF) ¶¶ 1-16.) The Referee concluded that, although Claimant did not make the video, she attempted to circulate the video to a male co-worker (MCW) who was not involved in the care of the resident, which constituted a violation of Employer's policies. (Referee's Decision at 2.) Moreover, the Referee held that, in attempting to show the video of the resident in a situation in which the resident was vulnerable, Claimant acted in a manner contrary to the best interests of

the resident and Employer, as well as in a manner contrary to that which Employer had a right to expect of its employee. (Referee's Decision at 2.) Finally, the Referee concluded that Claimant did not offer adequate justification for her behavior and, therefore, Claimant was ineligible for UC benefits pursuant to Section 402(e) of the Law. Claimant appealed to the Board, which adopted and incorporated the Referee's determination as its own. (Board Order at 1.) Additionally, the Board "resolve[d] all relevant conflicts in [the] testimony in favor of the [E]mployer, whose witnesses credibly established that the [C]laimant attempted to discuss and share confidential resident/client information with a co[-]worker who was not directly involved in the client's case." (Board Order at 1.) Finally, the Board specifically rejected as not credible Claimant's testimony denying her attempts to share the video with her co-worker and that she was unaware that her behavior violated Employer's policies. (Board Order at 1.) Claimant now petitions this Court for review.[2]

On appeal, Claimant first asserts that Findings of Fact 7-12 and 14 are not supported by substantial evidence in the record. Claimant relies on her own testimony describing the relevant events, including that she told Employer's Human Resources Manager (HR Manager) that she did not have a cell phone that would show a video and that the rumor was not true, and no one other than herself and her sister (Sister), who was also Claimant's co-worker, actually saw the video at issue.

[2] In unemployment proceedings, our "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 facts are supported by substantial evidence in the record." Western and Southern Life Insurance Co. v. Unemployment Compensation Board of Review, 913 A.2d 331, 334 n.2 (Pa. Cmwlth. 2006).

The Board's findings of fact "are conclusive on appeal so long as the record, taken as a whole, contains substantial evidence to support those findings." Taylor v. Unemployment Compensation Board of Review, 474 Pa. 351, 355, 378 A.2d 829, 831 (1977). Substantial evidence is defined as "such relevant evidence which a reasonable mind might accept as adequate to support a conclusion." Philadelphia Gas Works v. Unemployment Compensation Board of Review, 654 A.2d 153, 157 (Pa. Cmwlth. 1995). That a claimant might believe a different version of the events took place does not create grounds for reversal if the Board's findings are supported by substantial evidence. Tapco, Inc. v. Unemployment Compensation Board of Review, 650 A.2d 1106, 1108-09 (Pa. Cmwlth. 1994).

A review of the record reveals that there is substantial evidence to support the challenged findings of fact. Finding of Fact 7 is that Sister took a video with her cell phone of one of Employer's emotionally disturbed residents "while the resident was in the time-out area for acting out." (FOF ¶ 7.) Neither Claimant nor Sister denied that Sister took the video of the student while she was in the time-out area and that students are placed in the time-out area if they have acted out. (Referee Hr'g Tr. at 14, 17-20.) Additionally, both Claimant and Sister testified that Claimant viewed the video on Sister's phone after Claimant picked Sister up from her shift with Employer. (Referee Hr'g Tr. at 14, 18, 20-21.) This supports the Board's finding that Sister showed Claimant the video of the student in a non-work-related situation. (FOF ¶ 8.) Next, the Board found that: (1) on July 12, 2010, Claimant attempted to show a MCW the video at work and that MCW was not directly involved with the resident at that particular time; (2) Claimant told MCW that the video was of the resident "acting like a fool and was screaming and hollering"; and (3) MCW refused to look at video.

(FOF ¶¶ 9-11.) MCW credibly testified to these exact facts during the Referee's hearing, (Referee Hr'g Tr. at 11-12); thus, these findings of fact are supported by substantial evidence. In Finding of Fact 12, the Board found that Claimant told a female co-worker (FCW) "that the video was of the child 'acting crazy.'" (FOF ¶ 12.) FCW testified at the Referee's hearing that Claimant informed her that the student was "acting crazy." (Referee Hr'g Tr. at 21.) Although FCW denied that Claimant mentioned anything about a video while speaking with FCW and MCW, (Referee Hr'g Tr. at 23), Claimant ultimately acknowledged that, in her conversation with FCW and MCW, she referred to a video depicting the student, (Referee Hr'g Tr. at 19). We conclude that a reasonable inference from this combined testimony is that Claimant discussed the video with MCW and FCW and indicated that the student was acting crazy in that video. In a substantial evidence challenge, the record, including all logical and reasonable inferences therefrom, must be viewed in the light most favorable to the prevailing party, Stringent v. Unemployment Compensation Board of Review, 703 A.2d 1084, 1087 (Pa. Cmwlth. 1997), which, in this instance, is Employer. Finally, MCW testified that, on the next day, he reported the video to Employer, (Referee Hr'g Tr. at 11), and HR Manager testified that MCW reported the conduct, and that Employer began its investigation based on that report, (Referee Hr'g Tr. at 8). Such testimony supports the Board's finding that, "[t]he following day . . . [MCW] reported the video to the [E]mployer and the [E]mployer initiated an investigation." (FOF ¶ 14.) Accordingly, we disagree with Claimant's assertion that the challenged findings of fact were not supported by substantial evidence.

Claimant next argues that the Board erred in finding that her actions constituted willful misconduct that rendered her ineligible for benefits. She further asserts that

she did not violate Employer's work policies against sharing information regarding students with those not involved in the students' care and behavior that is "unsuitable in the childcare environment or acts which in the judgment of the Executive Director, are detrimental to the best interest of the children[], families, or the Agency." (FOF ¶ 4.)

Section 402(e) of the Law provides that an employee is ineligible for UC benefits when her "unemployment is due to [her] discharge . . . from work for willful misconduct connected with [her] work." 43 P.S. § 802(e). While the Law does not define "willful misconduct," our courts have defined it as:

> (1) a wanton or willful disregard for an employer's interests; (2) a deliberate violation of an employer's rules; (3) a disregard for standards of behavior which an employer can rightfully expect of an employee; or (4) negligence indicating an intentional disregard of the employer's interest or an employee's duties or obligations.

Philadelphia Parking Authority v. Unemployment Compensation Board of Review, 1 A.3d 965, 968 (Pa. Cmwlth. 2010). When a claimant is terminated for a work-rule violation, the employer has the burden to establish the rule existed, the claimant knew of the rule, and the claimant violated the rule. Id. If an employer satisfies its burden of proof, the burden then shifts to the claimant to show that she had good cause to violate the work rule. Docherty v. Unemployment Compensation Board of Review, 898 A.2d 1205, 1209 (Pa. Cmwlth. 2006). "A claimant has good cause if his or her actions are justifiable and reasonable under the circumstances." Id. at 1208-09.

Here, Employer satisfied its burden of proving that it had work rules that: (1) state "[t]he care of our residents/clients is a personal matter. You are never permitted

to discuss any resident/client's situation with persons other than those directly involved with his/her case. . . . [E]mployees who discuss or divulge confidential information of the nature outlined above are subject to immediate discharge"; and (2) prohibits "[b]ehavior unsuitable in the childcare environment or acts which in the judgment of the Executive Director, are detrimental to the best interest of the children[], families, or the Agency." (FOF ¶¶ 3-4; Employer Ex. 1.) Employer introduced the relevant pages of its employee handbook, which contained these work rules, and Employer's HR Manager testified as to the purpose of the two particular rules at issue and how Claimant's conduct violated these rules. (Referee Hr'g Tr. at 5-9.) Specifically, HR Manager testified, *inter alia*, that Claimant's conduct "wouldn't be in the best interest of the child because . . . that's demeaning to the child. That's not respecting the child. You know putting the child in their worst case scenario and then sharing it." (Referee Hr'g Tr. at 9.)

Additionally, Claimant admitted that she knew of Employer's confidentiality policy, (Referee Hr'g Tr. at 13), which, as quoted above, prohibits discussing a student's care and treatment with persons not directly involved with the student's care. In addition to MCW's credited testimony that Claimant attempted to show the video to him and discussed how the student was "acting a fool, screaming and hollering," (Referee Hr'g Tr. at 11), Claimant, herself, acknowledged that she viewed the video of the student acting out, (Referee Hr'g Tr. at 18). Both MCW and Claimant testified that MCW was not directly involved with the student's care at the time Claimant attempted to show the video to him. (Referee Hr'g Tr. at 33.) Accordingly, we conclude that Employer established that Claimant's conduct violated Employer's work rules in that Claimant attempted to discuss and/or show a video of

one of Employer's resident students with a co-worker who was not directly involved with that student's care, which did not show the proper level of respect for the student at issue.

Claimant does not assert any good cause for her actions, but merely reasserts that she told HR Manager that the rumor was not true and that no one has actually seen the video.[3] However, the Board clearly rejected Claimant's testimony that she did not attempt to show the video to her co-workers. Moreover, the fact that Employer did not observe the video does not change the result, as Claimant never offered to show the video to establish that the video contained nothing that was detrimental to the student or to Employer's interest. Thus, we conclude that Claimant has failed to establish that she had good cause for her actions and, accordingly, is not eligible for benefits under Section 402(e) of the Law. Docherty, 898 A.2d at 1209.

Accordingly, the Board's Order is affirmed.

RENÉE COHN JUBELIRER, Judge

[3] According to HR Manager, Claimant attempted to justify her conduct by asserting that everyone took photographs and videos of the students, and Sister and FCW reiterated Claimant's contention during the hearing. (Referee Hr'g Tr. at 9, 20, 22.) However, FCW acknowledged that those photographs are taken using the students' cameras and that the staff does not use the photographs themselves. (Referee Hr'g Tr. at 22.) Additionally, neither HR Manager nor Employer's principal was aware that Sister or other employees were taking pictures of students with their cell phones. (Referee Hr'g Tr. at 24-25.)

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O R D E R

NOW, October 17, 2011, the Order of the Unemployment Compensation Board of Review in the above-captioned matter is hereby **AFFIRMED**.

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RENÉE COHN JUBELIRER, Judge