IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Mary C. Raco, Petitioner	:	
	:	No. 378 C.D. 2011
v.	:	
	:	Submitted: July 15, 2011
Unemployment Compensation Board of Review, Respondent	:	

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McCULLOUGH FILED: December 16, 2011

Mary C. Raco (Claimant) petitions pro se for review of the January 12, 2011, order of the Unemployment Compensation Board of Review (Board), which held that Claimant was ineligible for benefits under section 402(e) of the Unemployment Compensation Law (Law).[1]

Claimant was employed by the Social Security Administration (Employer) from July 1, 1990, through June 30, 2010, as an Inquiries and Expediter Specialist. Claimant worked 40 hours each week and her annual salary was approximately $60,000. However, Employer routinely offered its employees the

[1] Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. §802(e). Section 402(e) of the Law provides that an employee shall be ineligible for compensation for any week in which her unemployment is due to her discharge or temporary suspension from work for willful misconduct connected with her work.

opportunity to sign up for overtime. The employees would sign up in advance for a specific amount of overtime, and would be expected to work the specified time. Claimant signed up for such overtime on May 10, 2010, but left work approximately 34 minutes early to help her father, who had Alzheimer's disease and dementia and had locked himself out of their house. Claimant was concerned for her father's safety. Claimant did not inform a supervisor that she was leaving, and she did not correct the discrepancy on her time card the next morning. (Findings of Fact Nos. 1-8.)

Upon learning that Claimant had left work early on May 10, Employer initiated an investigation into Claimant's time records, including her purported overtime, for the prior 30 days. Claimant's time cards during this period revealed a number of discrepancies, ranging from 1 minute to 34 minutes as compared to the time that she specified that she would work. One discrepancy was 7 and 1/2 minutes and another 10 minutes, for which Claimant offered Employer no explanation, but the remaining discrepancies were all less than 5 minutes. Following this investigation, Employer discharged Claimant for falsifying her time records. (Findings of Fact Nos. 9-13.)

Claimant filed a claim for benefits with the Scranton Unemployment Compensation Service Center (Service Center), which determined that Claimant was not ineligible for benefits under section 402(e) of the Law. Employer appealed, and the case was assigned to a referee for a hearing.

Roseann Markiewicz, Employer's Inquiries and Expediting Manager, testified that she was Claimant's direct supervisor and was informed by another employee on May 11, 2010, that Claimant had left early the previous day. (N.T. at 10.) Markiewicz testified that she called her own supervisor and immediately began

an investigation of Claimant's time records.[2] Id. Markiewicz indicated that her investigation revealed that Claimant had left early every working day over a 30-day period, including 3 significant discrepancies that exceeded 5 minutes. (N.T. at 11-13.) Markiewicz testified in detail regarding one such discrepancy of 34 minutes on May 10, 2010, stating as follows:

> So, on the morning of May 11, when I arrived at work, [Claimant] came over and brought me the credit sheet that she had signed. Now, the date – the day of May 10 – every morning, when I cam (sic) in, I generally sign a pre-approval. We have a pre-approval on the bottom of the left side of the sheet. That just says that anybody that signs in can sign – can work. I had signed that sheet on May the 10th, but when [Claimant] brought me the sheet over on May 11, my signature wasn't on there. And I was – I didn't understand. I said, what happened to my signature? [Claimant] said, oh, what do you mean? And I said, well, my signature – I signed this sheet yesterday. She said, well, I couldn't find it. Well, we didn't – we really didn't know, and we still don't know whatever happened to that sheet. [Claimant] brought me – and I said, okay, just resign [sic] it, and I'll sign off again. So, I resigned the sheet. . . I felt that that was the chance for [Claimant] to resign the sheet in the correct time, and that did not happen. She gave me another sheet and still signed four to 5:00, when she had already left at 4:25.

(N.T. at 13-14.) Markiewicz acknowledged that the clocks in Employer's building display different times and that not all of the clocks in the building are "100-percent

[2] Markiewicz relied on Claimant's overtime sheets, telephone logs, computer log-off times, and building surveillance video in conducting this investigation. (N.T. at 10.)

accurate." However, for this reason, Markiewicz indicated that discrepancies of a minute or two are generally overlooked. (N.T. at 12-13.)

Laverne Brockington, Employer's operations manager, testified that she made the final decision to terminate Claimant after meeting with Claimant and her union representative and giving her an opportunity to respond to the allegations. (N.T. at 32.) Brockington indicated that the discrepancies on Claimant's time cards were the primary reason for her termination. (N.T. at 33.) Brockington also acknowledged that the clocks throughout Employer's building are different. Id. On cross-examination, Brockington confirmed that, while there are multiple clocks in Claimant's work area that she could have used to record her time, a discrepancy of a few minutes is generally "not a cause for termination." (N.T. at 36.)

Claimant began her testimony by discussing the incident on May 10, 2010. Claimant explained that she left early that day because her father, who was 85 years old and suffered from Alzheimer's disease, had called her crying because he had locked himself out of the house. (N.T. at 41.) Claimant acknowledged that she signed on for overtime from 4:00 p.m. to 5:00 p.m. earlier that day but stated that she never spoke with Markiewicz regarding her overtime the next morning. Id. Claimant also testified regarding the time differences among the varying clocks in Employer's building, noting that the clock closest to her work area is approximately 4 minutes slower than most of the other clocks. (N.T. at 42.) Hence, Claimant indicated that she "always went by [her] wristwatch" when signing out. Id.

Upon questioning by the referee, Claimant explained the 7 and 1/2 minute discrepancy by suggesting that the time clock on a videotape of her leaving the building that day could have differed significantly from her watch, as Claimant indicated that she followed the same routine each day, i.e., she looked at her watch,

signed out, went to the restroom, and left the building. (N.T. at 44.) Claimant noted that she was never told by Employer which clock to rely on when recording her time. (N.T. at 51.)

Ultimately, the referee affirmed the decision of the Service Center and found that Claimant was not ineligible for benefits under section 402(e) of the Law, reasoning as follows:

> Employer's method of calculating the time discrepancies is not credible. There are a number of time pieces where Claimant works. There is no certain way by which an employee who is clocking out at the end of the day will know precisely the time they are clocking out. Employer offered no evidence to show which timepiece it uses to determine the precise time Claimant clocked out. There was certainly no reasonable method by which Claimant could ever know if she was clocking early, late or on time. From this, the Referee concludes that Employer failed to show Claimant made a deliberate choice, terminable under Employer rules, to falsify her time records.

(C.R. at Tab 8.) Employer appealed to the Board, which reversed the referee's decision and concluded that Claimant was ineligible for benefits under section 402(e) of the Law.

The Board's findings of fact are similar to those of the referee. However, the Board concluded that Claimant did not have good cause for failing to notify a supervisor that she was leaving early on May 10, 2010, or for failing to correct her time records the next day. Additionally, the Board concluded that Claimant did not present a good cause explanation for the other occasions on which she left early. The Board indicated that these discrepancies, of 10 minutes and 7 and 1/2 minutes, respectively, could not be attributed to the multiple clocks in Employer's

building. Thus, the Board concluded that Claimant falsified her time records on three occasions and that such conduct was below the standards that an employer has a right to expect.

On appeal to this Court,[3] Claimant argues that the Board erred in concluding that her actions constituted willful misconduct. More specifically, Claimant argues that there is no evidence that she acted willfully or wantonly or in deliberate violation of Employer's rules. Claimant also argues that the Board erred in concluding that she did not have a good cause explanation for the two occasions, excluding May 10, 2010, that she left work early.[4] We disagree.

Although the Law does not define willful misconduct, it has been construed by our Court as: (1) the wanton or willful disregard of the employer's interests; (2) the deliberate violation of the employer's rules/directives; (3) the disregard of the standards of behavior which an employer can rightfully expect from an employee; and (4) negligence demonstrating an intentional disregard of the employer's interest or the employee's duties and obligations. Kelly v. Unemployment Compensation Board of Review, 747 A.2d 436 (Pa. Cmwlth. 2000).

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[3] Our scope 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. Shrum v. Unemployment Compensation Board of Review, 690 A.2d 796 (Pa. Cmwlth.), appeal denied, 548 Pa. 663, 698 A.2d 69 (1997). Furthermore, 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, 378 A.2d 829 (1977). Substantial evidence is defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Brown v. Unemployment Compensation Board of Review, 854 A.2d 626 (Pa. Cmwlth. 2004).

[4] We note that the Social Security Administration has filed an *amicus curiae* brief in support of the Board's decision and order. The arguments of the Social Security Administration mirror the arguments raised by the Board in its brief.

The employer bears the burden to prove that a discharged employee was guilty of willful misconduct.[5] Gillins v. Unemployment Compensation Board of Review, 534 Pa. 590, 633 A.2d 1150 (1993).

Claimant argues that there is no evidence that she intentionally left early, which precludes a finding of willful misconduct. However, this Court has held that actual intent to wrong the employer is not necessary for such a finding and that willful misconduct can be proven by a finding of conscious or careless disregard of the employer's interests. Wilkins v. Unemployment Compensation Board of Review, 502 A.2d 283 (Pa. Cmwlth. 1985) (repeated acts of unsafe and negligent work evidenced a substantial disregard of the employer's interest); Homony v. Unemployment Compensation Board of Review, 312 A.2d 77, 78 (Pa. Cmwlth. 1973) (employee has a duty to maintain reasonable communication with the employer during a period of prolonged absence and the failure to maintain any contact over the course of seven months was unreasonable and evidenced a breach of that duty).

Moreover, in Temple University v. Unemployment Compensation Board of Review, 565 Pa. 178, 772 A.2d 416 (2001), our Supreme Court held that an employee's falsification of time sheets, even when done at the direction of a supervisor, constituted willful misconduct. In Temple University, the employee's supervisor told the employee that he should be rewarded for good work performance and directed him to add hours to his timesheets in order to receive additional pay. The employee submitted falsified time sheets and received pay for hours he did not work. The court concluded that the employee's actions constituted theft from his

[5] Whether or not an employee's actions amount to willful misconduct is a question of law subject to review by this Court. Noland v. Unemployment Compensation Board of Review, 425 A.2d 1203 (Pa. Cmwlth. 1981).

employer and was not excused because of an erroneous belief of legal entitlement. See also Department of the Navy, Naval Air Warfare Center v. Unemployment Compensation Board of Review, 632 A.2d 622 (Pa. Cmwlth. 1993) (submission of falsified travel vouchers constituted willful misconduct); Brode v. Unemployment Compensation Board of Review, 470 A.2d 200 (Pa. Cmwlth. 1984) (receipt of pay for hours not worked and failing to report the same constituted willful misconduct).

Claimant also argues that, contrary to the Board's finding, she was never given the opportunity to correct the May 10 time sheet. However, in making this finding, the Board implicitly credited Markiewicz' testimony that Claimant presented her a new overtime sheet on May 11 which reflected that Claimant had worked until 5:00 p.m. on May 10, when in fact she had left at 4:25 p.m. Claimant recites her own testimony before the referee concerning Employer's collection of the time sheets and her inability to access or correct the sheets the next day, neglecting the Board's implicit rejection of that testimony. The law is well settled that the Board has sole province over credibility determinations, which determinations will not be disturbed on appeal. Guthrie v. Unemployment Compensation Board of Review, 738 A.2d 518 (Pa. Cmwlth. 1999); Gioia v. Unemployment Compensation Board of Review, 661 A.2d 34 (Pa. Cmwlth. 1995).

Finally, Claimant alleges that the Board erred in concluding that she did not have good cause for the other two occasions she left early, of 10 minutes and 7 and 1/2 minutes, respectively, citing the discrepancies among the various clocks in Employer's building. We note that after Employer established the discrepancies, the burden shifted to Claimant to establish good cause such that her actions were justified or reasonable under the circumstances. Chapman v. Unemployment Compensation

Board of Review, 20 A.3d 603 (Pa. Cmwlth. 2011). Claimant did not meet her burden in this case.

Other than her own testimony, which was rejected by the Board, Claimant presented no evidence regarding the extent of the purported discrepancies among Employer's clocks and in relation to its surveillance video. Employer's witnesses conceded that there were discrepancies among the clocks, but each witness testified that discrepancies of a few minutes on employee time sheets are essentially overlooked by Employer. Again, the Board implicitly credited this testimony and relied on the same in concluding that the discrepancies of 10 minutes and 7 and 1/2 minutes could not be explained by the varying clocks. The Board did not err in this regard.

Accordingly, for all of the above reasons, the order of the Board is affirmed.

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PATRICIA A. McCULLOUGH, Judge

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ORDER

AND NOW, this 16th day of December, 2011, the order of the Unemployment Compensation Board of Review, dated January 12, 2011, is hereby affirmed.

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PATRICIA A. McCULLOUGH, Judge