

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Lisa M. McKeogh, :
Petitioner :
 :
v. : No. 380 C.D. 2008
 : Submitted: July 18, 2008
Unemployment Compensation :
Board of Review, :
Respondent :

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE PELLEGRINI

FILED: August 11, 2008

Lisa M. McKeogh (Claimant) appeals 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 when she utilized the computers belonging to Admiral

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

An employe shall be ineligible for compensation for any week in which his unemployment is due to his discharge or temporary suspension from work for willful misconduct connected with his

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Kitchens (Employer) on Employer's time to start a competing business. We affirm the Board's decision because we need not reach issues raised by Claimant on appeal as she has waived all issues.

Claimant was employed by Employer as a kitchen designer from May 2007 through August 22, 2007, for which she was paid \$65,000 per year plus commissions. When Employer discovered that she had been using its computers on Employer's time to start a competing business, Claimant was discharged for misappropriating company time, using Employer's computers without authorization, and starting a business to compete with Employer.

Claimant filed for unemployment compensation benefits, which were denied by the Office of Employment Security (OES), and she requested a hearing before the Referee. Claimant testified before the Referee that she set up the website "Bellissimo Kitchens" to help bring in customers for Employer's business, and she was setting up the business in case Employer followed through on its threat to terminate all employees. However, Employer offered evidence that Claimant was using Employer's computers to set up her own business, sought advice from another person as to how she could properly incorporate her business, and advised the party with whom she was communicating not to inform Employer that she was engaged in this activity. The Referee did not find Claimant credible

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

and affirmed the OES' decision by denying her benefits. Claimant filed an appeal with the Board denying that she was attempting to start her own business and also arguing that 1) she had limited time to testify during the hearing and 2) her attorney was given limited time to cross-examine the only witness for Employer in order to rebut his testimony and to establish Claimant's credibility. The Board affirmed the Referee's decision, and this appeal by Claimant followed.²

On appeal, Claimant raises three arguments in her "Statement of Questions Presented:" the first is whether she was given adequate time to testify and rebut the sole witness of Employer, and the second and third deal with whether her attorney had adequate time to cross-examine Employer's sole witness and to establish Claimant's credibility.³ However, Claimant makes no argument for any

² Our scope of review is limited to determining whether an error of law was committed, whether constitutional rights were violated or whether necessary findings of fact are supported by substantial evidence. *Ross v. Unemployment Compensation Board of Review*, 861 A.2d 1019 (Pa. Cmwlth. 2004). Whether a claimant has engaged in willful misconduct is a question of law subject to review by this Court based upon the findings of fact found by the Board. *Id.*

³ Specifically, the questions raised are as follows:

1. Whether the Appellant, Lisa M. McKeogh, was given adequate and sufficient time to testify on her behalf and to rebut the sole witness of her former employer, Mr. Ken Straiger of Admiral Kitchen, LLC., during the hearing held on November 14, 2007, before Referee, Bruce Newman, Montgomery County, Norristown, Pennsylvania.

2. Whether the Appellant's Attorney, Edward J. Morris was given limited time to cross examine Mr. Ken Straiger of Admiral Kitchen, LLC., who was the only witness for Admiral Kitchen and to establish Petitioner's credibility which limitation resulted in errors of fact and law.

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of the questions she has presented, but merely states the following in her “Summary of Argument:”

Appellant, Lisa M. McKeough, was denied adequate and sufficient time to testify on her behalf and to rebut the sole witness of her former employer, Mr. Ken Straiger of Admiral Kitchen, LLC., during the hearing held on November 14, 2007, before Referee, Bruce Newman, Montgomery County, Norristown, Pennsylvania.

Appellant’s Attorney, Edward J. Morris was given limited time to cross examine Mr. Ken Straiger of Admiral Kitchen, LLC., which was the only witness for Admiral Kitchen to rebut his testimony and to establish Appellant’s credibility which limitation resulted in errors of fact and law.

Other than these statements, there is no argument presented to the Court explaining how or why Claimant and her attorney were denied adequate time by the Referee. There also is no indication by Claimant or case law cited as to what would have been an adequate amount of time for testifying by Claimant or cross-examination by her attorney. Blanket statements regarding errors by the Board and Referee do not constitute arguments for the Court to review, and it is

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3. Whether the Appellant was prepared to present a meritorious defense but was given limited time to cross examine Mr. Ken Straiger of Admiral Kitchen, LLC., who was the only witness for Admiral Kitchen and to establish Petitioner’s credibility which limitation resulted in errors of fact and law.

not the Court's role to become Claimant's counsel when her brief is inadequate.⁴ Because arguments that are not properly developed in a brief will be deemed waived by this Court, *Rapid Pallet v. Unemployment Compensation Board of Review*, 707 A.2d 636 (Pa. Cmwlth. 1998), Claimant's arguments are waived on appeal.⁵

Accordingly, the order of the Board is affirmed.

DAN PELLEGRINI, JUDGE

⁴ While Claimant also makes other statements in her Summary of Argument, i.e., that she met her burden of proof and that her constitutional rights were violated, those arguments were not raised in her Statement of Questions Presented and also were not supported by any further explanation or caselaw.

⁵ *See also* Pa. R.A.P. 2119(a) which requires that: "The argument section [of the brief] shall be divided into as many parts as there are questions to be argued; and shall have at the head of each part-in distinctive type or in type distinctively displayed-the particular point treated therein, followed by such discussion and citation of authorities as are deemed pertinent."

