

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Richard D. Harris, Sr.,	:	
Petitioner	:	
	:	
v.	:	No. 496 C.D. 2011
	:	Submitted: September 2, 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 JUDGE SIMPSON**

**FILED: October 4, 2011**

Richard D. Harris, Sr. (Claimant) petitions for review of an order of the Unemployment Compensation Board of Review (Board) that denied his claim for benefits under Section 402(e) of the Unemployment Compensation Law (Law) (willful misconduct).<sup>1</sup> Claimant contends his actions did not constitute willful misconduct because he had good cause for his activity. Upon review, we affirm.

The Board found the following facts. Claimant worked for Mercy Fitzgerald Hospital (Employer) as a security officer for approximately four years. In March 2010, Employer received information that Claimant sold illegal copyright infringed DVDs on company property during work hours. Subsequently,

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

Employer conducted an investigation and concluded the allegations were true. As a result, Employer terminated Claimant. Thereafter, Claimant applied for unemployment benefits, which were initially granted. Employer appealed.

At a hearing, the referee found Claimant ineligible for benefits based on a finding of willful misconduct. Specifically, the referee determined, partly based on Claimant's admissions, that Claimant sold copyright infringed DVDs on company property during work. The referee determined Claimant's actions constituted a violation of Employer's work rules and were in willful disregard of the reasonable standards expected by Employer. Claimant appealed.

On appeal, the Board affirmed the referee's decision and made essentially identical findings and determinations. Claimant petitions for review.<sup>2</sup>

In his brief, Claimant argues he did not commit willful misconduct as he had good cause for his actions. Specifically, Claimant asserts Employer did not regularly enforce its policy against selling items at work; therefore, he was unaware that his conduct was in violation of a work rule. Additionally, Claimant argues the true reason the policy is being applied to him is in retaliation for his involvement in an unrelated suit filed against Employer by some of the employees.

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<sup>2</sup> Our review is limited to determining whether the necessary findings of fact were supported by substantial evidence, whether errors of law were committed, or whether constitutional rights were violated. Oliver v. Unemployment Comp. Bd. of Review, 5 A.3d 432 (Pa. Cmwlth. 2010) (en banc).

Section 402(e) of the Law provides, “[a]n employee shall be ineligible for compensation for any week ... [i]n which his unemployment is due to his discharge...from work for willful misconduct connected with his work ....” 43 P.S. §802(e). “Our Supreme Court defines willful misconduct as behavior that evidences a willful disregard of the employer’s interest, a deliberate violation of the employer’s work rules, or a disregard of standards of behavior that the employer can rightfully expect from its employees.” Ductmate Indus., Inc. v. Unemployment Comp. Bd. of Review, 949 A.2d 338, 341 (Pa. Cmwlth. 2008) (citing Caterpillar, Inc. v. Unemployment Comp. Bd. of Review, 550 Pa. 115, 703 A.2d 452, 456 (1997)). Whether a claimant’s conduct rises to the level of willful misconduct is a question of law fully reviewable on appeal. Caterpillar.

A work rule violation need not be shown where the expected standard of behavior is obvious, and the claimant’s conduct is clearly contrary to the employer’s interests. Spare v. Unemployment Comp. Bd. of Review, 432 A.2d 283 (Pa. Cmwlth. 1981). Thus, this Court holds that a criminal act, which is sufficiently connected to a claimant’s employment, is adequate to establish willful misconduct. Knarr v. Unemployment Comp. Bd. of Review, 579 A.2d 464 (Pa. Cmwlth. 1990); Unemployment Comp. Bd. of Review v. Anderson, 351 A.2d 705, 706 (Pa. Cmwlth. 1976) (“[conducting] criminal activities on [an] employer’s premises [is] an obvious violation of acceptable standards of behavior”).

Additionally, where the alleged willful misconduct is based on a work rule violation, the burden is on the employer to prove the claimant knew the work rule existed and violated it. Bishop Carroll High School v. Unemployment Comp.

Bd. of Review, 557 A.2d 1141 (Pa. Cmwlth. 1989). If an employer meets its burden of establishing willful misconduct, the burden shifts to the claimant to establish good cause for violating the rule. Docherty v. Unemployment Comp. Bd. of Review, 898 A.2d 1205 (Pa. Cmwlth. 2006). Good cause exists, and otherwise willful misconduct is excused, where a claimant can establish his actions were justified and reasonable under the circumstances. Id.

Here, Claimant admitted he conducted illegal activities while on duty at work. Notes of Testimony, 12/3/10, at 10. Moreover, in his brief, Claimant does not dispute his conduct was illegal. As such, Claimant's illegal activities show a conscious disregard for the standard of behavior Employer could rightfully expect from its employees. See Knarr; Anderson. Additionally, Employer maintained a code of conduct that required employees to act with integrity; illegal activity at work clearly violates that mandate. See id. Therefore, the Board did not err in determining Claimant's actions constituted willful misconduct.

Furthermore, Claimant did not establish good cause for his behavior. Claimant asserts he had good cause and his sales were reasonable because Employer permitted other employees to sell various items at work. Claimant also argues Employer only enforced the policy against him in retaliation for him complaining about Employer's alleged wage-law violations, which are the subject of a pending civil suit.

Contrary to Claimant's reasoning, Employer did not terminate Claimant because he sold items at work; rather, Employer terminated Claimant

because he illegally sold copyright infringed DVDs at work. The Board found that “The employer is aware that other employees have sold things while at work. However, the claimant has not shown that any of those items were illegal.” Finding of Fact No. 8. Therefore, Claimant has not shown his actions to be reasonable under the circumstances, and he has not shown that he was situated similar to other employees who were treated differently. See Workinger v. Unemployment Comp. Bd. of Review, 667 A.2d 436 (Pa. Cmwlth. 1995).

Additionally, Claimant did not prove his retaliation theory. The Board stated, “The Board notes that it cannot find any merit to the claimant’s argument that he was discharged for other reasons.” Bd. Op. at 2. Thus, Claimant’s arguments are not supported by the facts as found by the Board.

Accordingly, we affirm.

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ROBERT SIMPSON, Judge

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**ORDER**

**AND NOW**, this 4<sup>th</sup> day of October, 2011, the order of the Unemployment Compensation Board of Review is **AFFIRMED**.

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ROBERT SIMPSON, Judge