

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Liberty Truck Center, Inc.,	:	
Petitioner	:	
	:	
v.	:	No. 498 C.D. 2012
	:	Submitted: October 26, 2012
Unemployment Compensation	:	
Board of Review,	:	
Respondent	:	

BEFORE: HONORABLE DAN PELLEGRINI, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES GARDNER COLINS, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE SIMPSON**

FILED: November 30, 2012

Liberty Truck Center, Inc. (Employer) petitions for review of an order of the Unemployment Compensation Board of Review (Board) that granted David Farrald (Claimant) unemployment compensation benefits. Employer challenges the Board's determination that Claimant did not commit willful misconduct by violating Employer's timekeeping policy. See Section 402(e) of the Unemployment Compensation Law (Law).¹ Discerning no error, we affirm.

Claimant worked for Employer as a salaried full-time manager from March 4, 2011, until his last day of work on November 1, 2011. Employer utilizes an electronic time card system in which employees sign into the cash register using their specific identifiers registering their arrival and departure times. Employer has

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

a policy that prohibits altering, falsifying, or tampering with time records. Employer sent an email stating that management is to punch in and out consistently. Employer directed Claimant to provide an explanation for any manual time adjustments. Claimant was aware of Employer's timekeeping policy.

Employer investigated Claimant's arrival and departure times by comparing Claimant's punch time records with the security camera. Employer determined that, on 11 occasions over the course of one month, Claimant had gross deviations in the manual punch times versus the times recorded on the security camera. Claimant admitted he adjusted his time records, but he understood that he had the permission of his supervisor to do so. Claimant asserted he was verbally instructed to adjust his hours by his immediate supervisor because he forgot to punch in. Claimant understood that he was discharged for adjusting his hours. Employer discharged Claimant for falsifying his time records in violation of Employer's policy. Thereafter, Claimant applied for unemployment benefits, which the local service center denied. Claimant appealed.

At a hearing before a referee, Claimant testified on his own behalf, and Peg Napolitano, Employer's District Manager, testified for Employer. The referee determined that Employer did not establish willful misconduct because much of Employer's evidence constituted hearsay. The referee issued a decision reversing the service center and granting unemployment compensation benefits to Claimant. Employer appealed.

On appeal, the Board affirmed on alternate grounds. The Board determined that, although Claimant admitted he manually changed his time punches, Claimant made a notation explaining why, in accordance with Employer's directive. Therefore, he did not violate Employer's timekeeping policy. From this decision, Employer petitions for review.²

Employer contends that the Board's award of benefits is in error and is not based upon substantial evidence because the record proves Claimant engaged in willful misconduct by failing to comply with Employer's timekeeping policy.³ Employer established the existence of a reasonable work rule that directs managers to punch in and out consistently and prohibits employees from altering, falsifying, or tampering with time records. Bd. Op., 2/24/2012, Findings of Fact (F.F.) Nos. 3, 4. Employer also established Claimant's awareness of the work rule. F.F. No. 6. Employer asserts that Claimant consistently disregarded Employer's rule by manually changing his time punches.

The Board is the ultimate fact-finder in unemployment compensation matters and is empowered to resolve all conflicts in evidence, witness credibility, and weight accorded to the evidence. Ductmate Indus., Inc. v. Unemployment

² 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).

³ Employer does not challenge any of the Board's specific findings of fact. In the petition for review, Employer states that it "agrees with all of the findings of fact." Pet. for Review at 1. As a result, the Board's findings are conclusive on appeal. See Campbell v. Unemployment Comp. Bd. of Review, 694 A.2d 1167 (Pa. Cmwlth. 1997) (holding unchallenged findings are conclusive on appeal).

Comp. Bd. of Review, 949 A.2d 338 (Pa. Cmwlth. 2008). The party prevailing before the Board “is entitled to the benefit of all reasonable inferences drawn from the evidence.” Id. at 342.

Section 402(e) of the Law provides, “[a]n employe 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). “Willful misconduct” is “behavior evidencing a wanton or willful disregard of the employer’s interests; a deliberate violation of the employer’s work rules; a disregard of standards of behavior the employer can rightfully expect from its employee; [or], negligence indicating an intentional disregard of the employer’s interest or an employee’s duties or obligations.” Dep’t of Corr. v. Unemployment Comp. Bd. of Review, 943 A.2d 1011, 1015 (Pa. Cmwlth. 2008).

The employer bears the initial burden of proving a claimant engaged in willful misconduct. Ductmate. When asserting discharge due to a violation of a work rule, an employer must establish existence of the rule and its violation. Id. Whether a claimant’s conduct rises to the level of willful misconduct is a question of law fully reviewable on appeal. Caterpillar, Inc. v. Unemployment Comp. Bd. of Review, 550 Pa. 115, 703 A.2d 452 (1997).

Here, the Board concluded Employer did not establish Claimant was discharged for willful misconduct. Employer’s policy prohibits altering, falsifying, or tampering with time records. Reproduced Record (R.R.) at 18a. Employer directed its managers to punch in and out consistently. Id. at 21a. Employer sent an email to Claimant, as well as other managers, stating:

It has come to my attention that some managers are not punching in and out consistently. As you all know, punching in and out each day is a requirement and must be done to log your hours, even though you are on salary. Please make sure that you are punching in and out every day per our company requirements and that any manual time adjustments are accompanied by an explanation.

Id. at 17a (emphasis added).

Although Claimant admitted that he manually altered his time records, Claimant credibly testified that his immediate supervisor verbally instructed him to adjust his hours because he forgot to punch in. F.F. No. 11; R.R. at 60a. Claimant explained that “if I showed up at 8:00 and if I forgot to punch in until 10:00 and I was leaving at 5:00, I would punch out at 7:00 to make up for those two hours.” R.R. at 61a. Claimant testified that he adjusted his hours to provide an accurate reflection of the hours he actually worked. Id. at 61a, 65a. Claimant provided a notation for the manual time adjustments. Id. at 17a. The record, when viewed as a whole, supports the Board’s conclusion that Claimant did not violate Employer’s work rule. Employer therefore failed to prove willful misconduct.

Based upon the foregoing, we affirm the Board’s order granting Claimant unemployment compensation benefits.

ROBERT SIMPSON, Judge

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ORDER

AND NOW, this 30th day of November, 2012, the order of the Unemployment Compensation Board of Review is **AFFIRMED**.

ROBERT SIMPSON, Judge