

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Selena M. Horne,	:	
Petitioner	:	
	:	
v.	:	
	:	
Unemployment Compensation	:	
Board of Review,	:	No. 53 C.D. 2010
Respondent	:	Submitted: September 17, 2010

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY

FILED: November 10, 2010

Selena M. Horne (Claimant) petitions for review from the order of the of the Unemployment Compensation Board of Review (Board) which affirmed the decision of the Referee who disapproved benefits under Section 402(e) and 401(f) of the Unemployment Compensation Law (Law).¹

The relevant facts, as initially found by the Referee and adopted by the Board, are:

1. The claimant was last employed by Park Pleasant Nursing Home as a charge nurse earning \$22.00 per hour. She was employed for 5 months, and her last day of work was June 23, 2009.

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §802(e) and 801(f).

2. The employer's policy prohibits the falsification of documents. Failure to adhere to the policy will result in termination.
3. The claimant was aware or should have been aware of the policy which was contained in the employer's handbook.
4. The employer's timekeeping procedure requires an employee to punch in at a time clock using a swipe card.
5. If an employee misses a swipe or forgets the swipe card, the employee completes a missed punch report.
6. The missed punch report must be signed by a supervisor who can verify the time of the employee's arrival.
7. On June 22, 2009, the supervisor saw the claimant at the time clock at approximately 7:15 p.m.
8. The claimant submitted a missed punch reported [sic] indicating that she signed in at 7:05 p.m.
9. The supervisor refused to sign the missed punch report because she did not see the claimant until 7:15 p.m.
10. A check of the time clock records indicated that the claimant punched in at 7:17 p.m. on June 22, 2009.
11. The claimant alleges that she signed in by her own clock, and was in the building before the supervisor saw her.
12. On June 25, 2009, the employer met with the claimant about the incident.
13. The claimant was terminated for falsification of documents.

14. From June 24, 2009 to July 3, 2009, the claimant did not work or have earnings.

Referee's Decision, September 29, 2009, Findings of Fact Nos. 1-14 at 1-2.

The Referee determined:

It is well established that the deliberate violation of an employer's policy is generally considered to be willful misconduct. In this case, the employer has established the policy prohibiting the falsification of documents. The claimant violated the policy, and as a result, she was discharged. The claimant has failed to show good cause for her actions which were in violation of company policy and considered willful misconduct. Therefore, benefits are disapproved under the provisions of Section 402(e) of the Law.

....

The claimant gave sworn credible testimony that she was not employed after her separation from Park Pleasant Nursing Home. Therefore, the claimant did not earn six times her weekly benefit rate in subsequent employment, and benefits are also disapproved under the provisions of Section 401(f) of the Law.

Referee's Decision at 2.

The Board affirmed:

The record is replete with conflicting testimony and evidence pertaining to the circumstances surrounding the claimant's discharge. Contrary to the claimant's assertions, the employer's witnesses with first hand knowledge provided the credible and accurate series of events for which the claimant was discharged.

Board's Decision, December 16, 2009, at 1.

Claimant contends that the Board erred when it determined that Claimant was ineligible for benefits because she committed willful misconduct.²

Whether a claimant's conduct rises to the level of willful misconduct is a question of law subject to this Court's review. Lee Hospital v. Unemployment Compensation Board of Review, 589 A.2d 297 (Pa. Cmwlth. 1991). Willful misconduct is defined as conduct that represents a wanton and willful disregard of an employer's interest, deliberate violation of rules, disregard of standards of behavior which an employer can rightfully expect from the employee, or negligence which manifests culpability, wrongful intent, evil design, or intentional and substantial disregard for the employer's interest or employee's duties and obligations. Frick v. Unemployment Compensation Board of Review, 375 A.2d 879 (Pa. Cmwlth. 1977). The employer bears the burden of proving that it discharged an employee for willful misconduct. City of Beaver Falls v. Unemployment Compensation Board of Review, 441 A.2d 510 (Pa. Cmwlth. 1982). The employer bears the burden of proving the existence of the work rule and its violation. Once the employer establishes that, the burden then shifts to the claimant to prove that the violation was for good cause. Peak v. Unemployment Compensation Board of Review, 509 Pa. 267, 501 A.2d 1383 (1985).

Lisa Reifenrath (Ms. Reinfenrath), Director of Human Resources for Park Pleasant Nursing Home (Employer), testified credibly that Claimant was

² This Court's review in an unemployment compensation case is limited to a determination of whether constitutional rights were violated, errors of law were committed, or essential findings of fact were not supported by substantial evidence. Lee Hospital v. Unemployment Compensation Board of Review, 637 A.2d 695 (Pa. Cmwlth. 1994).

discharged for willful misconduct.³ Madinga Dweh, RN Evening Supervisor for Employer, testified credibly that she refused to sign Claimant's missed punch form because it did not accurately reflect the time Claimant arrived. Curtina Heckman, Director of Nursing for Employer, testified credibly that she terminated Claimant for falsification of records.

Claimant testified regarding the sequence of events on June 22, 2009.⁴

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- ³ **[Referee (R)]:** What happened that caused the Claimant's separation from the employment? We're focusing on the incident that occurred at or near June 23rd that caused her separation from employment.
- [Ms. Reinfenrath]:** On June 23rd she made a false record regarding her time clock. The violation was she submitted a missed punch form, which was not the actual time she had arrived. And she didn't follow procedure for using that form.

Notes of Testimony (N.T.), September 29, 2009, at 10.

- ⁴ **[R]:** Okay. Now you've heard the testimony given by the Employer's witnesses, that the Employer has a policy which basically prohibits falsification, and that there was an incident that occurred on June 22nd, which led to your separation from the Employer. What happened? Now it's your turn.
- [Claimant (C)]:** Okay. On the 22nd I arrived at work. I had my badge down in my bag.
- [R]:** What time did you arrive?
- [C]:** It was 7:05, because I look [sic] at my watch before I get out of the car. My clock is set a little bit before that.
- [R]:** Okay.
- [C]:** I've never had a problem with using my clock before. I've never been forced to use the time clock, it has not been a practiced policy at all. Nor has any supervisor that I've ever had sign my time card, used the time clock. I entered the building. I went upstairs. At the time that I got upstairs, there were three people standing—three, three of the nurses that were there, Wanda Irvin, Reebe (phonetic) Owens, and Latiya (phonetic) Gans (phonetic). They were all at the nurses's stating [sic]. Madinga, they just said you just missed Madinga. She went down on the elevator when you came up. I said I have to go back downstairs and swipe in anyway. I just wanted to let you guys know I was here. I

(Footnote continued on next page...)

Regarding Claimant's challenges to the credibility of Employer's witness and quality of Employer's evidence, Claimant is essentially attacking the factfinding and the weight accorded to the evidence by the Board. Claimant's argument is flawed because the Board was free to find Claimant's version of the incident unpersuasive.

In unemployment compensation proceedings, the Board is the ultimate factfinding body empowered to resolve conflicts in evidence, to determine the credibility of witnesses, and to determine the weight to be accorded evidence. Unemployment Compensation Board of Review v. Wright, 347 A.2d 328 (Pa.

(continued...)

went into the office, I put my bags down, my black bag that I always carry, it's a nurse's bag. I went to the office, I put the bag down. I got my badge out of the bag, it took me a little while to find it because I had switched bags, nursing bags. I went downstairs, and that is when I swiped in. Then I went to Madinga to have the, have the sheet signed....

So she refused to sign it. I said -- I told her then, I had to go upstairs first, I had to find my badge, you know, and I just said you know what I'm not going to argue. I had already swiped in prior to coming to her anyway, so she - - and at the time that I swiped in she didn't see me with my nursing bag or none of that. So it was obvious that I had already been upstairs and come back down. So I went back upstairs, because I had to count narcs with the, with the nurse that was waiting, because they have to be off the floor by 7:30. I discussed it with the nurses that were upstairs, we talked about it a little bit. And at that time I said let me write down what happened to show that there's a discrepancy. When I, when I went back down on the elevator, that's when the time was 7:13. That's the 7:13 time that I wrote down. That was when I was on my way back downstairs. So that time I had already had. Then I swiped - - then I came to Madinga, then I went back upstairs.

N.T. at 24-25.

Cmwlth. 1975). Findings of fact are conclusive upon review provided that the record, taken as a whole, provides substantial evidence to support the findings. Taylor v. Unemployment Compensation Board of Review, 474 Pa. 351, 378 A.2d 829 (1977). This Court will neither reweigh the evidence nor accept a version of the facts the Board rejected.⁵

Accordingly, the decision of the Board is affirmed.

BERNARD L. McGINLEY, Judge

⁵ Claimant argues that the Board capriciously disregarded relevant evidence. Here, the Board noted:

The Board recognizes that the capricious disregard standard of review, previously applicable where only the party with the burden of proof presented evidence and did not prevail before the administrative agency, is now “an appropriate component of appellate consideration in every case in which such question is properly brought before the Court.” *Leon E. Wintermeyer, Inc. v. Workers’ Compensation Appeal Board*, 571 Pa. 189, 203, 812 A.2d 478, 487 (2002).

Board’s Brief, Footnote 4 at page 7.

Both parties presented evidence. However, the Board properly performed its duty as factfinder and found the Employer’s evidence to be credible.

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ORDER

AND NOW, this 10th day of November, 2010, the order of the Unemployment Compensation Board of Review in the above-captioned matter is affirmed.

BERNARD L. MCGINLEY, Judge