

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Rachna J. Patel, :
 :
 Petitioner :
 :
 v. : No. 550 C.D. 2012
 :
 : Submitted: October 19, 2012
 Unemployment Compensation :
 Board of Review, :
 Respondent :

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McCULLOUGH

FILED: January 30, 2013

Rachna J. Patel (Claimant) petitions for review of the March 2, 2012 order of the Unemployment Compensation Board of Review (Board), which affirmed a referee's determination that Claimant is ineligible for benefits pursuant to section 402(e) of the Unemployment Compensation Law (Law).¹ We affirm.

Claimant became employed by St. Vincent Health Center (Employer) as part of her participation in Employer's Emergency Medical Residency Program. Employer's policy provided that an employee who did not return to work at the expiration of a leave of absence may be discharged. Claimant was or should have

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. §802(e). Section 402(e) states 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.

been aware of this policy. During the second year of her residency, Claimant was approved to take medical leave under the Family and Medical Leave Act (FMLA)² from June 1, 2011, through June 26, 2011, for treatment of supraventricular tachycardia (irregular heartbeat). On June 23, 2011, Claimant underwent surgery to correct her irregular heartbeat. On June 27, 2011, Claimant asked to extend her medical leave because she was not feeling well. Employer agreed to this extension so long as Claimant provided the necessary documentation from her physician. (Board's Findings of Fact, Nos. 1-7.)

Claimant's treating physician would not provide her with the medical documentation she needed to support an extension of her leave. (Board's Findings of Fact, Nos. 8, 12.) On July 11, 2011, Employer mailed Claimant a letter requesting that she submit a statement from her physician by July 15, 2011. (Board's Finding of Fact No. 9.) However, the letter was mailed to the wrong address, and Claimant did not receive it in a timely fashion. On July 18, 2011, a human resources manager sent an email to Claimant notifying her that Employer needed the documentation from her treating physician no later than the end of July. (Board's Findings of Fact Nos. 10-11.) Claimant's physician would not provide her with the necessary documentation, and Claimant informed Employer of her inability to obtain the medical forms on July 29, 2011. (Board's Findings of Fact Nos. 12, 14.) On August 1, 2011, Employer discharged Claimant for failing to secure a physician's excuse to justify her extended absence from work following her surgery. (Board's Findings of Fact No. 15.)

Claimant filed an application for unemployment compensation on August 7, 2011. The local service center determined Claimant voluntarily quit her

² 29 U.S.C. §§2601-2654.

employment and was ineligible for benefits pursuant to section 402(b) of the Law.³ Claimant appealed, and after a continuance was granted, a hearing was conducted on October 27, 2011.

At the hearing, Kim M. Figurski (Figurski), a manager in Employer's Human Resources Department, testified that she handled Claimant's request to extend her leave. Figurski said she spoke with Claimant on June 27, 2011, and advised Claimant of the need to provide medical documentation to extend her leave. (N.T. at 49-50.) Figurski stated that when the documentation was not submitted, she mailed a letter to Claimant on July 11, 2011, and again on July 13, 2011. (N.T. at 50-51.) Figurski stated that she subsequently received a phone call from Claimant expressing confusion and asking her to email specific instructions. Figurski also testified that Claimant called again and asked what would happen if she did not provide the documentation to Employer, after which Figurski informed Claimant that her leave would not be protected. (N.T. at 51-53.)

Matthew T. McCarthy (McCarthy), Program Director for St. Vincent's Emergency Medicine Residency Program, stated he was aware that Claimant was on medical leave and that this leave was extended on June 27, 2011. (N.T. at 61-63.) McCarthy testified that on July 19, 2011, Claimant told him that her treating physician would not sign the necessary documents and that she was unable to personally talk with her doctor. (N.T. at 63-64.) McCarthy also said that Claimant told him she wanted to extend her leave so that she could study for board examinations. (N.T. at 71.)

³ Section 402(b) of the Law, 43 P.S. §802(b), provides that an employee who voluntarily leaves work without cause of a necessitous and compelling nature is ineligible for benefits.

Claimant testified that she was diagnosed with supraventricular tachycardia, otherwise known as an irregular heartbeat. (N.T. at 13.) She explained that because of this diagnosis she applied for leave under the FMLA and ultimately had surgery to correct the problem. Claimant testified that she continued to have symptoms and problems after the surgery, and on June 27, 2011, she requested that her leave be extended. Claimant explained that when she spoke with Figurski on that date, Figurski asked Claimant if she had any paperwork on file; Claimant indicated she did but none related to an extension of her leave; and Figurski told her she would call back if there was an issue with Claimant's file. (N.T. at 26-27.) Claimant said that at this time she was not aware she needed to turn in any documentation to extend her leave and she believed that if she needed to provide additional documentation Figurski would call her. (Id.)

Claimant testified that she eventually received a letter asking her to provide the necessary documentation to extend her leave. Claimant stated that she followed up by contacting Figurski and asking her to email a clarification. Claimant said she also called a second time to ask what would happen if she could not get the documentation but Figurski never returned this second phone call. Claimant testified that after receiving the letter and email clarification, she contacted her physician. According to Claimant, "We went back and forth through a secretary. And then eventually, like I discussed with my lawyer, he contacted me through his nurse, I never directly spoke to him. And I got the, you know, saying that he won't be giving me the paperwork." (N.T. at 27-30.) Claimant stated that her treating physician did not give a reason for refusing to provide the documentation. (N.T. at 30.)

Claimant testified that she contacted McCarthy on July 29, 2011, to tell him she was having difficulties getting the necessary documents from her treating

physician. Claimant said that at this point, McCarthy told Claimant for the first time that she could be discharged for failing to provide the medical documentation to support the extension of her leave. On August 1, 2011, Claimant received a letter saying she was discharged. (N.T. at 39-40.)

In addition to her testimony, Claimant submitted a report dated August 3, 2011, prepared by Joan M. Orloski, Ph.D., D.O. (Reproduced Record (R.R.) Appendix at 16.) Dr. Orloski states in the report that she met with Claimant on August 2, 2011, and reviewed her medical history. Dr. Orloski also states that patients such as Claimant can continue to have symptoms for four to six weeks after surgery; that it was in Claimant's best interest to take four weeks off from work; and that she approved of Claimant's decision to return to her studies as of August 1, 2011. The report was not offered for the truth of its contents, but to show that Claimant made an effort to obtain medical documentation from another doctor and submit the same to Employer. (N.T. at 18-20.)

After the hearing the referee determined that Claimant did not voluntarily quit her job, but, rather, Employer discharged Claimant for willful misconduct when she failed to provide the necessary documentation to extend her leave of absence. Claimant appealed to the Board, which affirmed the decision of the referee, resolving the conflicts in testimony in favor of Employer.

On appeal to this Court,⁴ Claimant argues that the Board erred in determining that Employer established willful misconduct because Claimant did not

⁴ Our scope of review is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with the law, and whether findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

deliberately violate Employer's work rule and her compliance depended upon the cooperation of a third party. We disagree.

Whether an employee's conduct constituted willful misconduct is a matter of law subject to this Court's review. Miller v. Unemployment Compensation Board of Review, 405 A.2d 1034 (Pa. Cmwlth. 1979). The burden of proving willful misconduct rests with the employer. Brant v. Unemployment Compensation Board of Review, 477 A.2d 596 (Pa. Cmwlth. 1984). Where, as here, a claimant is discharged for violating a work rule or policy, the employer must establish both the existence of a reasonable rule or policy and its violation; thereafter, the burden shifts to the claimant to prove she had good cause for her actions. Guthrie v. Unemployment Compensation Board of Review, 738 A.2d 518 (Pa. Cmwlth. 1999).

In the case at hand, Employer presented evidence establishing that its policy requires an employee to obtain documentation to extend her medical leave or face risk of being discharged; that Claimant was aware of this policy; and that Claimant violated the policy when she did not turn in medical documentation to support the extension of her medical leave. The burden of proof then shifted to Claimant to demonstrate good cause. Department of Corrections v. Unemployment Compensation Board of Review, 943 A.2d 1011 (Pa. Cmwlth. 2008).

However, Claimant maintains that Employer did not prove that her actions constituted willful misconduct because she did not deliberately violate Employer's policy but was simply unable to get documentation from her treating physician. Claimant contends that she is not ineligible for benefits because compliance with Employer's policy was not within her control but depended upon the cooperation of a third party. As support for this argument, Claimant cites, and distinguishes, Owens v. Unemployment Compensation Board of Review, 748 A.2d

794 (Pa. Cmwlth. 2000). The claimant in Owens was warned numerous times that her job was in jeopardy and that she needed to get a medical form filled out by her doctor. The claimant did not attempt to get the form filled out until the day it was due to be given to the employer, and, because her doctor was not available that day it was not returned to the employer until after the deadline. In Owens, our court upheld the denial of benefits based on willful misconduct, specifically, the claimant's failure to timely submit a medical certificate to excuse her absences.⁵

Claimant argues that Owens is factually distinguishable from the facts presented here and therefore this Court should reach a contrary result. Specifically, Claimant asserts that she was not similarly warned that she might lose her job and she did make an effort to obtain documentation from her physician. However, in Owens the court focused on the actions by the claimant, not a third party, and there is no language in Owens suggesting that, as a matter of law, reliance on a doctor or any other third party relieves a claimant of responsibility to comply with an employer's rule or policy. Accordingly, we reject Claimant's argument that "if an employee's unemployment is caused, at least in part, by extraneous factors over which an

⁵ The court in Owens stated as follows:

Claimant lays the blame on the doctor arguing that it was he who turned the documentation in late. We do not agree. Claimant was responsible to turn in the documentation. She had more than thirty days to accomplish this task. The record does not indicate that Claimant made a reasonable effort to have the form filled out as required. ... This last minute attempt does not indicate a reasonable effort was made by Claimant. ... [W]e believe it behooved Claimant to make every effort to turn in the medical documentation.

Id. at 798-99.

employee has no control, then she should be provided with unemployment compensation benefits.” (Claimant’s brief at 14.)

More importantly, the Board expressly accepted the testimony of Employer’s witnesses as credible and resolved conflicting testimony in Employer’s favor. In unemployment cases, the Board is the ultimate fact-finder empowered to make all determinations as to witness credibility and evidentiary weight. Peak v. Unemployment Compensation Board of Review, 509 Pa. 267, 501 A.2d 1383 (1985). The Board’s Findings are conclusive and binding on appeal where, as here, the record contains substantial evidence to support those findings. Brannigan v. Unemployment Compensation Board of Review, 887 A.2d 841 (Pa. Cmwlth. 2005). Accordingly, Claimant’s assertions that she did not have warning that her discharge was imminent and that Employer’s application of its policy was unreasonable necessarily fail.

Lastly, we address Claimant’s contention that the Board’s Findings of Fact No. 13 (that Claimant never notified Employer she was having problems obtaining documentation) and No. 14 (that Claimant finally notified Employer on July 29, 2011, that she was having such problems) are not supported by the record. Claimant points out that contrary testimony was offered by McCarthy, Employer’s witness, who stated that Claimant informed him on July 19th that she was having difficulties getting the documentation from her treating physician. However, Claimant testified that this conversation took place on the 29th. (N.T. at 17.) In any event, Claimant was discharged for failing to supply medical documentation to support an extension of her medical leave, not for failing to advise Employer earlier that she was having difficulty complying with its request. Thus, we conclude that the facts addressed in these findings are not material to our disposition and, therefore, any error in this regard was harmless.

Accordingly, we affirm.

PATRICIA A. McCULLOUGH, Judge

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Petitioner	:	
	:	No. 550 C.D. 2012
v.	:	
	:	
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 30th day of January, 2013, the order of the Unemployment Compensation Board of Review, dated March 2, 2012, is affirmed.

PATRICIA A. McCULLOUGH, Judge