

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Richard S. Potter, :
Petitioner :
v. :
Unemployment Compensation :
Board of Review, : No. 581 C.D. 2010
Respondent : Submitted: August 20, 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: October 13, 2010

Richard S. Potter (Claimant) petitions for review from the order of the Unemployment Compensation Board of Review (Board) which affirmed the decision of the Referee who reversed the Pennsylvania Bureau of U.C. Benefits and Allowance's grant of benefits under Section 402(e) of the Unemployment Compensation Law (Law).¹

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

1. Claimant was employed by GPX Management as a Service Manager at a rate of \$20.00 per hour that began on April 1, 2009 and last worked on October 5, 2009.

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

2. The Claimant angrily complained to the regional manager that he was unhappy with the job and wanted to go back to a tech position.
3. The Claimant complained about supplies and other work related issues.
4. The Claimant was urged to rethink the matter and after one week continued to angrily complain.
5. The Claimant developed a pattern of using personal funds to purchase supplies and was warned that this was not an acceptable practice.
6. The Claimant was made aware that there was a company credit card and/or approved vendors from whom he could make such purchases.
7. The Claimant did not utilize the standard procedure for supplies as he continued to use personal funds and submit expense reports for reimbursement.
8. The Claimant was subsequently discharged because of his non-compliance with company policy regarding supply purchases and continued poor attitude.

Referee's Decision (Decision), January 15, 2010, Findings of Fact Nos. 1-8 at 1.

The Referee determined:

In the present case, the record is clear that the Claimant failed to follow the established policies after being made aware and coupled with his uncooperative attitude, a finding of willful misconduct is concluded on his part in connection with the employment. Accordingly, the Claimant is disallowed benefits under Section 402(e) of the Law.

Decision at 2.

The Board affirmed.

Claimant contends that the Board erred when it determined that Claimant was ineligible for benefits because he 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).

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).

The first issue raised in Claimant's Statement of Questions Involved concerns whether the Board committed an error of law by not remanding this matter to the Referee to receive evidence from the Employer and allow the Claimant to enter a defense. This issue is not addressed in the argument section of his brief. Accordingly, it is waived. See Pa.R.A.P. 2116(a); County of Venango v. Housing Authority of Venango, 868 A.2d 646 (Pa. Cmwlth. 2005); Van Duser v. Unemployment Compensation Board of Review, 642 A.2d 544 (Pa. Cmwlth. 1994) (Issues not briefed are waived.).

Claimant also asserts he was permitted to make cash purchases and that other employees used their personal funds for company purchases. Claimant maintains there was no clear Employer policy or rule that he violated and if he did, his conduct was justified.

Suzanne Trigg (Ms. Trigg), Regional Property Manager for Employer, testified credibly that Claimant was discharged for willful misconduct.³ 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 the evidence by the Board. Claimant's argument is flawed

³ **[Referee (R)]:** And you terminated him because...?
[Employer's Witness (EW)]: The poor attitude and for continuing to buy supplies improperly.
R: Okay. Was he aware of the procedures for purchasing supplies?
EW: Yes.

N.T. at 3.

because the Board was free to find Claimant's version of the incident unpersuasive.⁴

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. 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.

Accordingly, the decision of the Board is affirmed.

BERNARD L. MCGINLEY, Judge

⁴ **R:** Well... Ms. Trigg testified here today that she spoke to you about it. You couldn't submit personal expense reports seeking reimbursement for parts that you were making—or purchasing with using your own funds. Did she speak to you about that?
Claimant (C): No.

N.T. at 6.

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ORDER

AND NOW, this 13th day of October, 2010, the decision of the Board is affirmed.

BERNARD L. McGINLEY, Judge