IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Carol Ann Welsh,   :
                                          :
              Petitioner   :
                                          :
                                          :
        v.   :   No. 609 C.D. 2010
                                          :   Submitted: August 20, 2010
Unemployment Compensation   :
Board of Review,   :
                                          :
              Respondent   :
                                          :

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

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FLAHERTY   FILED: October 15, 2010

        Carol Ann Welsh (Claimant), *pro se*, petitions for review from
the order of the Unemployment Compensation Board of Review (Board) that
affirmed the referee's denial of benefits under Section 402(e) of the
Unemployment Compensation Law (Law), due to Claimant's willful
misconduct. [1] We affirm.

_____

[1] Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. §
802(e). Section 402(e) of the Law provides that:

        An employe shall be ineligible for compensation for any
        week-

                              ***

Footnote continued on next page…

The facts as found by the referee and adopted by the Board are as follows:

1.   The claimant was last employed as an X-Ray Technologist by Thomas Jefferson University Hospital from October 4, 1976 through July 23, 2009 at the final rate of pay of $32.18 per hour.

2.   As a health professional the claimant was aware of the confidentiality requirements of the HIPPA Federal Law.

3.   This employer has policies which state that the disclosure of patient information without proper authorization and/or accessing a patient record without a job-related need-to-know will result in termination of employment.

4.   The claimant was, or should have been, aware of the aforestated employer policy.

5.   The claimant had access to the medical records of patients she was assigned to x-ray.

6.   On July 16, 2009 the claimant accessed the medical records of a patient to which she had not been assigned to x-ray.

7.   The claimant then disclosed confidential medical information that she obtained about the patient to others in her unit.

8.   As a result, on July 23, 2009 the claimant was discharged for violating the aforestated employer policies.

(Referee's decision at 1.)

(e) In which his unemployment is due to his discharge or temporary suspension from work for willful misconduct connected with his work, irrespective of whether or not such work is "employment" as defined in this act….

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In concluding that Claimant engaged in willful misconduct, the referee stated in pertinent part as follows:

> [T]he employer has policies which state that the disclosure of patient information without proper authorization and/or accessing a patient record without a job-related need-to [-] know will result in termination of employment. The claimant was, or should have been, aware of these policies.
>
> On July 16, 2009, the claimant violated these policies by accessing the medical records of a patient she was not assigned to treat and by disclosing confidential medical information about the patient to others in her unit. At the Referee's hearing the claimant offered no adequate justification for her violation of these important policies.
>
> …[T]he employer has met its burden of proving that the claimant committed willful misconduct, thereby rendering herself ineligible for benefits under Section 402(e) of the Law.

(Referee's decision at 2.) Claimant appealed to the Board, which adopted the referee's findings and conclusions and affirmed the referee's decision. Claimant now petitions this court for review.[2]

Claimant contends that the Board erred in determining that her conduct amounted to willful misconduct, and that the Board made findings of fact not supported by substantial evidence to prove that Claimant violated Thomas Jefferson University Hospital's (Employer) policy.

This court has defined willful misconduct under Section 402(e) of the Law as:

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[2] Our review in this matter is limited to a determination of whether constitutional rights have been violated, errors of law committed, or whether essential findings of fact are supported by substantial evidence. Brady v. Unemployment Compensation Board of Review, 544 A.2d 1085 (Pa. Cmwlth. 1988).

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> [A] wanton and willful disregard of an employer's interest, a deliberate violation of rules, a disregard of standards of behavior which the employer can rightfully expect from its employee, or negligence which manifests culpability, wrongful intent, evil design, or intentional and substantial disregard for the employer's interests or the employee's duties and obligations.

Brady, 544 A.2d at 1086. An employer has the burden of proving that willful misconduct was committed by an employee. Hartley v. Unemployment Compensation Board of Review, 397 A.2d 477 (Pa. Cmwlth. 1979). A review of the record reveals that Employer met its burden of proving willful misconduct.

In this case, Employer established that it had policies which stated that the disclosure of patient information without proper authorization and/or accessing a patient record without a job-related need-to-know basis would result in termination of employment. Claimant was, or should have been, aware of these policies. Claimant violated these policies by accessing the medical records of a fellow employee at the hospital, who she was not assigned to treat, and by disclosing confidential medical information about the patient to others in her unit.

Once an employer meets its burden, the burden then shifts to the claimant to show that she had good cause for violating the policy. Guthrie v. Unemployment Compensation Board of Review, 738 A.2d 518 (Pa. Cmwlth. 1999). Here, Claimant maintains that it was a common work practice for an x-ray technician to access medical information of patients that they were not assigned to x-ray in order to prepare for the possibility of being assigned to them later in the day. Employer's department manager

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testified, however, that this was not the established procedure that x-ray technicians were allowed to follow.

This is supported by the following testimony:

ET   …you've heard testimony provided by Ms. Welsh. Does the departmental workflow have any relevance to this situation and if not tell the Referee why?

EW1 The workflow is that a physician's note comes into the work area, the technologist should not be in the computer opening up any information until they have that doctor's note in their hand; that is the assignment that they have gotten and then they open it up to see all patient's demographics and patient history and then they proceed to x-ray their patient. That is the workflow.

….

R   Okay and now do you agree with her that since they're all x-ray technologists that it's okay that they share information about patients even though they're not going to be treating the patient?

EW1 I do not agree with that, no.

(R.R. 32-33.)

Here, the Board accepted the testimony of Employer's witness that the disclosure of confidential patient information occurred only after the technicians were assigned a patient and dissemination of confidential information was only to occur for work-related and need-to-know reasons. The Board is the ultimate finder of fact and determines credibility. Treon v. Unemployment Compensation Board of Review, 499 Pa. 455, 453 A.2d 960 (1982).

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Moreover, Claimant admitted to her wrongdoing in a letter she wrote to Employer which stated, "I realize what I said was wrong, and I am truly sorry." (Record item No. 7.) This contradicts Claimant's argument that she did not violate Employer's policy, and that it was acceptable common practice to access patients medical information, to which she was not assigned, and disclose such information to others in her unit.

In accordance with the above, the decision of the Board is affirmed.

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JIM FLAHERTY, Senior Judge

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Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	
	:	

O R D E R

AND NOW, this 15th day of October, 2010 the order of the
Unemployment Compensation Board of Review, in the above-captioned
matter, is affirmed.

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JIM FLAHERTY, Senior Judge