

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Frank R. Fedison,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 632 C.D. 2012
	:	SUBMITTED: September 21, 2012
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, Judge**  
**HONORABLE RENÉE COHN JUBELIRER, Judge**  
**HONORABLE ANNE E. COVEY, Judge**

**OPINION NOT REPORTED**

**MEMORANDUM OPINION BY  
JUDGE LEADBETTER**

**FILED: January 4, 2013**

Frank R. Fedison petitions for review of an order of the Unemployment Compensation Board of Review (Board) that reversed the decision of a referee and denied him unemployment compensation benefits, concluding that his violation of a work rule constituted willful misconduct under Section 402(e) of the Unemployment Compensation Law (Law).<sup>1</sup> We affirm.

The facts found by the Board are as follows. Claimant worked as a corrections officer for Employer Franklin County Jail from February 1995 to June

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

2011. Employer has a work rule regarding how pat downs of inmates are to be conducted. In May 2011, “[C]laimant was captured on video camera completing an insufficient pat down of a prisoner headed for court.” Board’s Finding of Fact No. 4. Claimant admitted that the pat down was inadequate and contrary to Employer’s policies, but maintained that Employer had instructed him “to tone down his patting to prevent prisoner complaints.” Board’s Finding of Fact No. 6. In June 2011, Employer viewed the video footage of the May 2011 pat down at issue, determined that it was insufficient and discharged Claimant. Claimant was vulnerable to discharge in that he “was on a last chance agreement, meaning that the next rule or policy violation could result in immediate discharge.” Board’s Finding of Fact No. 3.

The Lancaster UC Service Center initially determined that Claimant was ineligible for benefits. After a hearing at which Claimant and two witnesses for Employer testified, the referee concluded that Claimant established good cause for violating the work rule and determined that he was eligible for benefits. The Board reversed, rejecting as not credible Claimant’s testimony that his superior had advised him to administer non-compliant pat downs. Claimant’s timely petition for review to this Court followed.

Section 402(e) provides, in pertinent part, that an employee shall be ineligible for compensation for any week “[i]n which his unemployment is due to his discharge or temporary suspension from work for willful misconduct connected with his work . . . .” The term “willful misconduct” has been defined to include: (1) the deliberate violation of work rules; and (2) the disregard of standards of behavior which an employer can rightfully expect of its employee. *Glatfelter*

*Barber Shop v. Unemployment Comp. Bd. of Review*, 957 A.2d 786, 792 (Pa. Cmwlth. 2008).

The employer bears the initial burden of proving that the claimant engaged in willful misconduct. *Yost v. Unemployment Comp. Bd. of Review*, 42 A.3d 1158, 1162 (Pa. Cmwlth. 2012). If the willful misconduct charge is based upon a violation of a work rule, the employer must prove the existence of the rule and its deliberate violation. *Id.* Once the employer establishes a *prima facie* case of willful misconduct, the burden then shifts to the claimant to demonstrate good cause for his conduct. *Id.* The claimant has good cause if his action “is justifiable or reasonable under the circumstances.” *Frumento v. Unemployment Comp. Bd. of Review*, 466 Pa. 81, 87, 351 A.2d 631, 634 (1976).

On appeal, Claimant contends that the Board erred in determining that he did not establish good cause for violating the pat-down rule via his uncontradicted testimony that he was merely following the orders of his superior. Claimant emphasizes that Employer never presented the testimony of the superior in question or alleged that he was unavailable to testify. Further, Claimant maintains that Board should have provided a reason for rejecting Claimant’s uncontradicted testimony. Accordingly, Claimant maintains that there is no evidentiary basis for the Board’s credibility determination. We reject Claimant’s arguments.

It was not Employer’s burden to present a witness who allegedly advised Claimant not to comply with Employer’s pat-down rule. Once Employer met its burden of proving the existence of the rule and its deliberate violation, the burden shifted to Claimant to establish good cause for violating the rule. *Yost*, 42 A.3d at 1162. The only evidence that Claimant presented to establish good cause

was his own testimony, which the Board found to be not credible. We decline to disturb the Board's credibility determination on appeal. *Oliver v. Unemployment Comp. Bd. of Review*, 5 A.3d 432, 438 (Pa. Cmwlth. 2010) ("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.")

Moreover, where there is conflicting evidence and the Board's reasons for reversing are clear from the record and sufficient to permit judicial review, it need not explain its reversal of a referee's findings based upon a credibility determination. *Chapman v. Unemployment Comp. Bd. of Review*, 20 A.3d 603, 613 (Pa. Cmwlth. 2011). Here, Employer presented evidence contrary to Claimant's position that Employer somehow had sanctioned insufficient pat downs. In a March 2011 memo issued to all corrections officers approximately two months before the incident at issue, Employer clarified that all officers were expected to follow existing policies and procedures as outlined in the collective bargaining agreement and the S.O.P. manual of the Franklin County Jail. September 24, 2011 Hearing, Exhibit E-1. Employer emphasized that it was addressing one of the most commonly abused rules, conducting a safety/security check in accordance with the S.O.P. Further, it noted that it was "not changing any policy or standing operating procedure, merely just enforcing the one that already exists." *Id.* at 1. Lastly, it noted that one of the purposes of the memo was to "eliminate[] the confusion of 'which [lieutenant] is on' and 'which rules to follow today.'" *Id.*

Accordingly, having concluded that Claimant's evidence was insufficient to meet his burden of establishing good cause for violating Employer's work rule, we affirm.

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**BONNIE BRIGANCE LEADBETTER,**  
Judge

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	:	
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**ORDER**

AND NOW, this 4th day of January, 2013, the order of the Unemployment Compensation Board of Review is hereby AFFIRMED.

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**BONNIE BRIGANCE LEADBETTER,**  
Judge