

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Willie Muldowney,	:	
Petitioner	:	
	:	
v.	:	No. 695 C.D. 2008
	:	Submitted: September 19, 2008
Unemployment Compensation	:	
Board of Review,	:	
Respondent	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE ROCHELLE S. FRIEDMAN, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FLAHERTY FILED: December 5, 2008

Willie Muldowney (Claimant) petitions, *pro se*, for review from an order of the Unemployment Compensation Board of Review (Board) which reversed the decision of the referee and denied benefits to Claimant for willful misconduct under Section 402(e) of the Unemployment Compensation Law (Law).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 employee shall be ineligible for compensation for any week-

....

(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.

Claimant, prior to her dismissal, was a housekeeper for the Good Samaritan Regional Medical Center (Employer). After her dismissal, Claimant applied for and was denied benefits by the Scranton Unemployment Compensation Service Center pursuant to Section 402(e) of the Law. Claimant appealed that decision to the referee, who held a hearing at which Claimant, with counsel and a witness, and Employer's witness, appeared and testified. The referee reversed the Service Center's determination. Employer appealed to the Board, which made the following findings of fact:

1. The claimant worked for Good Samaritan Regional Medical Center as a housekeeper and her last day of work was June 25, 2007.
2. After her last day of work, the claimant took a week of vacation.
3. The claimant did not return to work after her vacation.
4. By letter dated July 26, 2007, the employer informed the claimant that she was being considered to have resigned because she had failed to justify her continued absence. The letter also directed the claimant to contact the employer immediately if the claimant felt that there had been a misunderstanding.
5. The claimant then contacted the employer and provided medical documentation to the employer.
6. The documentation that the claimant presented to the employer was traced over and stated that the claimant needed three weeks of leave to care for her mother who was being placed in a nursing home. The document had a date of July 23, 2007, as the date that the claimant's leave was to end.

7. The claimant told the employer that she had received the document from the doctor with the tracing on it.

8. The employer contacted the physician's office, which faxed a copy of the original document to the employer. That document contained no tracing and has a date of July 13, 2007, as the last day that the claimant would need leave.

9. The claimant had no explanation for the discrepancy.

10. The employer discharged the claimant for falsification of the employer's records in violation of its policies.

Board's Decision, March 18, 2008, (Board's Decision), Findings of Fact Nos. 1-10 at 1-2.

Based on the above, the Board determined that Claimant committed willful misconduct on that the date on the medical leave document that Claimant submitted to Employer "was clearly traced over and changed." Board's Decision at 2. The Board determined that Claimant's testimony that the document came from the physician with the altered date, was not credible. The Board stated that Claimant "falsified medical documentation in violation of the employer's policy." Board's Decision at 2. The Board concluded that Claimant was ineligible for benefits under Section 402(e) of the Law. Claimant now petitions our court for review.²

² Our review 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).

Claimant essentially argues that the Board erred in determining that she committed willful misconduct. She contends that she did not falsify the medical documentation that she gave to Employer. Claimant maintains that it would have been of no benefit for her to alter the dates at issue. Specifically, she states that the dates on the form were the dates the family medical leave was to start, not end, and thus, she needed the leave to start on July 13th, as that was the date she had begun to miss work, after using up her vacation time. She further contends that Employer fired her seven days before it had even received the papers from her, as she was terminated on July 26, 2007, and Employer did not receive the paperwork until August 1, 2007.³

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

[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.

In the present controversy, Claimant presented a medical leave slip to Employer with an altered date on it. Employer contacted the physician's office

³ Claimant was not terminated for altering the form until August 1, 2007. Claimant had been previously terminated on July 26, 2007, for abandoning her position. However, after speaking with Employer her position was restored and she was given time to produce a completed Family Medical Leave Act Certification form from the doctor. Claimant produced such form on August 1, 2007, and was terminated for falsification of such form.

and a copy of the original slip was sent to Employer. The original did not have an altered date.

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. Cmwlt. 1979). Here, there was no dispute that altering an official document of this nature constituted willful misconduct as defined in Section 402(e) of the Law. The only question before the Board was whether Claimant was the person who altered the document. The testimony presented revealed that Claimant submitted the altered form to Employer, was confronted by Employer regarding the alteration, and that Claimant denied altering the form. Employer, subsequently, obtained a copy of the original form from the physician, and, as such form was unaltered, terminated Claimant.

The Board determined that Claimant's testimony that she did not alter the form, was not credible. All credibility determinations are made by the Board. The weight given the evidence is within the discretion of the Board as factfinder. Fitzpatrick v. Unemployment Compensation Board of Review, 616 A.2d 110 (Pa. Cmwlt. 1992). The Board did not err in determining that Claimant was discharged for willful misconduct, as such determination is supported by substantial evidence.

Accordingly, we affirm the decision of the Board.

JIM FLAHERTY, Senior Judge

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Board of Review,	:	
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ORDER

AND NOW, this 5th day of December, 2008 the Order of the Unemployment Compensation Board of Review in the above-captioned matter is affirmed.

JIM FLAHERTY, Senior Judge