

At a February 3, 2010 hearing before the Referee, Employer presented the testimony of Latasha Sutton, a human resources generalist. Ms. Sutton explained that Claimant was terminated on December 10, 2009, for leaving work early the previous day without notifying a supervisor. She stated that if an employee of the payroll department needs to leave early, the policy is that he must notify a supervisor or the supervisor's supervisor. If these individual's are unavailable, at minimum, an employee should send an e-mail or voice mail to the supervisor or supervisor's supervisor if he needs to leave work early. Per Ms. Sutton, failure to comply with this policy warrants termination. Ms. Sutton asserted that Claimant was aware of this policy as it was communicated via staff meetings and team meetings.

Ms. Sutton testified that she became aware that Claimant left work on December 9, 2009 prior to the end of his work day when informed by Claimant's supervisor. The following day, Claimant was called to meet with his supervisor and Ms. Sutton. Claimant was questioned about the incident and he communicated that he left work early because he was not feeling well. According to Ms. Sutton, Claimant told her that no supervisor was available when he elected to go home so he notified a temporary employee. As notice to a temporary employee as opposed to a supervisor was insufficient, Claimant was terminated.

Employer further presented the testimony of Amaryllis O'Neill, payroll supervisor, who testified that she had a 10:00 a.m. meeting to attend on December 9, 2009. She stated that she informed her staff that she had her cell phone with her and that she could be reached if necessary. Ms. O'Neill

stated that when she returned from her meeting at 12:00 p.m., she was advised Claimant left the premises. She checked her voicemail and e-mail but there were no messages concerning his departure. She agreed a temporary employee informed her that Claimant had to go home due to illness.

Claimant testified that he was not feeling well while at work on December 9, 2009. He stated that around noon, he checked both Ms. O'Neill's office and Ms. O'Neill's supervisor's office. Both offices were empty. Claimant explained his understanding of Employer's policy was that you just needed to tell someone if you are leaving work early. He believed his notice to the temporary employee was sufficient and that he did not need to call his supervisor's cell phone.

Following the submission of evidence, the Referee concluded that Claimant was ineligible for unemployment compensation benefits under Section 402(e) of the Pennsylvania Unemployment Compensation Law (Law), Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2837, as amended, 43 P.S. §802(e). That provision states as follows:

An employe 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...

The Referee rendered thirteen findings of fact and determined that Claimant deliberately violated Employer's established policy regarding

leaving work early. She found Claimant committed willful misconduct and was not eligible for benefits under the Law. In so finding, the Referee resolved all conflicts in the testimony in favor of the Employer. The Board affirmed. The Board also found Employer's evidence more credible than Claimant's evidence. The Board further indicated that even in the absence of a policy regarding leaving work early, an employer can reasonably expect an employee to notify management before leaving work. Claimant appeals.¹

Claimant argues on appeal that the Board erred in affirming the Referee's determination to deny him unemployment compensation benefits. He further posits he did not violate company policy for leaving work early. Claimant questions that if it was an issue for him to leave early on December 9, 2009 without notifying a supervisor, why did his supervisor did not attempt to contact him on that day and inquire as to his whereabouts. Moreover, Claimant queries why it was improper for him to give notice to the temporary employee that he was leaving work early when that message was relayed to the supervisor. Claimant also states that Employer's policy concerning leaving early calls for a warning and/or progressive discipline in the event of its violation and that he was never given a warning.

¹ 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 necessary findings of fact are not supported by substantial evidence. Lee Hosp. v. Unemployment Compensation Board of Review, 637 A.2d 695 (Pa. Cmwlth. 1994).

Before addressing Claimant's arguments, we must first address the Board's contention that although Claimant generally contends the Board's decision is erroneous because of a variety of arguments, he fails to challenge any of the Board's findings of fact in his Petition for Review or his brief.

In unemployment compensation proceedings, the Board is the ultimate fact finder, and it is empowered to resolve all conflicts in the evidence and to determine the credibility of witnesses. Procito v. Unemployment Compensation Board of Review, 945 A.2d 261, 262 n. 1 (Pa. Cmwlth. 2008). The fact that a witness has presented a different version of the facts than found by the Board is not a basis for reversal if substantial evidence supports the Board's findings. Ruiz v. Unemployment Compensation Board of Review, 887 A.2d 804 (Pa. Cmwlth. 2005). In determining whether or not substantial evidence exists to support the Board's findings, we must examine the testimony in a light most favorable to the prevailing party, giving that party the benefit of any inference which can be drawn logically and reasonably from the evidence. Janicki v. Unemployment Compensation Board of Review, 469 A.2d 713 (Pa. Cmwlth. 1984). When a claimant fails to challenge any specific findings of fact made by the Board, those findings are conclusive on appeal. Campbell v. Unemployment Compensation Board of Review, 694 A.2d 1167 (Pa. Cmwlth. 1997); see also Salamak v. Unemployment Compensation Board of Review, 497 A.2d 951 (Pa. Cmwlth. 1985).

In the present matter, the Board briefly outlined the issue presented in this case and emphasized the conflicting testimony concerning what level of notification is required for an employee of Employer to leave work early. The Board resolved the conflict in testimony by crediting Employer's evidence over that presented by Claimant. It further adopted the Referee's thirteen findings of fact and incorporated them into its decision by reference. Claimant does not challenge any specific findings in either his Petition for Review or brief filed with this Court. Consequently, those findings; *i.e.*, that departmental policy required an employee to notify a supervisor prior to leaving early, that failure to do so would result in termination, that Claimant was aware or should have been aware of this policy, and that Claimant left work early on December 9, 2009 without notifying a supervisor, are binding on this Court. Campbell; Salamak.

Notwithstanding the contents of the above paragraph, we note that whether an employee's actions constitute willful misconduct is a question of law subject to plenary review by this Court. Glatfelter Barber Shop v. Unemployment Compensation Board of Review, 957 A.2d 786 (Pa. Cmwlth. 2008); *see also* Zimmerman v. Unemployment Compensation Board of Review, 836 A.2d 1074 (Pa. Cmwlth. 2003). Therefore, we shall review whether the facts of this case, as found by the Board, support a determination that Claimant was terminated from his employment due to willful misconduct.

In unemployment compensation cases, the employer has the burden of demonstrating the claimant was terminated for willful misconduct.

Eshbach v. Unemployment Compensation Board of Review, 855 A.2d 943 (Pa. Cmwlth. 2004); McKeesport Hosp. v. Unemployment Compensation Board of Review, 625 A.2d 112 (Pa. Cmwlth. 1993). 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 his or her employee, or negligence which manifests culpability, wrongful intent, evil design, or intentional and substantial disregard for the employer's interest or the employee's duties and obligations. Glatfelter Barber Shop, 957 A.2d at 792. When a charge of willful misconduct is based on the violation of a work rule, the employer must prove the existence of the rule, the reasonableness of the rule, and the fact of its violation. Owens v. Unemployment Compensation Board of Review, 748 A.2d 794 (Pa. Cmwlth 2000). Once an employer meets this burden, the burden shifts to the employee to show he had good cause for violating the work rule. ATM Corp. of America v. Unemployment Compensation Board of Review, 892 A.2d 859 (Pa. Cmwlth. 2006).

This Court has held that a specific rule is not necessary where the standard of behavior is obvious and the employee's conduct is so inimical to the employer's interests that discharge is a natural result. Orend v. Unemployment Compensation Board of Review, 821 A.2d 659 (Pa. Cmwlth. 2003). An employer has the right to expect that its employees will attend work when they are scheduled, that they will be on time and that they

will not leave work early without permission. Fritz v. Unemployment Compensation Board of Review, 446 A.2d 330 (Pa. Cmwlth. 1982).

Employer had the burden in this proceeding to show the claimant was terminated for willful misconduct. Eshbach; McKeesport Hosp. Because Employer sought to establish willful misconduct due to a violation of a work rule, it was required to prove the existence of the rule, the reasonableness of the rule, and the fact of its violation. Owens. We reiterate that in light of Claimant's failure to specifically challenge any of the findings of fact made below, the findings made by the Board are binding on this Court. Therefore, it is accepted as fact that departmental policy required an employee to notify a supervisor prior to leaving early, that failure to do so would result in termination, that Claimant was aware or should have been aware of this policy, and that Claimant left work early on December 9, 2009 without notifying a supervisor, are binding on this Court. While Claimant asserts that his understanding of the work rule was that the notice he was required to provide concerning leaving early may be given to any employee as opposed to merely supervisory employees, that testimony was rejected by the Board. The Board is the ultimate fact finder and may resolve all conflicts in the evidence. Procito.

We reiterate that the Board found that even in the absence of a work rule, an employer could reasonably expect one of its employees to notify a member of management before leaving work. This is consistent with the holdings of Orend and Fritz, respectively, that a specific rule is not necessary to preclude conduct that is obviously adverse or hostile to the

employer's interests and that employees will be on time and not leave work early without permission. Therefore, Employer's actual established work rule was reasonable. Consequently, Employer was able to satisfy its burden of proof in this matter.

Once Employer met its burden, the burden shifted to Claimant to show he had good cause for violating the work rule. ATM Corp. of America. Claimant did not provide good cause for violating the work rule. Instead, he merely challenged the actual terms of the work rule. As noted, Claimant's interpretation of the work rule was rejected by the Board. Indeed, although Claimant testified that he left work after informing a temporary employee when he was unable to find Ms. O'Neill or her supervisor, the credible testimony of record was that he could have called Ms. O'Neill on her cell phone or left a voice mail to satisfy Employer's policy concerning leaving work early.

We acknowledge Claimant's arguments that he was not given a warning for what would have purportedly been a first infraction of the work rule regarding leaving early. But, no testimony concerning a policy of progressive discipline was put in the record. Moreover, Claimant does not set forth the significance of his contention that his supervisor failed to attempt to contact him when it was discovered that he went home early on December 9, 2009. Finally, while Ms. O'Neill agreed that the temporary employee did relay the message to her that Claimant left work early on the day in question, the fact remains that the credible testimony of record establishes that departmental policy required notification be given to a

supervisor. We cannot hold that it was unreasonable for Employer to adhere to its work rules instead of creating an exception thereto for Claimant.

We are required to examine the testimony in a light most favorable to the party prevailing below. Janicki. In so doing, we must conclude that the Board made no error in denying unemployment compensation benefits due to Claimant's willful misconduct. We affirm the Board's determination.

JIM FLAHERTY, Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Thomas Leong,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 767 C.D. 2010
	:	
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	
	:	

ORDER

AND NOW, this 19th day of November, 2010, the order of the Unemployment Compensation Board of Review is AFFIRMED.

JIM FLAHERTY, Senior Judge