

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Susan R. Jones,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
Unemployment Compensation	:	
Board of Review,	:	No. 833 C.D. 2010
	:	
Respondent	:	Submitted: September 17, 2010

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER

FILED: October 20, 2010

Susan R. Jones (Claimant) petitions this Court for review of the April 12, 2010 order of the Unemployment Compensation Board of Review (UCBR) affirming the decision of the Referee holding Claimant ineligible for benefits under Section 402(e) of the Unemployment Compensation Law (Law).¹ The sole issue before the Court is: whether Claimant's actions rose to the level of willful misconduct. For reasons that follow, we affirm the UCBR's order.

Claimant was hired by St. Mary's Home of Erie (Employer) as a Certified Nurse's Assistant beginning June 6, 1991, and ending November 23, 2009. On November 22, 2009, Claimant was overheard using vulgar language directed towards a patient. Employer conducted an investigation concerning the incident and determined that Claimant verbally abused a patient. Employer has a policy

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

concerning abuse of patients, which provides for disciplinary action up to and including discharge from employment. Claimant was involuntarily discharged for violation of this policy.

Claimant subsequently applied for unemployment compensation (UC) benefits. On December 7, 2009, the Erie UC Service Center mailed a notice of determination denying benefits under Section 402(e) of the Law. Claimant appealed and a hearing was held before a Referee. On January 15, 2010, the Referee issued his decision affirming the determination of the UC Service Center. Claimant appealed to the UCBR. The UCBR affirmed the decision of the Referee. Claimant appealed to this Court.²

Claimant argues that her actions did not rise to the level of willful misconduct. Specifically, Claimant contends the findings of the UCBR are not supported by substantial evidence because the language used by Claimant was de minimus at most, and her actions did not rise to the level of being against the best interests of Employer. We disagree.

“Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *City of Pittsburgh, Dep’t of Pub. Safety v. Unemployment Comp. Bd. of Review*, 927 A.2d 675, 676 n.1 (Pa. Cmwlth. 2007) (quotation marks omitted).

Willful misconduct has been defined as the (a) wanton and willful disregard for an employer’s interests, (b) deliberate violation of an employer’s rules, (c) disregard for standards of behavior which an employer can rightfully expect of an employee, or (d) negligence indicating an intentional

² This Court’s review is limited to determining whether the findings of fact were supported by substantial evidence, whether constitutional rights were violated, or whether errors of law were committed. *Johnson v. Unemployment Comp. Bd. of Review*, 869 A.2d 1095 (Pa. Cmwlth. 2005).

disregard of the employer's interests or an employee's duties and obligations.

On Line Inc. v. Unemployment Comp. Bd. of Review, 941 A.2d 786, 789 (Pa. Cmwlth. 2008) (quotation marks omitted). "In the case of a work rule violation, the employer must establish the existence of the rule, the reasonableness of the rule and its violation." *Lindsay v. Unemployment Comp. Bd. of Review*, 789 A.2d 385, 389 (Pa. Cmwlth. 2001).

Here, Claimant testified that she had a copy of the personnel book which includes the personnel policies. She further testified that the book contained a policy against verbally or physically abusing residents and that she received annual training on patient abuse. Nevertheless, Michelle Komisarski, a speech language pathologist who works at the hospital Monday through Friday, and was present on November 22, 2009, testified that she overheard Claimant verbally abuse a patient. Specifically, she testified:

I was transporting a resident to the therapy room. And when I heard loud talking, loud yelling. I don't know if yelling is quite the word, but very loud verbiage coming from the resident's room, the resident in question. And I heard [several utterances of profanity]. And then I heard the resident whimpering and I heard shut up. And then I believe what was said next was shut it, but it was said through gritted teeth like shut it, shut it. Like really mean, very, very mean. And at that point, I was very upset with the way a resident was treated and I walked into the room and spoke to [Claimant] and told her that that was not appropriate the way she was addressing the resident. And [Claimant] told me that she had been having a bad day.

Certified Record, Item No. 9 (C.R.) at 10.

Further, Tammy Black, the nursing supervisor, testified:

We did feel this was an incident of abuse due to the foul language used in the room, [and] the telling the resident to

shut up. Obviously, she was yelling at the resident loud enough that the speech therapist could hear it in the hallway. When we looked into it, there were other multiple incidents in her record that she had been warned about this behavior. It was felt strongly enough that it was verbal abuse to the resident that a PB-22 [(a form filed with the state anytime there is an incident of patient abuse)] was filed with the State of Pennsylvania.

C.R. at 12.

Clearly Employer has established the existence of its policy against verbally abusing patients, and Claimant's knowledge of said policy. It would be absurd to say that such a policy is unreasonable. Moreover, the testimony of Michelle Komisarski and Tammy Black is relevant evidence that a reasonable mind might accept as adequate to support the conclusion that Claimant's actions rose to the level of willful misconduct in the context of a work rule violation. Accordingly, the UCBR did not err in finding that Claimant committed willful misconduct.

JOHNNY J. BUTLER, Judge

