

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Frank J. Fisher, :
Petitioner :
v. : No. 848 C.D. 2011
: Submitted: October 21, 2011
Unemployment Compensation :
Board of Review, :
Respondent :

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE PELLEGRINI

FILED: November 17, 2011

Frank J. Fisher (Claimant) petitions for review of the order of the Unemployment Compensation Board of Review (Board) affirming the decision of the Unemployment Compensation Referee (Referee) finding Claimant ineligible for benefits under Section 402(e) of the Unemployment Compensation Law¹ (Law)

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §802(e). That section provides 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, irrespective of whether or not such work is “employment” as defined in this act.

(Footnote continued on next page...)

because his failure to maintain a valid driver's license constituted willful misconduct. Finding no error in the Board's decision, we affirm.

The facts of this case are not in dispute. Claimant was employed full-time as a case worker with the United Methodist Home for Children (Employer) from approximately June of 2005 until October 6, 2010. Maintaining a valid driver's license is a requirement for continued employment for all of Employer's employees, in particular case workers who must transport residents as part of their job duties. Claimant's license expired on September 2, 2010, and he continued to transport residents in Employer's vehicles for over a month after his license expired. When Employer became aware of these facts, it terminated Claimant's employment. Claimant filed an unemployment compensation claim which the Office of Unemployment Compensation Benefits denied, finding Claimant ineligible for benefits under Section 402(e) of the Law because his failure to renew his driver's license showed a disregard for the standards of behavior which

(continued...)

While the term "willful misconduct" is not specifically defined in the Law, our courts utilize the following definition:

- (a) wanton or 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; and (d) negligence indicating an intentional disregard of the employer's interest or an employee's duties or obligations.

Grieb v. Unemployment Compensation Board of Review, 573 Pa. 594, 600, 827 A.2d 422, 425 (2003) (citing *Navickas v. Unemployment Compensation Review Board*, 567 Pa. 298, 304, 787 A.2d 284, 288 (2001)). In order to make such a determination, the court must consider all of the facts and circumstances, including the employee's proffered reasons for non-compliance.

Employer had the right to expect of its employees. Claimant appealed this decision to the Referee.

Eileen Swit (Ms. Swit), Director of Social Services and Claimant's direct supervisor, testified on behalf of Employer that Claimant's employment was terminated because:

He was driving with an expired license driving agency vehicles and residents, he failed to follow departmental and/or agency procedures or instructions, he failed to take adequate safety measures when interacting with clients, and he failed to follow the policies and procedures of the agency as outlined in the agency manual.

(Reproduced Record (R.R.) at 15a). All of these reasons stem from Claimant's failure to maintain a valid driver's license. Ms. Swit testified that Claimant's job description and Employer's policy manual both state that Claimant was required to maintain a valid driver's license as a condition of his employment. Employer admitted both documents into evidence as well as a signed statement from Claimant acknowledging that he received a copy of Employer's policy manual. According to Ms. Swit, maintaining a valid license is extremely important for safety and liability purposes and Employer's policy was uniformly enforced. Ms. Swit testified that she received a copy of a report indicating that Claimant's driver's license expired on September 2, 2010. When she confronted Claimant about the issue on October 6, 2010, Claimant admitted that his license had expired and simply stated "he just did not get around to it." (R.R. at 21a). Ms. Swit admitted on cross-examination that Claimant told her about personal issues going

on in his life which he claimed were very stressful and lead to his forgetting to renew his license.

Kendra Maley (Ms. Maley), Employer's Benefits and Payroll Manager, testified that she ran a yearly report on all employees to determine the status of their driver's license. When she ran the report on October 4, 2010, it indicated that Claimant's driver's license was expired. Richard Chubb (Mr. Chubb), Director of Maintenance and Transportation, testified that he maintained a copy of every employee's driver's license and sent out memos when the licenses were up for renewal. Mr. Chubb testified that he placed a memo in Claimant's mailbox in late August 2010, as a reminder that Claimant's license was due to be renewed. According to Mr. Chubb, he never received a copy of Claimant's new driver's license as required and when he spoke to Claimant about the issue on October 5, 2010, Claimant stated "it was on his list of things to do." (R.R. at 26a).

Claimant testified that when Mr. Chubb asked him in October 2010 if he had a current driver's license, Claimant admitted that he did not, but stated he would renew his license first thing the next day. However, he did not do so, and the next day Claimant was called into Ms. Swit's office and confronted about the issue. According to Claimant, he told Ms. Swit that he simply forgot to renew his license and that he had issues going on in his personal life, in particular the fact that his girlfriend had suddenly told him she was leaving him and moving to Denver, Colorado. Claimant told Ms. Swit he was having a difficult time, was stressed and that his personal issues contributed to his forgetting to renew his license. Claimant admitted that he transported residents in Employer's vehicles after his license had expired but denied knowing that his license was expired while doing so.

The Referee found Claimant ineligible for benefits under Section 402(e) of the Law because his failure to renew his license amounted to willful misconduct. The Referee found that Employer sent Claimant a written reminder to renew his driver's license in August 2010, and verbally discussed the issue with Claimant subsequent to the written reminder. The Referee also noted it was the normal practice of the Pennsylvania Department of Transportation to mail a license renewal form to licensees well before their license expiration date. The Referee found that Claimant was aware of Employer's requirement that he maintain a valid driver's license and that Claimant ignored the multiple warnings regarding this requirement of his employment; therefore, he was ineligible for benefits. Claimant appealed to the Board which affirmed, dismissing Claimant's argument that his actions were merely negligent and stating that Claimant "deliberately did not renew his driver's license despite multiple reminders." (April 12, 2011 Board Decision at 1). In addition, the Board found that Claimant's assertion of emotional stress was not good cause for his failure to renew his driver's license. This appeal followed.²

On appeal, Claimant argues that the Board's finding of willful misconduct is not supported by substantial evidence.³ According to Claimant, he did not intentionally violate Employer's work rule; he simply forgot to renew his

² The Court's scope of review in this matter is limited to determining whether there was a constitutional violation or error of law, whether any practice or procedure of the Board was not followed, and whether the necessary findings of fact are supported by substantial evidence. *Glenn v. Unemployment Compensation Board of Review*, 928 A.2d 1169, 1171 n.1 (Pa. Cmwlth. 2007).

³ Substantial evidence has been defined as "such relevant evidence as a reasonable mind might accept as adequate to support a finding of fact." *Seton Co. v. Unemployment Compensation Board of Review*, 663 A.2d 296, 299 n.3 (Pa. Cmwlth. 1995).

license due to the personal problems he was experiencing and the stress he was under. Claimant alleges the Board erred in disregarding his reasons for failing to maintain a valid license and failing to consider all of the circumstances. Claimant admits he received a memo from Mr. Chubb in August 2010, reminding him of the need to renew his license. However, he claims this was the only reminder he received from Employer and the Board erred in finding otherwise. According to Claimant, his actions amounted to mere negligence; therefore, Employer failed to meet its burden of proving willful misconduct. We disagree.

Claimant is correct in his assertion that an employee's negligence does not constitute willful misconduct under the Law "unless it is of such degree or recurrence as to manifest culpability, wrongful intent, or evil design, or show an intentional and substantial disregard of the employer's interest or of the employee's duties and obligations to the employer." *Coleman v. Unemployment Compensation Board of Review*, 407 A.2d 130, 131-32 (Pa. Cmwlth. 1979) (citations omitted). However, Claimant's argument overlooks a long line of cases specifically surrounding the issue of licensure. We have repeatedly held that failure to obtain a license when the employee is aware that licensure is a requirement of employment and there is a job-related necessity for the license can constitute willful misconduct. *See Adams v. Unemployment Compensation Board of Review*, 484 A.2d 232, 234 (Pa. Cmwlth. 1984); *Township of Darby v. Unemployment Compensation Board of Review*, 429 A.2d 1223, 1227 (Pa. Cmwlth. 1981); *Chacko v. Unemployment Compensation Board of Review*, 410 A.2d 418, 419 (Pa. Cmwlth. 1980).

Claimant admits that Employer had a policy in place stating that all employees had to maintain a valid driver's license as a condition of continued

employment. He also admits that he was aware of the policy; that he received a reminder from Mr. Chubb in August 2010, stating that his license was up for renewal; that Mr. Chubb spoke to him about the status of his driver's license on October 5, 2010; and that he violated Employer's policy by allowing his driver's license to expire. Claimant also admits that transporting residents was one of his job duties and that he transported residents in Employer's vehicles for over a month without a valid license. Despite Claimant's assertion otherwise, Employer was not required to repeatedly remind him of his need to maintain a valid driver's license; rather, it was Claimant's responsibility to ensure he was in compliance with this job requirement. In addition, it is a matter of common sense that an individual must obtain and maintain a valid driver's license in order to legally operate a motor vehicle, and Claimant was familiar with the renewal process. Claimant had more than sufficient time and warning to take the simple steps required to renew his driver's license. All of these facts go beyond mere negligence and demonstrate at least a disregard for the standards of behavior Employer could rightfully expect, if not a deliberate violation of Employer's policy. Therefore, there is substantial evidence to support the Board's finding of willful misconduct. In addition, Claimant's assertion that he merely forgot due to the stress he was under given his personal problems does not amount to good cause to support his actions.

Accordingly, the order of the Board is affirmed.

DAN PELLEGRINI, JUDGE

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ORDER

AND NOW, this 17th day of November, 2011, the order of the
Unemployment Compensation Board of Review, dated April 12, 2011, is affirmed.

DAN PELLEGRINI, JUDGE