

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Joan Delie, :  
 :  
 Petitioner :  
 :  
 v. : No. 86 C.D. 2010  
 : Submitted: July 9, 2010  
 Unemployment Compensation :  
 Board of Review, :  
 Respondent :

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE P. KEVIN BROBSON, Judge  
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY SENIOR JUDGE FRIEDMAN

FILED: August 18, 2010

Joan Delie (Claimant) petitions for review of the December 23, 2009, order of the Unemployment Compensation Board of Review (UCBR), which affirmed the decision of the referee to deny unemployment compensation benefits to Claimant pursuant to section 402(e) of the Unemployment Compensation Law (Law).<sup>1</sup> We affirm.

Claimant worked as a health care administrator for the Department of Corrections (Employer). Claimant's duties required that she supervise the hours her

---

<sup>1</sup> 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 a claimant is ineligible for benefits for any week in which the claimant's unemployment is due to discharge from work for willful misconduct connected with his or her work.

subordinates worked, including overtime and leave. (UCBR's Findings of Fact, Nos. 1-2.)

Employer's leave policy required that employees submit leave requests through a computer system. It was Claimant's responsibility to see that her employees entered their leave requests on the computer system. If an employee under Claimant's supervision did not know how to use the computer system, Claimant was responsible for showing her how to use it. If for some reason an employee still could not use the computer system, Claimant was responsible for having the employee manually fill out, sign and submit leave slips to the timekeeper for entry into the computer. Claimant was aware of, and received training in, Employer's leave policy. (UCBR's Findings of Fact, Nos. 4, 11, 17-20.)

An employee under Claimant's supervision was not submitting leave requests through the computer system. The employee failed to put a full week of vacation into the computer system, as well as other miscellaneous hours, and Claimant did not require the employee to manually fill out, sign and submit a leave slip. This employee failed to account for seventy-six hours and fifty-five minutes of leave time.<sup>2</sup> (UCBR's Findings of Fact, Nos. 3, 9-10.)

---

<sup>2</sup> Employees entered and left Employer's facility by means of a fingerprint recognition system that recorded the employees' time of entry and time of departure. Employer was able to calculate the amount of unapproved leave for an employee by comparing the hours on the computer system with the times that the employee entered and left the facility. (UCBR's Findings of Fact, Nos. 13-14.)

In addition, Claimant was required to equalize overtime between two subordinate employees, but Claimant failed to do so. One of the employees worked 230 hours of overtime, while the other employee worked 120.43 overtime hours. Moreover, one employee stayed at work as long as she liked, and, as a result, Claimant lost complete control of that employee's work hours. (UCBR's Findings of Fact, Nos. 5-8.)

Employer discharged Claimant for time and attendance issues and for failure to effectively administer Employer's medical department. (UCBR's Findings of Fact, No. 22.) Claimant applied for unemployment benefits, but the application was denied. Claimant filed an appeal, and, after a hearing, the referee affirmed the denial of benefits. Claimant then appealed to the UCBR, which concluded that Claimant was ineligible for benefits under section 402(e) of the Law because Claimant did not properly perform her duties by requiring employees under her supervision to submit leave slips or account for their overtime.<sup>3</sup> Claimant now petitions this court for review.<sup>4</sup>

---

<sup>3</sup> This court has defined willful misconduct to include: (1) an act of wanton or willful disregard of the employer's interests; (2) a deliberate violation of the employer's rules; (3) a disregard of the standards of behavior which the employer has a right to expect of the employee; or (4) negligence in such degree or recurrence as to manifest culpability, wrongful intent, or evil design, or show an intentional and substantial disregard of the employer's interests or the employee's duties and obligations to the employer. *Food Fair Stores, Inc. v. Unemployment Compensation Board of Review*, 314 A.2d 528 (Pa. Cmwlth. 1974).

<sup>4</sup> Our scope of review is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with the law and whether the necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

Claimant first argues that she did not engage in willful misconduct when she failed to use the computer system to approve leave for an employee who was not “mapped” to Claimant, i.e., it was not possible for Claimant to approve leave for the employee on the computer because the computer system did not alert Claimant that the employee was requesting leave. However, Claimant’s failure to use the computer system to approve leave for the employee was not the basis for the UCBR’s willful misconduct determination. The UCBR concluded that Claimant engaged in willful misconduct for failing to require the employee to submit signed leave slips to timekeepers for entry on the computer.

Claimant next argues that she did not engage in willful misconduct by failing to equalize overtime. Claimant said that she had a plan to equalize overtime between the two employees she supervised, i.e., Claimant decided to temporarily authorize more overtime for the more experienced employee so that the medical department could obtain accreditation by the American Correctional Association (ACA), after which she would authorize more overtime for the other employee. However, Claimant did not indicate when the medical department would be likely to obtain ACA accreditation, so the lack of overtime equalization could last indefinitely. Moreover, one employee has already received nearly 110 more overtime hours than the other, (UCBR’s Findings of Fact, No. 7), so it could be years after ACA accreditation before overtime equalization occurs.<sup>5</sup> Finally, the employee with the greater number of overtime hours stays as long as she likes, and Claimant has lost complete control over

---

<sup>5</sup> We note that it took one year, from May of 2008 to April of 2009, for the one employee to accumulate 110 more overtime hours than the other. (R.R. at 194a-198a.)

that employee's work hours. (UCBR's Findings of Fact, No. 8.) Thus, Claimant's plan to equalize overtime had some obvious problems.<sup>6</sup>

Claimant also argues that: (1) to the extent the UCBR concluded that she engaged in willful misconduct by failing to obey the Deputy Superintendent's directive to notify security to remove from the premises an employee who stayed at work after her scheduled quitting time, Claimant believed that doing so would have humiliated the dedicated employee; (2) to the extent Employer discharged her for failure to provide a job description to her subordinates in a timely manner, Claimant did not receive her own job description in a timely manner; and (3) to the extent Employer discharged her for failing to conduct a proper investigation into the time and attendance of one of her employees, Claimant did not intentionally fail to conduct a proper investigation. However, the UCBR made no findings regarding these matters and did not mention them in making the willful misconduct determination.

Finally, Claimant argues that the referee erred by failing to permit evidence regarding Claimant's excellent work history.<sup>7</sup> We note that the referee did permit evidence regarding Claimant's most recent performance evaluation. (R.R. at

---

<sup>6</sup> Indeed, we note that, in her witness statement, Claimant conceded that the equalization of overtime "is a problem." (R.R. at 190a.)

<sup>7</sup> We note this court has held that a single act of misconduct by a long-term employee with a good employment record may constitute willful misconduct. *Food Fair Stores*. The employer has the burden of proving willful misconduct. *BMV, a Division of Harsco Corporation v. Unemployment Compensation Board of Review*, 504 A.2d 946 (Pa. Cmwlth. 1986). Here, Employer established that, because Claimant failed to properly perform her work duties, Employer paid an employee for hours not worked.

37a-41a.) However, Claimant also sought to present evidence regarding Claimant's past performance evaluations at another facility. (R.R. at 52a.) The referee did not allow such evidence because it was not relevant to the allegation of willful misconduct at the facility where Claimant most recently worked. (*Id.*) We find no error in the referee's ruling. *See Flores v. Unemployment Compensation Board of Review*, 686 A.2d 66 (Pa. Cmwlth. 1996) (stating that a referee has broad discretion in admitting or rejecting evidence).

Claimant also argues that the referee erred by failing to permit evidence that, at the 2009 budget hearings, the Secretary of Corrections mentioned Claimant's program to consolidate hemophiliac inmates at the prison and purchase blood products at a savings of \$400,000 annually. (R.R. at 43a.) The referee did not allow the evidence because it was not relevant to the allegation of willful misconduct relating to Claimant's supervisory duties. (*Id.*) We find no error in the referee's ruling. *See Flores*.

Accordingly, we affirm.<sup>8</sup>

---

ROCHELLE S. FRIEDMAN, Senior Judge

---

<sup>8</sup> Claimant also contends that the referee erred by inquiring into Claimant's rate of pay; however, the UCBR did not mention Claimant's rate of pay in making the willful misconduct determination.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Joan Delie,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 86 C.D. 2010
	:	
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 18th day of August, 2010, the order of the Unemployment Compensation Board of Review, dated December 23, 2009, is hereby affirmed.

---

ROCHELLE S. FRIEDMAN, Senior Judge