

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Cuccaro Plumbing, Inc., :
Petitioner :
v. :
Unemployment Compensation :
Board of Review, : No. 877 C.D. 2012
Respondent : Submitted: November 16, 2012

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY

FILED: January 7, 2013

Cuccaro Plumbing, Inc. (Employer), petitions for review of the Order of the Unemployment Compensation Board of Review (Board) that affirmed the decision of the Referee that Rebecca L. Knetzer (Claimant) was not ineligible for benefits under Section 402(e) of the Unemployment Compensation Law (Law).¹

The Board made the following relevant findings of fact:

1. The claimant worked for the employer, Cuccaro Plumbing, Inc., as a service manager and purchasing employee, full-time, from July 20, 2009 until her last day of work, November 29, 2011. The claimant's rate of pay was \$18.12 an hour.
2. During the course of the claimant's employment she had been disciplined for various infractions.

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

3. On November 29, 2011, the claimant was called into the owner's office.
4. The claimant was asked if she had recently used the employer's computer for personal reasons.
5. The claimant said that she did use it for homework the day before.
6. Other employees used the employer's computer for personal use and were not disciplined.
7. The employer then handed the claimant a pre-drafted resignation letter and indicated that if she did not sign it the employer would not give her a letter of reference for any prospective job; he also threatened to take the claimant to court.
8. The claimant initially refused to sign but after the owner got upset and started yelling she acquiesced.
9. The claimant believed that she really had no choice so she signed the letter.
10. The employer alleges that the claimant was never discharged and that she simply resigned from her employment because of the previous disciplinary incidents which allegedly caused the employer financial problems.
11. The employer alleges that the claimant was not forced to resign at all and that continuing work was available.

DISCUSSION:....

....

Based upon the above Findings, which are supported by the claimant's credible testimony, the Board concludes that the claimant was discharged by the employer. The employer's words and actions had the immediacy and finality of a discharge.

....

...[T]he Board concludes that the employer has not met its burden of proving that the claimant's actions rise to the level of willful misconduct. The employer simply argues that the claimant was not discharged and that continuing work was available. The claimant, while admitting that she did use the employer's computer for personal reasons on November 28, 2011, does not admit that she knowingly and deliberately violated a policy which was consistently enforced. The Board finds credible her assertions that other employees used the employer's computer for personal use and were not disciplined. Furthermore, there is no evidence concerning what type of discipline should be administered.

Board's Opinion, April 12, 2012, Findings of Fact Nos. 1-11 and Discussion at 1-3.

On appeal, Employer contends² the Board failed to apply the correct legal standard when it awarded unemployment compensation. Essentially, Employer argues that Claimant resigned from her employment because of previous disciplinary incidents that allegedly caused Employer financial problems.³

² Our review is limited to determining whether constitutional rights were violated, whether errors of law were committed, and whether findings of fact are supported by substantial evidence. *Beddis v. Unemployment Compensation Board of Review*, 6 A.3d 1053, 1055 n.2 (Pa Cmwlth. 2010). This Court will review the case in the light most favorable to the party who prevailed before the Board, drawing all logical and reasonable inferences from the testimony in order to determine if substantial evidence exists. *Taylor v. Unemployment Compensation Board of Review*, 474 Pa. 351, 355, 378 A.2d 829, 831 (1977).

³ More specifically, Employer argues that Claimant embezzled \$3,700.00 from Employer, that Claimant deceived Employer, and that Claimant used company property for her personal use.

Whether a Claimant's conduct rises to the level of willful misconduct is a question of law subject to this Court's review. *Lee Hospital v. Unemployment Compensation Board of Review*, 589 A.2d 297 (Pa. Cmwlth. 1991). 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 the employee, or negligence which manifests culpability, wrongful intent, evil design, or intentional and substantial disregard for the Employer's interest or employee's duties and obligations. *Frick v. Unemployment Compensation Board of Review*, 375 A.2d 879 (Pa. Cmwlth. 1977). The Employer bears the burden of proving that it discharged an employee for willful misconduct. *City of Beaver Falls v. Unemployment Compensation Board of Review*, 441 A.2d 510 (Pa. Cmwlth. 1982). The Employer bears the burden of proving the existence of the work rule and its violation. Once the Employer establishes that, the burden then shifts to the Claimant to prove that the violation was for good cause. *Peak v. Unemployment Compensation Board of Review*, 509 Pa. 267, 501 A.2d 1383 (1985).

Employer argued that Claimant was not entitled to benefits because she embezzled in excess of \$3,700.00 from Employer. However, the Board, based on the evidence before it, determined that Claimant was discharged because she used Employer's computer for personal use and not because of theft.

Ken Cuccaro, owner of Employer, testified that Claimant resigned from her position.

The letters state between the theft and deception, she could not do her job. She has our - - she has the Company right now in financial disarray because of the lies, the deceit and inadequacy of what she said she could do. And I guess the only way, she felt that she had to resign. That's exactly what she did.

Notes of Testimony, January 31, 2012, (N.T. 1/31/12) at 6; Reproduced Record (R.R.) at 61a.

Claimant credibly testified as to the circumstances surrounding her separation from employment:

On November 29th, it was a Tuesday morning. It was around 9:00 a.m. and I was asked to bring a file folder upstairs to Mr. Cuccaro's [Employer's] office. I took the file folder upstairs, handed it to him, started to walk out. He asked me to close the door. I shut the door. He asked me if I understand [sic] the computer policy. We had discussed about the fact, because I did use the computer during company time. I did some homework on the 28th, that was not disputed at all. He had a Letter of Resignation sitting on his desk that he had typed out and asked me to sign. I initially said no. He got upset, started telling me that he would not give me any Letter of References [sic]. He would not- - he would take me to Court. I mean he was yelling this at me and he kept going and going and going and so I finally just signed it and then he said I'm walking you out the door. I mean I felt intimidated and I did feel threatened in that office. And I felt like I had no choice.

N.T. 1/31/12 at 5; Reproduced Record at 60a.

In unemployment compensation proceedings, the Board is the ultimate fact-finding body empowered to resolve conflicts in evidence, to

determine the credibility of witnesses, and to determine the weight to be accorded evidence. *Unemployment Compensation Board of Review v. Wright*, 347 A.2d 328 (Pa. Cmwlth. 1975). Findings of fact are conclusive upon review provided that the record, taken as a whole, provides substantial evidence to support the findings. *Taylor v. Unemployment Compensation Board of Review*, 474 Pa. 351, 355, 378 A.2d 829, 831 (1977).

The Board determined that Employer failed to shoulder its burden to prove that Claimant's actions rose to the level of willful misconduct. Employer failed to present any credible evidence that Claimant knowingly violated any policy of Employer's. In fact, Employer attempted to argue before the Board that Claimant resigned and was not discharged.

The findings of fact challenged by Employer are supported by substantial evidence.

Accordingly, the decision of the Board is affirmed.

BERNARD L. MCGINLEY, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

| | | |
|---------------------------|---|-------------------|
| Cuccaro Plumbing, Inc., | : | |
| Petitioner | : | |
| | : | |
| v. | : | |
| | : | |
| Unemployment Compensation | : | |
| Board of Review, | : | No. 877 C.D. 2012 |
| Respondent | : | |

ORDER

AND NOW, this 7th day of January, 2013, the Order of the Unemployment Compensation Board of Review is affirmed.

BERNARD L. MCGINLEY, Judge