



Claimant, prior to his dismissal, was a chef for the Springfield Country Club (Employer). After his dismissal, Claimant applied for and was granted benefits by the Pennsylvania Bureau of Unemployment Compensation Benefits and Allowances (Bureau). Employer appealed that decision to the referee, who held a hearing. The referee reversed the Bureau's grant of benefits, determining that Claimant engaged in willful misconduct. Claimant appealed to the Board, which made the following findings of fact:

1. The claimant was last employed by Springfield Country Club as a restaurant chef at a rate of \$14.50 per hour since April 17, 2007, and last worked on September 16, 2007.
2. On or about September 16, 2007, the general manager entered the kitchen and was confronted by the claimant appearing upset asserting that he was sick of this place, used obscenities, and said he was quitting.
3. The claimant walked off the job at this time, before the end of his shift.
4. The employer had to quickly find someone to replace the claimant in performing duties on the banquet line.
5. The claimant called the employer the next day to inquire about his schedule.
6. The employer alerted the claimant he had been discharged due to abandoning his position.
7. The claimant made no attempt to discuss with the employer his concerns that caused him to walk off the job prior to leaving.
8. The claimant is able and available to work with some restrictions. He cannot work a six-day workweek.

Board's Decision, April 15, 2008 (Board's Decision), Findings of Fact Nos. 1-8 at 1-2.

The Board concluded that Claimant committed willful misconduct in leaving his employment prior to the end of his shift. The Board determined that Claimant failed to show good cause for his actions and denied benefits pursuant to Section 402(e) of the Law. Claimant now petitions our Court for review.<sup>2</sup>

Claimant contends that the Board erred in denying him benefits based upon a finding of willful misconduct where there is not substantial evidence of record to support the conclusion that Claimant abandoned his job or that he needed permission in order to leave work early.

This court has defined willful misconduct under Section 402(e) of the Law as:

[A] wanton and willful disregard of an employer's interest, a deliberate violation of rules, a disregard of standards of behavior which the employer can rightfully expect from its employee, or negligence which manifests culpability, wrongful intent, evil design, or intentional and substantial disregard for the employer's interests or the employee's duties and obligations.

Brady, 544 A.2d at 1086.

An employer has the burden of proving that willful misconduct was committed by an employee. Hartley v. Unemployment Compensation Board of Review, 397 A.2d 477 (Pa. Cmwlth. 1979). Employer's general manager testified that on September 16, 2007, Claimant confronted the general manager, appeared to

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<sup>2</sup> Our review is limited to a determination of whether constitutional rights have been violated, errors of law committed, or whether essential findings of fact are supported by substantial evidence. Brady v. Unemployment Compensation Board of Review, 544 A.2d 1085 (Pa. Cmwlth. 1988).

be upset, and informed the general manager that he “had it with this place. I’m out of here. I blank blank quit. Get somebody else...” Notes of Testimony, February 27, 2008, at 3. The general manager stated that Claimant then walked off the job prior to the end of his shift. Also, when Claimant called the next day, the general manager informed him that he had been dismissed for abandoning his position.

Once the employer establishes willful misconduct, the burden shifts to the claimant to show “just cause” for his actions. Mulqueen v. Unemployment Compensation Board of Review, 543 A.2d 1286 (Pa. Cmwlth. 1988). Claimant testified that he did not abandon his position. Claimant stated that he punched out and went home, that he did not see the general manager in the kitchen, and that he did not address the general manager prior to leaving. Claimant further stated that as a manager, he does not have to check with anyone prior to leaving. He stated that he left because it was time for him to go home, as Sunday nights are always an early night. Claimant also argued that he only called the general manager the next day to talk about mats in the kitchen.<sup>3</sup>

The Board found the general manager’s testimony that Claimant confronted the general manager, told the general manager that he quit and walked off the job prior to the end of his shift, to be credible. All credibility determinations are made by the Board. The weight given the evidence is within the discretion of the factfinder. Fitzpatrick v. Unemployment Compensation Board of Review, 616 A.2d 110 (Pa. Cmwlth. 1992). The Board is the ultimate factfinder. Treon v. Unemployment Compensation Board of Review, 499 Pa. 455,

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<sup>3</sup> Claimant was inconsistent on this point, at one time stating that he called the general manager to get the schedule, and then at another point denying that he called to get the schedule and stating that he called to talk about the mats.

453 A.2d 960 (1982). The Board's determination that Claimant was discharged for willful misconduct was supported by substantial evidence.

Accordingly, we affirm the decision of the Board.

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JIM FLAHERTY, Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Brian K. Widmer,	:
	:
Petitioner	:
	:
v.	: No. 877 C.D. 2008
	:
Unemployment Compensation	:
Board of Review,	:
	:
Respondent	:

**ORDER**

AND NOW, this 9<sup>th</sup> day of December, 2008, the Order of the Unemployment Compensation Board of Review in the above-captioned matter is affirmed.

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JIM FLAHERTY, Senior Judge