IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Joanne Wilcox, Petitioner	:	
v.	:	No. 883 C.D. 2012
Unemployment Compensation Board of Review, Respondent	:	Submitted: November 9, 2012

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE ANNE E. COVEY, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE COHN JUBELIRER **FILED: January 7, 2013**

Joanne Wilcox (Claimant) petitions for review of the Order of the Unemployment Compensation Board of Review (Board) denying her claim for unemployment compensation (UC) benefits pursuant to Section 402(e) of the UC Law (Law).[1] On appeal, Claimant argues that: (1) she did not commit willful misconduct because the policy of Threshold Rehabilitation Services (Employer) was unreasonable; (2) any violation of the policy was inadvertent; and (3) substantial evidence does not support that Claimant violated the policy. Because

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

the Board did not err and there is substantial evidence supporting the Board's findings that Claimant violated Employer's policy, we affirm.

Claimant filed an application for UC benefits, which was denied by the Allentown UC Service Center (Service Center) on December 23, 2011. Claimant appealed to the Referee who, after a hearing on January 25, 2012 at which Claimant and Employer's Human Resources Director (Director) appeared and testified, affirmed the Service Center's determination. Claimant appealed to the Board on February 21, 2012. The Board made the following findings of fact:

1. The claimant was employed as a full time program assistant with Threshold Rehabilitation Services from September 10, 2007 until September 29, 2011 at a final hourly rate of $9.00.

2. The employer has an abuse policy which addresses prevention, reporting, and investigating abuse.

3. Under the investigation area[,] the policy states[,] "in the event an investigation is to be conducted, the alleged party must be immediately suspended without pay."

4. Additionally, it states[,] "the employee will be required to refrain from visiting Threshold property, programs and services, and from contacting and/or discussing the incident with other employees and individuals served."

5. The claimant was aware of the employer's policy by her signed acknowledgement.

6. On October 3, 2011, the employer was made aware of the possibility of physical and verbal abuse on the claimant's part.

7. That same day, the claimant was suspended and it was explained that she could have no contact with the employees of Threshold, the residents who lived at the group home where the claimant was employed, or the families of those residents.

8. The claimant admitted that she returned a co-worker's telephone call during the investigation.

9. The claimant mentioned the investigation.

10. The claimant['s employment] was terminated on October 18, 2011.

(Board Op., Findings of Fact (FOF) ¶¶ 1-10.) Based upon these findings, the Board concluded that Employer met its burden of establishing that Claimant was discharged for willful misconduct in connection with her work because Employer proved that Claimant violated Employer's reasonable policy and did not have good cause for doing so. (Board Op. at 2.) Claimant now petitions this Court for review.[2]

Under Section 402(e) of the Law, an employee is not eligible for benefits if "h[er] unemployment is due to h[er] discharge . . . for willful misconduct connected with h[er] work."

> Willful misconduct has been defined as (1) the wanton and willful disregard of the employer's interest; (2) the deliberate violation of rules; (3) the disregard of standards of behavior which an employer can rightfully expect from [its] employee; or (4) 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.

[2] "The Court's review is limited to determining whether constitutional rights were violated, whether an error of law was committed, whether a practice or procedure of the Board was not followed or whether the findings of fact are supported by substantial evidence in the record." Western and Southern Life Insurance Co. v. Unemployment Compensation Board of Review, 913 A.2d 331, 334 n.2 (Pa. Cmwlth. 2006).

Elser v. Unemployment Compensation Board of Review, 967 A.2d 1064, 1069 n.7 (Pa. Cmwlth. 2009). "Whether a claimant's conduct constituted willful misconduct is a question of law subject to this Court's review." Roberts v. Unemployment Compensation Board of Review, 977 A.2d 12, 16 (Pa. Cmwlth. 2009). Where an employer alleges a violation of a work rule, the "employer must establish the existence of the rule, its reasonableness . . . that the employee was aware of its existence," and the violation of that rule. Williams v. Unemployment Compensation Board of Review, 926 A.2d 568, 571 (Pa. Cmwlth. 2007). "Once the existence of a rule and its violation are established by the employer, the burden shifts to the claimant to show good cause for h[er] violation of the rule." City of Williamsport v. Unemployment Compensation Board of Review, 560 A.2d 312, 313-14 (Pa. Cmwlth. 1989).

Because Claimant does not dispute the existence of Employer's abuse policy or her awareness of it,[3] but contends that Employer's policy was unreasonable, "we [must] examine whether 'the rule or policy is reasonable in light of all the circumstances and[,] if so, whether the employee [had] good cause to violate the rule or policy.'" Chambersburg Hospital v. Unemployment Compensation Board of Review, 41 A.3d 896, 900 (Pa. Cmwlth. 2012) (quoting Spirnak v. Unemployment Compensation Board of Review, 557 A.2d 451, 453 (Pa. Cmwlth. 1989)). "Reasonableness is determined by whether the employer's application of the rule under the circumstances is fair, just and appropriate to pursue a legitimate interest." Id.

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[3] Claimant "does not dispute the fact of the Employer's policy, or her awareness of it." (Claimant's Br. at 9.)

The abuse policy at issue in this case provides that a suspended "employee will be required to refrain from visiting [Employer's] property, programs and services, and from contacting and/or discussing the incident with other employees and individuals served." (Hr'g Tr., Ex. E-1 at 3.)[4] The explanation for this requirement is provided within Employer's policy as follows: "to protect employees and individuals served" and "to carefully and completely gather all facts and relevant information in order to render an accurate and appropriate determination." (Hr'g Tr., Ex. E-1 at 3.) Thus, in this context, the application of the policy is fair, just, and appropriate in pursuing such a legitimate interest as an investigation of alleged abuse. Chambersburg Hospital, 41 A.3d at 900.

Next, Claimant asserts that any possible violation of the policy that she committed was inadvertent and not willful. Our review of the record shows that Claimant testified that a co-worker named Rachel called her and Claimant admitted returning the call. Claimant stated, "I did call her back." (Hr'g Tr. at 11.) Claimant stated that she

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[4] The policy further provides that "[w]ritten statements and interviews with associated employees are a routine part of the investigation process and will be required along with everyone's full cooperation." (Hr'g Tr., Ex. E-1 at 3.) When Employer "was made aware of the possibility of physical and verbal abuse on the [C]laimant's part," (FOF ¶ 6), Claimant was suspended and, in accordance with Employer's policy, was to have no contact with the employees, residents of the group home where Claimant was employed, or their families. (FOF ¶ 7.) The policy, itself, states that "[a]ny form of abuse is expressly prohibited and subject to disciplinary action and/or dismissal." (Hr'g Tr., Ex. E-1 at 1.) Upon any knowledge or awareness of alleged abuse the policy provides for a reporting procedure, including immediately contacting one's supervisor, the Department of Public Welfare, law enforcement authorities, Child Line for an alleged victim who is age 17 or younger, the Office of the Aging in the case of an alleged victim who is 60 years or older, other agencies in certain cases, and the families or guardians. (Hr'g Tr., Ex. E-1 at 2.)

> told her I didn't know, I just can't come to work. . . And then she asked me something else and then I told her . . . I did contact her back and she was asking me questions and I told her I don't know because I can't come to work.

(Hr'g Tr. at 16.) Claimant made this telephone call even after Director specifically informed her of the investigative process. Director testified as follows:

> On the date of October 3rd, I contacted [Claimant] . . . [and] informed her of the suspension and I explained the investigative process. I would never think that somebody would remember all of the details from a policy, so I'm very careful to repeat the specifics regarding, specifically, about contacting other people that work at [Employer] or going to the home and things of that nature because it's extremely important. I told her she was not permitted to visit the home where she worked, contact her supervisor or coworkers, individuals of the home, family members of individuals or any other people related to [Employer]. I informed her that an investigator would be contacting her. She stated that she would comply with the investigation at that point.

(Hr'g Tr. at 4.) In view of the fact that Director specifically warned Claimant not to contact others at work, Claimant violated Employer's policy and her decision to return the call from her co-worker was in direct violation of not only the policy, but also the specific warning given by Director.

Claimant's final argument is that substantial evidence does not support the Board's finding that Claimant violated Employer's policy. However, "[i]t is now axiomatic in an unemployment compensation case, that the findings of fact made by the Board . . . are conclusive on appeal so long as the record, taken as a whole, contains substantial evidence to support those findings." Taylor v. Unemployment Compensation Board of Review, 474 Pa. 351, 355, 378 A.2d 829, 831 (1977). Substantial evidence is that which "a reasonable mind, without weighing the

evidence or substituting its judgment for that of the fact finder, might accept as adequate to support the conclusion reached." Centennial School District v. Department of Education, 503 A.2d 1090, 1093 n.1 (Pa. Cmwlth. 1986). "The appellate court's duty is to examine the testimony in the light most favorable to the party in whose favor the Board has found, giving that party the benefit of all inferences that can logically and reasonably be drawn from the testimony, to see if substantial evidence for the Board's conclusion exists." Taylor, 474 Pa. at 355, 378 A.2d at 831.

Here, not only did Claimant acknowledge Employer's policy, but the Board credited Director's testimony in finding that, on the same day Claimant was suspended, "it was [specifically] explained that she could have no contact with the employees . . . the residents . . . or the families of [the] residents." (FOF ¶ 7.) Despite this policy and a specific warning by Director, Claimant nevertheless subsequently called her co-worker.[5] Therefore, there is substantial evidence to support the Board's finding that Claimant violated Employer's policy. Claimant's argument that she returned the phone call because she was merely being polite does not constitute good cause in view of Employer's policy and specific warning that Claimant must not contact anyone from her work during the investigation.

[5] Claimant further argues that FOF ¶ 9, that "[C]laimant mentioned the investigation" when Claimant returned the call to her co-worker during the investigation, was not supported by any evidence of record, let alone substantial evidence. However, whether or not Claimant mentioned the investigation is not germane to the finding that Claimant violated the abuse policy. The policy requires that an employee refrain from "contacting" other employees during an investigation; therefore, when Claimant called her co-worker during the investigation, a violation of the policy occurred. (Hr'g Tr., Ex. E-1 at 3.)

Accordingly, the Board did not err in finding Claimant ineligible for UC benefits because she committed willful misconduct.

For all of the above reasons, the Board's Order is affirmed.

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RENÉE COHN JUBELIRER, Judge

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Petitioner	:	
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	:	
Unemployment Compensation Board of Review,	: :	
	:	
Respondent	:	

O R D E R

NOW, January 7, 2013, the Order of the Unemployment Compensation Board of Review in the above-captioned matter is hereby **AFFIRMED**.

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RENÉE COHN JUBELIRER, Judge