

blocked her from exiting an office. The local job center granted Claimant's application for benefits. Employer appealed to the referee, who conducted a hearing at which both Claimant and Employer participated. Neither party was represented by counsel.

At the hearing, Ferguson explained that children from a nearby daycare center would visit Employer's facility. Ferguson stated that, on the morning of July 16, 2009, she informed her staff, including Claimant that Employer's policy was to allow child care workers to take charge of any problem that arose. (Reproduced Record (R.R.) at 15a.) Ferguson testified that she was subsequently told by the center's manager, Anita Marchegiani, that Claimant was leaving his assigned work area and focusing his attention on visiting children. (Id.) Ferguson stated that she went to investigate and observed Claimant crouched down behind two chairs, watching the interaction of the senior citizens and the children; she directed Claimant to stand up and, after an initial refusal, he complied and proceeded to do his work. (Id.) Ferguson stated that she then returned to her office, which she shared with Claimant. (Id.)

Ferguson testified that, a few minutes later, Claimant entered the office, closed the door, and placed his body on the door jamb, keeping his hand on the door handle. (R.R. at 15a) Ferguson stated that Claimant told her that she was never to reprimand him in front of a program participant again. (R.R. at 16a.) Ferguson told Claimant to stop and advised him that they needed to go and speak with the manager; however, Claimant refused to stop and informed Ferguson that she was going to hear him out. (Id.) Ferguson testified that she directed Claimant to remove his hand from the door handle, but Claimant did not do so. (Id.) According to Ferguson, she then pounded on the door to get the attention of another employee and told Claimant that

if he did not remove his hand she would consider his behavior to be a threat. (Id.) At that point, Claimant released his grip on the door, and Ferguson and Claimant went to Employer's administrative office. (Id.)

Ferguson also testified that Claimant had a history of aggressive behaviors in the workplace, (R.R. at 16a), and that she had previously spoken to Claimant regarding inappropriate behaviors. (R.R. at 23a – 24a.)

Marchegiani testified that she had instructed Ferguson to contact her immediately if Claimant exhibited confrontational or aggressive behaviors. (R.R. at 18a.) Marchegiani also stated that she subsequently placed Claimant on administrative suspension pending an investigation. In addition, Employer presented the testimony of its human resource representative, Brion Lieberman, who stated that he investigated the incident and supported the decision to terminate Claimant's employment. (R.R. at 19a.)

Claimant testified that he was performing his duties on July 16, 2009, and was crouched behind a chair to avoid a child who constantly sought him out, when Ferguson approached him and, in an unprofessional manner, started "chewing him out" in the presence of a visitor. (R.R. at 20a.) Claimant stated that, approximately fifteen minutes later, he went to confront Ferguson about the incident. (Id.) Claimant confirmed Ferguson's version of the incident in all respects, but asserted that he did not intend to harass, detain, or threaten Ferguson. (R.R. at 20a, 22a.)

Following the hearing, the referee made these relevant findings of fact:

3. The employer warned the claimant of inappropriate and aggressive behaviors in the workplace.

4. The center manager instructed claimant's supervisor should there be another incident to come directly to her, the center manager.
5. On July 16, 2009, the supervisor told the claimant to interact with the seniors and the daycare children rather than merely observing them and the claimant refused.
6. The claimant relented and did stand up and engage with the participants.
7. The claimant went into the office that he shared with his supervisor and placed his body across the door gripping the door handle.
8. The claimant said, "Don't you ever chew me out in front of participants again."
9. The supervisor asked the claimant to stop and take this to the center manager.
10. Claimant refused to stop and continued to block the exit.
11. The supervisor began to pound on the door and the claimant released the door handle.
12. The employer conducted an investigation of the incident.
13. The employer discharged the claimant for insubordination and inappropriate behavior.

(R.R. at 27a-28a.) The referee concluded that Claimant's actions in refusing direction by his supervisor and issuing orders to her while barring the exit of an office rose to the level of disqualifying willful misconduct. Claimant appealed to the Board, which resolved all conflicts in the evidence in Employer's favor and adopted the findings and conclusions of the referee. (R.R. at 33a.)

On appeal to this Court,² Claimant contends that Employer failed to establish that he engaged in willful misconduct. Claimant argues that questioning a person in the privacy of a shared office and then opening the door upon request is insufficient to establish willful misconduct, and that his conduct in the office was *de minimus* in nature and is not a basis for denying benefits.

Although the Law does not define “willful misconduct,” our courts have defined that term as including: (1) a wanton or willful disregard for an employer's interests; (2) a deliberate violation of an employer's rules; (3) a disregard for standards of behavior which an employer can rightfully expect of an employee; or (4) negligence indicating an intentional disregard of the employer's interest or an employee's duties or obligations. Moran v. Unemployment Compensation Board of Review, 973 A.2d 1024 (Pa. Cmwlth. 2009). Refusal to obey an employer’s order is willful misconduct, Patterson v. Unemployment Compensation Board of Review, 430 A.2d 1011 (Pa. Cmwlth. 1981), as is engaging in threatening behavior toward a supervisor. Andrews v. Unemployment Compensation Board of Review, 633 A.2d 1261 (Pa. Cmwlth. 1993). The employer bears the burden of establishing that the claimant was discharged for willful misconduct, Roberts v. Unemployment Compensation Board of Review, 977 A.2d 12 (Pa. Cmwlth. 2009), and the question of whether a claimant's conduct rises to the level of willful misconduct is one of law subject to our review. Andrews.

² Our scope of review is limited to determining whether constitutional rights were violated, errors of law were committed, or whether necessary findings of fact are supported by substantial evidence. Schneider v. Unemployment Compensation Board of Review, ___ A.2d ___ (Pa. Cmwlth., No. 2238 C.D. 2009, filed June 18, 2010).

Employer is participating in this appeal as an intervenor and has filed a brief in support of the Board’s decision to deny Claimant benefits.

Here, the credible evidence establishes that Claimant entered an office when Ferguson was alone, blocked the door with his body, ordered her not to “chew him out” in front of a participant again, refused her instruction to stop and go to the center’s manager, and did not cease blocking the exit until after Ferguson pounded on the door and told Claimant that she would consider his actions a threat. (Findings of Fact Nos. 6–11.) Contrary to Claimant’s argument, the record demonstrates that Claimant disregarded the standards of behavior which an employer can rightfully expect of an employee by refusing Ferguson’s orders, reprimanding Ferguson for her conduct, and acting in a manner that a reasonable person would interpret as threatening and intimidating. Therefore, we conclude that the Board correctly determined that Claimant engaged in disqualifying willful misconduct.

Next, Claimant contends that Findings of Fact Nos. 3, 5, 7, 9, 10, 11, 12, and 13 are unsupported by substantial evidence.³ We disagree. Our review of the record reveals that each of the Board’s findings is amply supported by the credible evidence introduced by Employer.

Finally, Claimant contends that the referee did not conduct a fair hearing and actively participated for the benefit of Employer. This issue was not raised by Claimant in his appeal to the Board (R.R. at 31a); nor did Claimant object to the referee’s questions and comments during the hearing. Therefore, this issue is

³ When reviewing the record to determine whether there is substantial evidence to support the Board's findings of fact, this Court views the record in the light most favorable to the party which prevailed before the Board, giving that party the benefit of all logical and reasonable inferences deducible from the evidence. Stringent v. Unemployment Compensation Board of Review, 703 A.2d 1084 (Pa. Cmwlth. 1997).

waived.⁴ Ridley School District v. Unemployment Compensation Board of Review, 637 A.2d 749 (Pa. Cmwlth. 1994); Schneider v. Unemployment Compensation Board of Review, 523 A.2d 1202 (Pa. Cmwlth. 1987).

Accordingly, the Board's order is affirmed.

PATRICIA A. McCULLOUGH, Judge

⁴ Moreover, after a careful review, we conclude that the record contains no support for Claimant's contentions.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Michael J. McGoff,	:	
Petitioner	:	
	:	No. 90 C.D. 2010
v.	:	
	:	
Unemployment Compensation	:	
Board of Review,	:	
Respondent	:	

ORDER

AND NOW, this 14th day of September, 2010, the December 23, 2009,
order of the Unemployment Compensation Board of Review is AFFIRMED.

PATRICIA A. McCULLOUGH, Judge