IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Yolanda Torres-Williams,	:	
Petitioner	:	
	:	
v.	:	No. 910 C.D. 2008
	:	Submitted: October 31, 2008
Unemployment Compensation	:	
Board of Review,	:	
Respondent	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE McCLOSKEY FILED: December 4, 2008

Yolanda Torres-Williams (Claimant) petitions pro se for review of an order of the Unemployment Compensation Board of Review (Board), affirming the decision of a referee, concluding that she was ineligible for unemployment compensation benefits pursuant to Section 402(e) of the Unemployment Compensation Law (UC Law).[1] We now affirm.

The facts as found by the Board can be summarized as follows.[2] Abington Memorial Hospital (Employer) hired Claimant as a receptionist beginning in July of 2007. Shortly thereafter, Employer provided Claimant with an employee handbook. Claimant acknowledged receipt of this handbook by her signature on August 13, 2007.

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

[2] In unemployment compensation cases, the Board is the ultimate fact finder. Peak v. Unemployment Compensation Board of Review, 509 Pa. 267, 501 A.2d 1383 (1985).

This handbook included a provision directing that employees should treat each other "with courtesy, honor, and respect."[3] On December 31, 2007, Employer issued a warning to Claimant for improper verbal communications to patients and co-workers. On January 9, 2008, Claimant asked a question of a co-worker. When the co-worker indicated that she did not know the answer to Claimant's question, Claimant responded "Jesus Christ, what do you know?" (N.T., February 21, 2008, p. 18). Thereafter, on January 10, 2008, Employer discharged Claimant for her behavior to her co-worker as well as for poor work performance.

Claimant proceeded to file a claim for unemployment compensation benefits with her local job center. The local job center denied Claimant benefits, concluding that she was ineligible for the same under Section 402(e) of the UC Law.[4] Claimant appealed and the case was assigned to an unemployment compensation referee. The referee conducted a hearing on February 21, 2008.

At this hearing, Claimant testified on her own behalf. Claimant testified that the entire office was frustrated as Employer had taken on approximately 30,000

[3] This handbook was later submitted as an exhibit at the hearing before the referee without objection from Claimant.

[4] Section 402(e) of the UC Law provides that an employee shall be ineligible for compensation for any week:

> In which his unemployment is due to his discharge or temporary suspension from work for willful misconduct connected with his work, irrespective of whether or not such work is 'employment' as defined in this act.

additional patients, on top of the 40,000 patients that it already serviced.[5] Claimant acknowledged that on the day of the final incident, January 9, 2008, she and the other staff were stressed due to the phone volume and the chaos of trying to schedule patients when availability was limited. Claimant also acknowledged making the statement in question, i.e., "Jesus Christ, what do you know?" However, Claimant alleged that she did not make this statement to another co-worker, but that she simply made the statement "out loud as a remark."[6] (N.T., February 21, 2008, p. 18). Claimant also testified that she did not receive the proper training, that she requested additional training and that she often stayed late to teach herself the job. Claimant further indicated that she only had one other incident with a co-worker, but that was right after she started working for Employer.

Employer presented the testimony of two witnesses, Miriam Perera, Senior Employee Relations Specialist, and Dawn DiBello, Regional Operations Manager. Ms. Perera testified as to Employer's general policies and procedures and noted that Claimant was provided with an employee handbook, as verified by Claimant's signature on August 13, 2007. In her testimony, Ms. DiBello indicated that she was Claimant's immediate supervisor. Ms. DiBello noted that she attempted to provide Claimant with extra training and that she even provided her with a "cheat sheet" as to the procedures and the physicians serviced by the office where Claimant was employed.

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[5] Claimant later explained that after she was hired, Employer added three doctors to its Obstetrics/Gynecology practice and that these doctors brought along 30,000 patients with them. Claimant also explained that patients were unhappy because there were not enough appointments to accommodate them. Claimant noted that her job required scheduling of appointments and procedures for thirteen physicians.

[6] Claimant indicated that she had asked a co-worker if a doctor did a certain procedure and that the co-worker was unsure.

Ms. DiBello proceeded to testify as to the incident on January 9, 2008, and how things were simply not working out with Claimant. Ms. DiBello described the incident as the "last straw" and characterized Claimant's actions on that day as disrespectful to her co-worker. (N.T., February 21, 2008, p. 7). Ms. DiBello noted that she had several patient letters as well as complaints from co-workers describing Claimant's behavior as rude. Ms. DiBello testified as to previous incidents with Claimant and her behavior and lateness in August, November and December of 2007.

Following the hearing, the referee issued a decision and order affirming the determination of the local job center. The referee found that Claimant had received repeated warnings, both verbal and written, regarding her absenteeism, her performance and her respect towards co-workers. Specifically, the referee noted a verbal warning in early November of 2007, a written warning in late November and a two-day suspension in December of 2007. After the incident on January 9, 2008, which Employer considered a violation of past warnings, the referee indicated that Claimant was terminated. The referee noted that Employer also cited to Claimant's poor overall job performance as a basis for her termination. Based upon these findings, the referee concluded that Employer had met its burden of establishing that Claimant engaged in willful misconduct sufficient to render her ineligible for benefits.

Claimant thereafter filed an appeal with the Board. However, the Board issued a decision and order affirming the decision of the referee and concluding that Claimant was ineligible for benefits under Section 402(e) as a result of her willful misconduct. In its decision, the Board cited to Employer's employee handbook regarding treatment of co-workers and found that Claimant knew or should have known

of Employer's policy in this regard.[7] The Board also referenced Claimant's history of work-related misconduct and her numerous warnings for violations of Employer's policies, specifically her treatment of co-workers. The Board then cited to a warning to Claimant regarding how she spoke to patients and co-workers on December 31, 2007, and the final incident only nine days later, on January 9, 2008. Based upon the above, the Board concluded that Employer had met its burden of establishing Claimant's willful misconduct. The Board further concluded that Claimant had failed to establish good cause for her conduct. Claimant then filed a petition for review with this Court.

On appeal,[8] Claimant argues that the Board erred by not giving greater weight to her reasons for engaging in the improper conduct and by disregarding substantial evidence regarding the charge of willful misconduct.[9] However, before we reach the merits of these arguments, we must address an application for relief filed by

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[7] In the discussion section of its decision, the Board noted that Claimant had acknowledged receipt of Employer's employee handbook on August 13, 2007.

[8] This Court's standard of review of a decision of the Board is limited to determining whether necessary factual findings are supported by substantial evidence, and whether an error of law or violation of constitutional rights has been committed. 2 Pa.C.S. §704; Brunswick Hotel & Conference Center v. Unemployment Compensation Board of Review, 906 A.2d 657 (Pa. Cmwlth. 2006).

[9] In her brief, Claimant challenges the referee's decision. However, as noted above, the Board is the ultimate fact-finder and this Court's review is limited to review of the Board's findings. Moreover, we have partially restated Claimant's issues on appeal, as her original statement of questions involved contained the following two issues:

> 1. Could referee [actually the Board as fact-finder] have more empathy to the Petitioner in regards to accusations of willful misconduct?
>
> 2. Is it legal for a referee to disregard substantial evidence from a respondent in a case of defense when charges are willful misconduct?

(Brief of Claimant at 6). Claimant, however, did later expound upon these issues in the summary and argument sections of her brief.

the Board in the form of a motion to strike Claimant's petition for review and dismiss her appeal. For the following reasons, the Board's application is denied.

The Board argues that the Court should quash or strike the petition for review because (1) the petition does not seek to challenge the basis of the Board's decision, i.e., Claimant's conduct constitutes willful misconduct, and (2) the petition for review does not seek to challenge matters over which this Court can exercise its powers of review, i.e., the Board's factual findings, legal errors or constitutional violations. This Court has recently indicated that we may "decline to consider issues a claimant fails to raise with sufficient specificity in his petition for review." Pearson v. Unemployment Compensation Board of Review, 954 A.2d 1260, 1263 (Pa. Cmwlth. 2008). We have also dismissed a claimant's petition for review where the claimant only asserted vague issues of error on the part of the Board or simply asserted that the Board's decision was not supported by substantial evidence. See Deal v. Unemployment Compensation Board of Review, 878 A.2d 131 (Pa. Cmwlth. 2005).[10] A claimant must submit a statement in his or her petition for review that is more substantial than merely a recitation of our standard of review. Id.

Admittedly, the grounds for reversal as stated by Claimant in her petition for review are somewhat lacking. However, Claimant does allege in her petition that she is challenging the Board's decision based upon "minimum grounds of evidence."[11]

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[10] We acknowledge that our decisions in both Pearson and Deal related to the doctrine of waiver and not an application to dismiss; however, the reasoning underlying those decisions is equally applicable to the application filed by the Board in the present case.

[11] In full, Claimant's grounds for reversal state as follows:

> I would like for the court to review the decision made by unemployment because the grounds base on the decision are minimum grounds of evidence. I have apologized for any misunderstanding and I am totally financed empty and have over 200 resumes

(Footnote continued on next page…)

We interpret this statement as a challenge to the Board's findings and its conclusion that Employer met its burden of establishing willful misconduct. Claimant's argument herein is similar to the arguments raised by the claimant in Pearson, who alleged that the Board had failed to "review all the facts" and that "this case is not strong enough," which we interpreted as a challenge to the employer's burden of proof and which we relied upon in rejecting the application of the waiver doctrine. Pearson, 954 A.2d at 1263.[12]

Turning our attention to the merits, the law is well settled that the burden is on an employer to prove that a discharged employee was guilty of willful misconduct.[13] Gillins v. Unemployment Compensation Board of Review, 534 Pa. 590, 633 A.2d 1150 (1993). There are four categories of activity that can constitute willful misconduct: (1) the wanton or willful disregard of the employer's interests; (2) the deliberate violation of the employer's rules/directives; (3) the disregard of the standards of behavior which an employer can rightfully expect from an employee; and (4) negligence demonstrating an intentional disregard of the employer's interest or the employee's duties and

(continued…)

> circulating with no effect to receiving employment. I have been unemployed for 4 months with absolutely no income. I need the unemployment compensation to sustain my living until I find work.

[12] In contrast, in Deal, we noted that the claimant had included no statement in her petition for review that even "fairly embraces the issue of willful misconduct…." Deal, 878 A.2d at 133.

[13] Whether or not an employee's actions amount to willful misconduct is a question of law subject to review by this Court. Noland v. Unemployment Compensation Board of Review, 425 A.2d 1203 (Pa. Cmwlth. 1981).

obligations to the employer. Kelly v. Unemployment Compensation Board of Review, 747 A.2d 436 (Pa. Cmwlth. 2000).

To establish willful misconduct for a violation of a work rule, the employer must establish the existence of the rule, its reasonableness, and its violation. Burchell v. Unemployment Compensation Board of Review, 848 A.2d 1082 (Pa. Cmwlth. 2004). Once an employer meets its burden, the burden then shifts to an employee to show that he/she had good cause for such conduct.[14] McKeesport Hospital v. Unemployment Compensation Board of Review, 625 A.2d 112 (Pa. Cmwlth. 1993).

We note at this point that Claimant has not challenged any specific factual findings by the Board. The law is equally well settled that where a party has failed to raise a challenge to specific factual findings, issues relating to the Board's findings are waived. Steinberg Vision Associates v. Unemployment Compensation Board of Review, 624 A.2d 237 (Pa. Cmwlth. 1993). As Claimant has not challenged any specific factual findings, these findings must remain intact. While Claimant appears to allege just cause for her actions and disparate treatment on the part of Employer, i.e., she was punished but her co-workers were not, Claimant failed to substantiate these assertions with any evidence other than her own testimony. The Board, however, essentially rejected Claimant's testimony as not credible. Instead, the Board appears to have credited the testimony of Ms. Perera and Ms. DiBello, which constitutes substantial evidence in support of the Board's findings and ultimate decision.[15]

[14] "Good cause" has been characterized as an action of the employee/claimant that is justifiable or reasonable under all the circumstances. See Medina v. Unemployment Compensation Board of Review, 423 A.2d 469 (Pa. Cmwlth. 1980).

[15] While the Board did not make any specific credibility determinations in its decision, said determinations are evident from the outcome of that decision.

Moreover, Claimant suggests that her statement at issue herein is not considered insulting in some cultures (thereby suggesting that she did not intend the comment to be insulting or discourteous). However, Claimant has pointed to no authority for her position that the lack of offensive intent constitutes good cause in a willful misconduct case. The sole questions the Board, and this Court, can consider are: (1) whether the statement is offensive, (2) whether the employee intended to make the statement and (3) whether the statement violated a rule of the employer. See Williams v. Unemployment Compensation Board of Review, 926 A.2d 568 (Pa. Cmwlth.), petition for allowance of appeal denied, 596 Pa. 712, 940 A.2d 368 (2007). Again, the evidence of record supports the Board's findings and ultimate conclusion herein.

Accordingly, the order of the Board is affirmed.

JOSEPH F. McCLOSKEY, Senior Judge

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O R D E R

AND NOW, this 4th day of December, 2008, the Unemployment Compensation Board of Review's (Board's) application for relief in the form of a motion to strike the petition for review filed by Yolanda Torres-Williams and dismiss her appeal is denied. The Board's order is, however, hereby affirmed.

JOSEPH F. McCLOSKEY, Senior Judge