

2. Claimant's responsibility, in part, requires that the Claimant oversee and provide training to new hires in all aspects of their positions.
3. Claimant accomplishes the training mission by delegating the task to subordinate employees.
4. The Employer requires that a log of training activities be created whenever training is implemented by the Employer for new hires.
5. Claimant was aware or should have been aware of Employer's policy.
6. On September 20, 2010, the Employer hired a new person for its Human Resources Department to work with Payroll.
7. The Claimant assigned the new hire to a seasoned individual for training.
8. On September 22, 2010, the Employer inquired about the missing training record for the new hire and asked the Claimant to produce the record.
9. Claimant had a subordinate create the record and the Claimant submitted it to the Employer.
10. The Employer wanted the training record to be emailed to the Employer in Microsoft Word format, so that the Employer could work with the document.
11. The Claimant asked a subordinate to create a training record after the Employer's request, and subsequently submitted the electronic record to the Employer.
12. The Employer became suspicious that the record was newly created, and used the properties section of Microsoft Office to determine if the document had been recently created.

13. The Employer confronted the Claimant about creating a recent document as opposed to having an archived document reflecting the new hire's training.

14. The Claimant insisted that the document had been created recording the new hire's training when that training was completed.

15. The Employer surmised that the Claimant was lying to it and discharged the Claimant for dishonesty.

16. The Employer discharged the Claimant for lying about the date of the creation of the document, and not for failure to create a log at the completion of the training.

17. Claimant was dishonest with the Employer.

Referee's Decision, January 3, 2011, Findings of Fact Nos. 1-17 at 1-2;
Reproduced Record (R.R.) at App-R-158 – App-R-159.

The referee reasoned that Claimant committed willful misconduct:

The record is replete with conflicting testimony offered by both parties at the hearing, however, the Referee resolves the conflict in testimony in favor of the Employer. Here, the Claimant was not discharged for not having created a record of training prior to the Employer's request for a copy of the training, but was discharged for telling the Employer that the record was already in existence, when, in fact, the Claimant directed a subordinate to create the record on the same date of the Employer's request. The Referee finds that the Claimant was dishonest in her dealings with the Employer, and could have easily resolved the issue by simply informing the Employer that the training record would be created on the date of the request and sent to the Employer. The Referee finds that the Claimant's dishonesty in dealing with the Employer falls below the standards that an Employer is entitled to expect of its employees. The employer asserts a narrowly defined reason for

discharging the Claimant for being dishonest about the date of the record creation, and not about the fact that the record was not previously created at or near the time of the training.

Decision at 2.²

The Board affirmed. The Board also denied Claimant's request to remand to the referee to take additional evidence.

Claimant contends that the Board erred when it determined that Employer established that Claimant committed willful misconduct and that this conduct was not the actual reason for her dismissal. Claimant also contends that the Board erred when it did not remand the case to the referee in order to take additional evidence which the referee precluded.³

Initially, Claimant contends that Cooper-Booth Wholesale Company (Employer) failed to meet its burden of proving that Claimant committed willful misconduct.

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

² The referee also determined that Claimant was ineligible for Emergency Unemployment Compensation benefits pursuant to Section 4001(d)(2) of the Emergency Unemployment Compensation Act of 2008, 26 U.S.C. §3304 note. That determination is not before this Court.

³ This Court's review in an unemployment compensation case is limited to a determination of whether constitutional rights were violated, errors of law were committed, or findings of fact were not supported by substantial evidence. Lee Hospital v. Unemployment Compensation Board of Review, 637 A.2d 695 (Pa. Cmwlth. 1994).

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).

Claimant argues that Employer failed to establish that Claimant lied about when the training schedule was created.

Greg Reichardt (Reichardt), Employer's general manager, testified regarding the circumstances of Claimant's termination:

EW1 [Reichardt]: So I realized I didn't have a copy of the training schedule. So I picked up the phone and I called Toni [Claimant] in her office and asked that she send me a copy of the training schedule and she indicated that she would send it to me immediately.

.....

EL [Daniel Lieberman, Employer's counsel]: . . . [D]id Ms. Clements send you a copy of the training schedule immediately as she indicated that she would?

EW1: No.

EL: Did she ever send you a copy of the training schedule?

EW1: After about 25 minutes I received a copy.

Notes of Testimony, December 28, 2010, (N.T.) at 8; R.R. at App-R72.

The next day Reichardt checked with Montika Smith (Smith), human resources assistant for Employer, as to when the training schedule was prepared. Smith told him that she created the document after Reichardt called Claimant and requested it. Reichardt also looked at the properties in the Word document and determined “that it was created approximately 8:20 in the morning about ten minutes after my phone call, my initial phone call perhaps.” N.T. at 10; R.R. at App-R74.

Reichardt further related what occurred:

The next morning – the morning of the 24th is when Toni first came into work. Sometime early in the morning I went to Ms. Clements' office and I gave her a copy of the training schedule and I put it on her desk and I said, how come when I asked for this on Wednesday you just didn't tell me that you hadn't done it . . . and she said, well, it was completed prior to Wednesday. And at that point I asked, are you certain about that and she said yes. I'm certain that it was completed beforehand and at that point I said, well I spoke to Montika Smith and Montika indicated that she created the document on Wednesday after Toni called and Ms. Deverter [the employee who was to conduct training] and Ms. Smith had not seen the document prior to Wednesday and then, I had showed her that, I looked at the properties of the document and the document itself had been created afterwards.

....

At that point I just took into consideration what Ms. Clements' position was with the company and I felt she was being dishonest and lied to me about that and I said that this was the last day that . . . we're going to work together and I told her that she was being let go for just being dishonest

N.T. at 10-11; R.R. at App-R74-App-R-75.

Reichardt testified that the employee handbook indicated that everyone was expected to act in good faith and be honest and failure to abide by that rule could result in termination. N.T. at 11; R.R. at App-R75. Reichardt testified that Claimant was given a copy of the handbook. N.T. at 12; R.R. at App-R76.

Claimant denied that she was dishonest in her dealings with Employer. N.T. at 27; R.R. at App-R91. She testified that she told Reichardt that she never lied about the creation of the training schedule. N.T. at 30; R.R. at App-R94.

The Board found Employer's witness, Reichardt, credible with respect to whether Claimant lied. Claimant suggests that she credibly testified that she did not lie to Employer. 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, 378 A.2d 829 (1977). Here, the Board accepted Reichardt's testimony over Claimant's. Claimant suggests that the Board must explain the reasoning for its choice, but she does not cite to any statute, regulation, or case law that requires the Board to do so. The Board acted as factfinder. This Court is not permitted to reweigh the evidence and make alternate credibility determinations which essentially is what Claimant desires.

Claimant also argues that Employer failed to prove that the alleged act of dishonesty was the reason for Claimant's termination especially when the Employer questionnaire stated that Claimant was terminated for unsatisfactory work performance. However, on the same questionnaire, question number nine stated, "Was there any misconduct involved in the claimant's unsatisfactory work performance?" The "yes" box was checked with the explanation, "She lied about the completion of a training schedule to me." Employer Questionnaire at 1; R.R. at App-R39. Contrary to Employer's assertion, Employer was consistent regarding the cause for Claimant's termination.

Claimant also contends that the Board erred when it declined to remand the case to the referee to hear evidence regarding additional potential causes for her termination. Claimant argues that she would have introduced evidence that she was fired for poor performance relative to a workplace injury that occurred two weeks prior to her discharge. Claimant asserts that she filed an ongoing workers' compensation claim.

The denial of an application for remand will be reversed only for a clear abuse of discretion. Flores v. Unemployment Compensation Board of Review, 686 A.2d 66 (Pa. Cmwlth. 1996). Here, Employer had the burden to prove that Claimant committed willful misconduct. Employer also had to establish that the conduct in question was the proximate cause of Claimant's discharge. Coleman v. Unemployment Compensation Board of Review, 406 A.2d 259 (Pa. Cmwlth. 1979). Employer established that Claimant lied to Reichardt and that this lie led to her discharge. A deliberate attempt to deceive an employer constitutes willful misconduct. Perry v. Unemployment Compensation Board of Review, 410 A.2d 398 (Pa. Cmwlth. 1980). This Court finds that the Board did not abuse its discretion when it declined Claimant's request to remand.

Accordingly, this Court affirms.

BERNARD L. MCGINLEY, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Toni Jean Clements,	:
	:
Petitioner	:
	:
v.	:
	:
Unemployment Compensation	:
Board of Review,	:
	:
Respondent	:

No. 986 C.D. 2011

ORDER

AND NOW, this 30th day of November, 2011, the order of the Unemployment Compensation Board of Review in the above-captioned matter is affirmed.

BERNARD L. MCGINLEY, Judge