

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Darlynda N. McGhee,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 2007 C.D. 2012
	:	
Unemployment Compensation	:	Submitted: March 28, 2013
Board of Review,	:	
	:	
Respondent	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE ROBERT SIMPSON, Judge  
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION  
BY JUDGE COHN JUBELIRER**

**FILED: May 21, 2013**

Darlynda N. McGhee (Claimant) petitions for review of an Order of the Unemployment Compensation Board of Review (Board) affirming the Unemployment Compensation Referee’s (Referee) decision finding Claimant ineligible for unemployment compensation (UC) benefits pursuant to Section 402(e) of the Unemployment Compensation Law (Law).<sup>1</sup> On appeal, Claimant

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<sup>1</sup> Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. § 802(e) (providing, in relevant part, that an employee is ineligible for UC benefits for any week the employee’s unemployment is due to willful misconduct connected with the employee’s work).

argues that: (1) Thomas Jefferson University Hospital (Employer) failed to establish that Claimant's conduct constituted willful misconduct; (2) Claimant was not knowingly insubordinate; and (3) Claimant had good cause for her actions. Discerning no error, we must affirm the Board's Order.

Claimant was employed as a Patient Access Representative by Employer from May 2009 through April 9, 2012, when Employer terminated her for insubordination. (Referee Decision, Findings of Fact (FOF) ¶¶ 1, 16-17.) Claimant filed an internet claim for UC benefits. The Philadelphia UC Service Center (Service Center) determined that Claimant was ineligible for benefits pursuant to Section 402(e) of the Law. (Notice of Determination, R.R. at 4a.) Claimant appealed the Service Center's determination and hearings before the Referee ensued.<sup>2</sup> Before the Referee, Employer presented the testimony of its Supervisor of Outpatient Registration (Supervisor) and Outpatient Registration Manager (Manager) and submitted documentary evidence into the record. Claimant testified on her own behalf. Based on the evidence presented, the Referee found as follows:

2. This Employer has policies which prohibit[] demonstrating disrespectful behavior, insubordination and/or willful failure to perform assigned duties.

3. The Claimant was, or should have been, aware of the aforestated Employer policies.

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<sup>2</sup> Two hearings were held before the Referee. The first hearing, held on June 20, 2012, was continued due to the unavailability of Claimant's counsel. The second hearing was held on July 9, 2012.

4. On March 14, 2011, the Claimant was issued a written warning and a three day disciplinary suspension for leaving her work area without authorization.
5. On March 23, 2011, the Claimant was issued a written warning for demonstrating unprofessional behavior towards a member of management.
6. On March 14, 2012, the Claimant was issued a written warning for unprofessional behavior in the workplace.
7. On March 30, 2012, the Claimant telephoned her Supervisor to request that the Supervisor send Co-workers to assist the Claimant.
8. During this telephone conversation the Claimant's Supervisor instructed the Claimant to start signing in the patients.
9. Signing in patients was part of the Claimant's normal duties.
10. The Claimant told her Supervisor that she was not going to sign in the patients and that her Supervisor was getting on "my nerves".
11. The Claimant's Supervisor reported this conversation to the Manager.
12. The Manager scheduled a meeting on March 31, 2012 to discuss with the Claimant the previous day's incident.
13. The Claimant's Supervisor told the Manager that the Claimant had refused to come into the meeting.
14. The Claimant's Manager went directly to the Claimant and asked the Claimant to come into the meeting to discuss the previous day's events.
15. The Claimant refused to go into the meeting with the Manager, but instead, telephoned her lawyer.
16. As a result, on April 5, 2012 the Claimant was suspended for insubordination.
17. On April 9, 2012, the Claimant's suspension was converted to a discharge.

(FOF ¶¶ 2-17.) The Referee resolved the conflicts in the testimony between Claimant and Employer’s witnesses in Employer’s favor. Thus, the Referee found the testimony of Supervisor and Manager to be credible with respect to the events leading up to Claimant’s April 9, 2012 discharge from employment. (Referee Decision at 1.) The Referee concluded that, while there was a history of work-related misconduct on the part of Claimant, Claimant was discharged primarily due to the March 30, 2012 incident, in which Claimant refused to sign in patients as directed by Supervisor, and the March 31, 2012 incident, in which Claimant chose to telephone her attorney instead of attending a meeting with Supervisor and Manager to discuss the events of March 30, 2012. (Referee Decision at 2.) The Referee determined that “Claimant offered no adequate justification [for] the two acts of insubordination which caused her discharge.” (Referee Decision at 3.) Therefore, the Referee concluded that he was “constrained to decide that the Employer ha[d] met its burden of proving that the Claimant committed willful misconduct, thereby rendering [Claimant] ineligible for benefits under Section 402(e) of the Law.” (Referee Decision at 3.)

Claimant appealed the Referee’s decision to the Board, which concluded that the Referee’s determination was proper under the Law. Accordingly, the Board adopted the Referee’s findings of fact and conclusions of law and affirmed the Referee’s decision. Claimant now petitions this Court for review.<sup>3</sup>

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<sup>3</sup> “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).

Section 402(e) of the Law provides, in pertinent part, that “[a]n employe shall be ineligible for compensation for any week . . . [i]n which h[er] unemployment is due to h[er] discharge or temporary suspension from work for willful misconduct connected with h[er] work.” 43 P.S. § 802(e). While the Law does not define “willful misconduct,” this Court has defined it as:

(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.

Philadelphia Parking Authority v. Unemployment Compensation Board of Review, 1 A.3d 965, 968 (Pa. Cmwlth. 2010). “If the employer alleges willful misconduct because the claimant violated a work rule, the employer must prove both the existence of the rule and its violation.” Caterpillar, Inc. v. Unemployment Compensation Board of Review, 550 Pa. 115, 123, 703 A.2d 452, 456 (1997). A claimant must also be “made aware of the existence of the work rule.” Bruce v. Unemployment Compensation Board of Review, 2 A.3d 667, 671 (Pa. Cmwlth. 2010).

If the employer satisfies its burden, the burden shifts to the employee to show that he or she had good cause for the conduct. McKeesport Hospital v. Unemployment Compensation Board of Review, 625 A.2d 112, 114 (Pa. Cmwlth. 1993). “A claimant has good cause if his or her actions are justifiable and reasonable under the circumstances.” Docherty v. Unemployment Compensation Board of Review, 898 A.2d 1205, 1208-09 (Pa. Cmwlth. 2006). Whether an

employee's actions constitute willful misconduct is a question of law subject to *de novo* review. Id. at 1208.

Initially, we note that Claimant does not challenge the existence of Employer's work rules prohibiting disrespectful behavior, insubordination and/or willful failure to perform assigned duties, or that she was aware of these rules. Instead, Claimant challenges the Board's determination that Employer met its burden of proving that she violated these work rules. Claimant first argues that Employer failed to prove that she refused to sign in patients as instructed by Supervisor on March 30, 2012.<sup>4</sup> Claimant contends that, although Manager testified that Claimant was discharged for not following Supervisor's directive, there is no testimony on the record that a refusal ever occurred. Claimant argues that Supervisor's testimony actually supports a finding that Claimant did not refuse to sign in patients and that there is nothing in Supervisor's testimony that even suggests that Claimant was not going to follow Supervisor's directive. Finally, Claimant contends that there is no evidence that she actually failed to sign in patients as instructed. Claimant contends that the only testimony that Claimant did not sign in patients was that of Manager; however, this testimony was inadmissible hearsay.

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<sup>4</sup> Claimant contends in her brief that the Referee and the Board failed to articulate which specific acts constituted insubordination on Claimant's part and why those unidentified actions were in fact insubordinate and, therefore, willful misconduct. (Claimant's Br. at 9.) As such, Claimant "assumes" from Manager's testimony that the two alleged acts of insubordination referred to by the Referee are Claimant's refusal to sign in patients and her alleged refusal to meet and discuss the incident. (Claimant's Br. at 10.) However, the Referee's decision, as adopted by the Board, clearly articulates that these are the two incidents of insubordination on Claimant's part that lead to her discharge from employment. (Referee's Decision at 2.)

Here, the Board found the testimony of Supervisor and Manager to be credible.<sup>5</sup> Claimant relies upon only a portion of Supervisor's credible testimony regarding the March 30, 2012 conversation between Supervisor and Claimant to support her argument that Claimant did not refuse to sign in patients. However, Supervisor's entire testimony reveals that Claimant's conduct during this conversation rose to the level of willful misconduct. Supervisor asked Claimant three times to start signing in patients and Claimant replied more than once that she was "not in the mood" and that she was "not going to do it." (Hr'g Tr. at 23, R.R. at 30a.) Supervisor testified that, after her repeated requests for Claimant to start signing in patients, Claimant replied "yeah, okay" and then hung up the phone on the Supervisor. (Hr'g Tr. at 23, R.R. at 30a.) Supervisor testified that, due to the tone of the conversation, she did not know if Claimant meant "yes" and was agreeing to comply with the directive, or if Claimant was being sarcastic. (Hr'g Tr. at 23, R.R. at 30a.) Based upon this uncertainty, Supervisor felt compelled to go to Claimant's work area to ensure that Claimant had complied with the directive. (Hr'g Tr. at 23, R.R. at 30a.)

It is well-settled that "an employee's refusal of an employer's reasonable work request will constitute disqualifying willful misconduct." Eckenrode v. Unemployment Compensation Board of Review, 533 A.2d 833, 835 (Pa. Cmwlth. 1987); see also ATM Corporation of America v. Unemployment Compensation Board of Review, 892 A.2d 859, 866 (Pa. Cmwlth. 2006) ("If the employer's

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<sup>5</sup> The Board is the ultimate finder of fact in UC cases and questions regarding the weight of the evidence and witness credibility are solely within its province. First Federal Savings Bank v. Unemployment Compensation Board of Review, 957 A.2d 811, 815 (Pa. Cmwlth. 2008).

request is reasonably related to the employee's job duties, the employee's refusal to cooperate can be viewed as a disregard of the standards of behavior expected of employees, which, as a matter of law, constitutes willful misconduct.") In addition, this Court has recognized that an employee's engagement in a debate with an employer over whether the employee will perform a regular duty of employment instead of performing the duty as directed rises to the level of willful misconduct. See Strong v. Unemployment Compensation Board of Review, 459 A.2d 57, 59 (Pa. Cmwlth. 1983) (holding that a claimant who defiantly debated with a supervisor over assignments engaged in willful misconduct). Thus, when Supervisor's entire testimony is viewed in context, the record supports the Board's determination that Claimant refused to sign in patients on March 30, 2012 as instructed by Supervisor. Moreover, with respect to Claimant's contention that there is no competent evidence that she actually failed to sign in patients as instructed, Claimant admitted during her testimony that she did not sign in any patients on March 30, 2012. (Hr'g Tr. at 45, R.R. at 52a.) Accordingly, Employer met its burden of proving that Claimant violated its work rule prohibiting insubordination when she refused to comply with Supervisor's directive to sign in patients on March 30, 2012.

Next, Claimant argues that Employer failed to prove that she refused to meet with Manager and Supervisor on March 31, 2012 to discuss the March 30, 2012 incident. Claimant contends that she did not refuse to attend the meeting, but instead only stated that she was going to call her attorney to represent her during the meeting.



A review of the testimony found credible by the Board belies Claimant's contention that she did not refuse to attend the March 31, 2012 meeting. Manager credibly testified that she asked Claimant directly if she was refusing to come into the office for the meeting and that Claimant replied "no, I'm not going in that office." (Hr'g Tr. at 11, R.R. at 18a.) Manager testified further that when she explained to Claimant what the meeting was about, Claimant took out her cell phone and began texting. (Hr'g Tr. at 11, R.R. at 18a.) The Board did not credit Claimant's testimony that she did not refuse to attend the meeting but, instead, wanted the opportunity to telephone her attorney before she went into the meeting. (Hr'g Tr. at 50, R.R. at 57a.) As witness credibility is within the sole province of the Board, First Federal Savings Bank v. Unemployment Compensation Board of Review, 957 A.2d 811, 815 (Pa. Cmwlth. 2008), we cannot disturb the Board's finding, based upon Manager's credible testimony, that Claimant refused Employer's directive to attend the March 31, 2012 meeting. That Claimant might believe a different version of the events took place does not create grounds for reversal if the Board's findings are supported by substantial evidence.<sup>6</sup> Tapco, Inc. v. Unemployment Compensation Board of Review, 650 A.2d 1106, 1108-09 (Pa. Cmwlth. 1994). Accordingly, Employer met its burden of proving that Claimant violated its work rule prohibiting insubordination when she refused to comply with Manager's directive to attend the March 31, 2012 meeting.

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<sup>6</sup> "Substantial evidence is defined as such relevant evidence which a reasonable mind might accept as adequate to support a conclusion." Philadelphia Gas Works v. Unemployment Compensation Board of Review, 654 A.2d 153, 157 (Pa. Cmwlth. 1995).

Next, Claimant argues that the evidence establishes that she did not know that calling her attorney, when she believed she was being unfairly disciplined, would be considered insubordination. Claimant contends that she contacted her attorney in the past without repercussions when she was threatened with discipline and was not told that doing so was wrong. However, the Board did not find that Claimant was insubordinate due to an attempt to contact her attorney; rather, the Board found that Claimant was insubordinate because she refused to attend the March 31, 2012 meeting. (Referee Decision at 2.) Because the Board did not find that Claimant was insubordinate for attempting to contact her attorney, this argument fails.

Finally, Claimant argues that if it is determined that she engaged in willful misconduct by contacting her attorney, she had good cause for doing so.<sup>7</sup> Claimant contends that because Employer was using the March 30, 2012 and March 31, 2012 incidents to harass her for filing an EEOC claim and for inquiries about a promotion for which she was never compensated, she chose to contact her attorney prior to attending the March 31, 2012 meeting. Therefore, Claimant contends, she had just cause for violating Employer's work rule prohibiting insubordination.

Claimant testified during the Referee's hearing that she believed she was being harassed when Manager requested that she attend the March 31, 2012 meeting and that is why she contacted her attorney. (Hr'g Tr. at 38, 51, R.R. at 45a, 58a.) However, Claimant's testimony regarding the alleged harassment was

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<sup>7</sup> Claimant does not offer any justification or good cause for her refusal to sign in patients on March 30, 2012, as instructed by Supervisor.

not found credible. Thus, there is no evidence that Claimant's actions were justifiable and reasonable under the circumstances of this case. Accordingly, Claimant did not meet her burden of proving that she had good cause for her actions.

For the foregoing reasons, the Board's Order is affirmed.

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**RENÉE COHN JUBELIRER, Judge**

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	:	
Petitioner	:	
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v.	:	No. 2007 C.D. 2012
	:	
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

**ORDER**

**NOW**, May 21, 2013, the Order of the Unemployment Compensation Board of Review entered in the above-captioned matter is **AFFIRMED**.

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**RENÉE COHN JUBELIRER, Judge**