

did not engage in willful misconduct under Section 402(e) of the Unemployment Compensation Law (Law)² due to excessive absenteeism during her probationary period. We affirm.

(continued...)

for work, active search for work, and refusal to accept work) shall apply to claims for [EUC benefits] and the payment thereof...”

² Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §802(e). That section provides, in relevant part:

An employe shall be ineligible for compensation for any week –

* * *

(e) 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.

Although the Law does not define the term “willful misconduct,” the courts have defined it as:

(1) wanton or willful disregard for an employer’s interests; (2) deliberate violation of an employer’s rules; (3) a disregard for the 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). The employer bears the burden of proving that a claimant’s actions constitute willful misconduct. *McKeesport Hospital v. Unemployment Compensation Board of Review*, 625 A.2d 112, 114 (Pa. Cmwlth. 1993). If the employer satisfies its burden, the burden shifts to the employee to show that he or she had good cause for his or her conduct. *Grand Sport Auto Body v. Unemployment Compensation Board of Review*, 55 A.3d 186, 190 (Pa. Cmwlth. 2012). A claimant has good cause if his or her actions are justifiable and reasonable under the circumstances. *Id.* Although unexcused absences from the workplace may constitute willful misconduct, even excessive absenteeism, when justified and properly reported, does not disqualify a claimant from receiving unemployment compensation benefits. *Sprague v.* **(Footnote continued on next page...)**

Claimant worked as a sales manager for Employer from January 7, 2013, through February 8, 2013.³ Claimant reported off work on January 21, 2013, due to an automobile accident on January 18, 2013, because she was unable to secure transportation for the one-hour commute over the weekend. Claimant left work early on January 25, 2013, due to a snow emergency. Claimant reported off sick on February 1, 2013. Because she had reported to work early on February 4, 2013, Claimant left work 15 minutes early that day without management approval. Claimant was warned in writing regarding her attendance on February 7, 2013.

On February 8, 2013, Claimant was scheduled to work her regular hours, from 8:30 a.m. to 5:15 p.m. Claimant called Employer to report that her dog was sick and that she may not be able to make it to work. At Employer's urging, Claimant made it to work on time. Claimant called her veterinarian and was told that her dog needed immediate veterinary assistance. Claimant left work at 9:45 a.m. to take her dog to the veterinarian. Employer requested and expected Claimant to return to work at least half of a shift that day. Claimant ended up taking her dog to an emergency clinic in the afternoon of February 8, 2013.

(continued...)

Unemployment Compensation Board of Review, 647 A.2d 675, 680 (Pa. Cmwlth. 1994). Whether an employee's actions constitute willful misconduct is a question of law subject to *de novo* review and must be determined based on a consideration of all of the circumstances. *Grand Sport Auto Body, 55 A.3d at 190.*

³ Prior to her employment, in May 2012, Claimant was mailed a notice of her financial eligibility for EUC benefits based on her regular unemployment compensation benefit application dated October 2, 2011.

Employer discharged Claimant that afternoon for excessive absenteeism during her 90-day probationary period.

Claimant filed a claim with the UC Service Center which determined that she was not ineligible for benefits under Section 402(e) and Employer appealed. Before the Referee, Suzanne Blasinsky (Blasinsky), Employer's Sales Manager, testified that Claimant called on Saturday, January 19, 2013, to report that she had a car accident the prior evening and that she was not going to make it to work the following Monday. (N.T. 5/14/13⁴ at 6). Blasinsky stated that on January 25, 2013, Claimant left work early because she was fearful of driving in the snow and that she called off sick on February 1, 2013. (*Id.*). Blasinsky testified that Claimant was seen leaving work 15 minutes early on February 4, 2013, without management approval. Blasinsky stated that Claimant had come to work a little early that day, but Employer's protocol is that she needed to let it know that she would be leaving a little early. (*Id.* at 8). Blasinsky testified that Claimant's early departure prompted a conversation with Claimant and the operations manager on February 7, 2013, to talk about her absenteeism and being away from her desk, and Claimant was provided with written documentation of the meeting. (*Id.* at 6).

Blasinsky testified that Claimant reported to work at 8:30 a.m. on February 8, 2013, but sent Blasinsky an e-mail at 9:30 a.m. that she was leaving to take her dog to the veterinarian because it was sick. (N.T. 5/14/13 at 7). Blasinsky

⁴ "N.T. 5/14/13" refers to the transcript of the Referee's hearing.

stated that she asked Claimant at 11:30 to work at least a half-day later that day, from 3:00 p.m. to 7:00 p.m.; that Claimant asked if she could come in on Saturday; and that she told Claimant that Employer could not accommodate that request because Claimant was in the training period. (*Id.*). Blasinsky testified that Claimant called her at 3:30 p.m. to report that she could not report to work because her dog needed to go to the emergency veterinarian and that she was not cleaned up enough to come into the office. (*Id.* at 7-8). Blasinsky stated that Claimant was discharged at 4:00 or 4:30 p.m. that day because Employer warned her the day before about absenteeism and she failed to make it to work that day. (*Id.* at 8).

Claimant admitted to the days that she was absent from work. (N.T. 5/14/13 at 9). Regarding her absence on January 21, 2013, Claimant testified that she was in the automobile accident and that she couldn't get a rental car to get to work. (*Id.* at 10, 12). Claimant stated that she left early on January 25, 2013, because it was optional for employees to leave based on the weather and she took the option to leave early because she lives so far away from work. (*Id.* at 9). Claimant admitted that she should have notified Blasinsky when she left 15 minutes early on February 4, 2013. (*Id.* at 10).

Regarding her absence on February 8, 2013, Claimant testified that her 10-week-old dog fell off the bed while she was getting ready for work. (N.T. 5/14/13 at 10). Claimant stated that the dog started to have seizures and was throwing up and defecating, so she called Blasinsky who asked her to come into work and suggested that the dog could stay with a neighbor. (*Id.*). Claimant testified that she really wanted to take the dog to a veterinarian, but that she left the

dog with a neighbor and went into work because it was too early to call the veterinarian. (*Id.*). Claimant stated that she called the veterinarian as soon as she got to the office and the veterinarian told her that she needed to bring the dog in immediately so she took the dog to the closest hospital, the Butler Veterinary Hospital. She testified that the hospital called her at 2:30 or 3:00 p.m. to let her know that the dog was not responding to treatment and was losing heartbeat and referred her to North Hills Veterinary. (*Id.* at 10-11). Claimant stated that she called Blasinsky to notify her that she would not be able to make it in for the half-day. (*Id.* at 11). She testified that she received a call from Blasinsky informing her that she was let go while she was picking the dog up from Butler Veterinary Hospital to transport it to North Hills Veterinary. (*Id.*). Records dated February 8, 2013, from Veterinary Emergency Clinic, Inc. and Butler Veterinary Associates, Inc. were admitted into evidence and outlined the treatments administered to Claimant's dog. (*Id.* at 12; Reproduced Record (R.R.) at 45a-49a).⁵

⁵ Specifically, the records from Butler Veterinary Associates, Inc. contains the following Note:

3PM – Had episode of being unresponsive, bradycardic, slow breathing, gums pale and gray. BG=360.

Admin. 0.03cc epinephrine IV and HR immed. Responded and began breathing better too.

After a few minutes started to have a seizure as well. Stopped on its own w/o treatment.

Called O and informed. Offered referral to PVSEC.

O opts to transfer.

(R.R. at 48a).

The Referee found:

In the present case, the employer has established that the claimant was excessively absent from work considering her brief tenure with the company and the fact that she was still under probation. However, the claimant has shown that she had good cause for the absenteeism. The Referee in no way questions the employer's right to discharge the claimant, but willful misconduct has not been shown and benefits cannot be denied under Section 402(e) of the Law.

(Referee's 5/16/13 Decision at 2). As a result, the Referee affirmed the UC Service Center's determination.

Employer appealed the Referee's decision to the Board which affirmed, specifically adopting the Referee's findings and conclusions. (Board's 7/24/13 Order at 1). This appeal by Employer followed in which Employer again argues that Claimant did not have good cause for her excessive absenteeism thereby precluding the award of benefits under Section 402(e) of the Law.⁶

An employer has the right to expect that its employees will attend work when they are scheduled, that they will be on time, and that they will not leave work early without permission. *Fritz v. Unemployment Compensation Board of Review*, 446 A.2d 330, 333 (Pa. Cmwlth. 1980). As a result, excessive

⁶ Our review of the Board's decision is limited to determining whether constitutional rights were violated, whether an error of law was committed, or whether necessary findings of fact are supported by substantial evidence. *Middletown Township v. Unemployment Compensation Board of Review*, 40 A.3d 217, 222 n.8 (Pa. Cmwlth. 2012).

absenteeism and tardiness may constitute willful misconduct as a disregard of the standards that an employer has a right to expect of its employees. *Id.*; *American Process Lettering, Inc. v. Unemployment Compensation Board of Review*, 412 A.2d 1123, 1125 (Pa. Cmwlth. 1980); *Crilly v. Unemployment Compensation Board of Review*, 397 A.2d 40, 41 (Pa. Cmwlth. 1979).⁷ Although an advance warning is not a precondition or prerequisite to support a discharge for willful misconduct, a prior warning is relevant in that it reflects the employee's attitude toward his employment and adds to the willfulness of the misconduct. *American Process Lettering, Inc.*, 412 A.2d at 1125-26. However, even where a history of absenteeism is present, a claimant is entitled to receive compensation benefits where the final absence which precipitated his or her discharge was based on good cause. *See Tritex Sportswear, Inc. v. Unemployment Compensation Board of Review*, 315 A.2d 322, 324 (Pa. Cmwlth. 1980). *But cf. Grand Sport Auto Body*, 55 A.3d at 192-94 (holding that a claimant's extensive absenteeism and history of tardiness constituted willful misconduct even if the claimant's final absence before discharge was justified).

The Board did not err in determining that Claimant established good cause for her absences in this case. Claimant's January 21, 2013 absence was

⁷ While absenteeism standing alone is grounds for discharge, it is not willful misconduct. *Lyons v. Unemployment Compensation Board of Review*, 533 A.2d 1144, 1145 (Pa. Cmwlth. 1987). Absenteeism can constitute willful misconduct if any of the following additional elements are present: (1) excessive absenteeism; (2) failure to notify the employer of the absence in advance; (3) lack of good or adequate cause for the absence; (4) disobedience of existing employer rules, regulations, or policy regarding absenteeism; and (5) disregard of warnings regarding absenteeism. *Petty v. Unemployment Compensation Board of Review*, 325 A.2d 642, 643 (Pa. Cmwlth. 1974).

based on good cause because she was in an automobile accident and did not have transportation to make the one-hour commute to work. *See, e.g., Adept Corp. v. Unemployment Compensation Board of Review*, 437 A.2d 109, 111 (Pa. Cmwlth. 1981) (holding that if a claimant is absent due to transportation problems beyond his control and properly reports his absence, he may not be found to have engaged in willful misconduct and benefits may not be denied on that basis).

Claimant had good cause for leaving the office early on January 25, 2013, as she was excused from work based on her testimony⁸ that Employer gave its employees the option to leave due to the weather and she exercised the option to leave early because she lives so far from work. (N.T. 5/14/13 at 9). Claimant admitted that she should have notified Blasinsky that she left 15 minutes early on February 4, 2013; however, Blasinsky acknowledged that Claimant had arrived at work early that day and that leaving early was a permissible practice in the office, but that Employer should have been notified according to protocol. (*Id.* at 8).

Claimant's February 1, 2013 absence was also based on good cause because it is undisputed that she was ill that day. *See, e.g., Sprague*, 647 A.2d at 680 (holding that the claimant's absenteeism did not constitute disqualifying willful misconduct where she properly reported her inability to work six times and gave illness as the reason each time); *McKeesport Hospital*, 625 A.2d at 114

⁸ We must "examine the testimony in the light most favorable to the party in whose favor the fact-finder has ruled, giving that party the benefit of all logical and reasonable inferences from the testimony...." *Penn Hills School District v. Unemployment Compensation Board of Review*, 496 Pa. 620, 630, 437 A.2d 1213, 1218 (1981).

(holding that illness is a good cause defense to a charge of willful misconduct due to excessive absenteeism).

Finally, Claimant's February 8, 2013 absence was also based on good cause because she reasonably felt compelled to obtain the necessary emergency veterinary care for her injured dog at the time that she was told to report to work thereby precluding a finding of willful misconduct. *See, e.g.*, Section 5511(c)(1) of the Crimes Code, 18 Pa. C.S. §5511(c)(1) ("A person commits an offense if he ... neglects any animal as to which he has a duty of care, whether belonging to himself or otherwise, ... or deprives any animal of necessary ... veterinary care...."); *Frumento v. Unemployment Compensation Board of Review*, 466 Pa. 81, 87, 351 A.2d 631, 634 (1976) (holding that good cause is established when the claimant's action is "justifiable or reasonable under the circumstances[.]"). As a result, the Board did not err in determining that Claimant demonstrated the requisite good cause for her absences and that she was not ineligible for benefits under Section 402(e) of the Law.⁹

⁹ Employer's reliance on *Shaddock v. Unemployment Compensation Board of Review*, 471 A.2d 1298 (Pa. Cmwlth. 1984), is misplaced. In that case, this Court noted that "[n]othing in this record indicates the nature of the child's illness or whether it was necessary for Claimant to miss a whole day's work to care for the child.... Considering the many warnings and the two-day suspension, we believe it behooved Claimant to make every effort to report for work or to demonstrate that the child's illness justified her absence." *Shaddock*, 471 A.2d at 1299, 1300 (citations omitted). In contrast, as noted above, in this case, Claimant presented the records from the veterinary clinics demonstrating the extent of her dog's injuries and the necessity for immediate veterinary care thereby justifying her absence from work.

Accordingly, the order of the Board is affirmed.

DAN PELLEGRINI, President Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Howard Hanna Holdings, Inc.,	:
Petitioner	:
	:
v.	: No. 1430 C.D. 2013
	:
Unemployment Compensation	:
Board of Review,	:
Respondent	:

ORDER

AND NOW, this 3rd day of April, 2014, the order of the Unemployment Compensation Board of Review, dated July 24, 2013, at No. B-553906, is affirmed.

DAN PELLEGRINI, President Judge