

finding that she committed willful misconduct because her misrepresentation on her employment application, omitting almost all of her criminal background, was not material to her employment where Employer stated that her criminal background did not matter. (Claimant's Br. at 10.) However, because Claimant's action of omitting the details of her lengthy criminal history, despite Employer's emphasis of the importance of honesty on her job application, was material to Claimant's employment, we affirm the Board's Order.

On August 29, 2011, Tony DePaul & Sons (Employer) hired Claimant as a full-time laborer trainee. (Referee Decision, Findings of Fact (FOF) ¶ 1.) According to Claimant, her responsibilities as a laborer trainee included maintaining and cleaning the work site of a paving project.² (Claimant's Br. at 10.) When filling out her employment application, Claimant indicated that she had a criminal record, but listed only one conviction for conspiracy. In fact, Claimant's six-page criminal history included numerous convictions, including forgery and identity theft. After performing a criminal background check that revealed numerous convictions, Employer discharged Claimant on September 2, 2011. (FOF ¶¶ 2-4.)

Claimant filed an application for UC benefits, which the Scranton UC Service Center denied because it determined that Claimant's actions constituted willful misconduct under Section 402(e) of the Law. (Notice of Determination at

² Apart from Employer's testimony that Claimant was hired as a laborer trainee, the record does not contain any evidence regarding the nature of Claimant's employment. (Hr'g Tr. at 4.)

1.) Claimant appealed the initial determination, and the case was assigned to a Referee for a hearing. The Referee determined that Claimant was aware of her complete criminal record, discrediting her testimony that she did not remember all of her convictions when filling out her application. (Referee Decision at 2.) Further, the Referee emphasized that “[C]laimant told the employer that she believed it was best to indicate: ‘will discuss at job interview’ when completing a job application,” although Claimant had not included such a notation on the application in question. (Referee Decision at 2.) Finally, the Referee concluded that the “convictions which the claimant did not disclose were crimes that show a dishonest history and must be considered material to the claimant’s employment.” (Referee Decision at 2.) The Referee affirmed the denial of benefits under Section 402(e) of the Law and Claimant appealed to the Board, which adopted the Referee’s findings of fact and conclusions of law. (Board Order.) Claimant now petitions this Court for review.³

On appeal,⁴ Claimant argues that the Board erred in finding that her conduct was willful misconduct under Section 402(e) of the Law because the omissions

³ This Court’s scope of review is limited to a determination of “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 & Southern Life Insurance Co. v. Unemployment Compensation Board of Review, 913 A.2d 331, 334 n.2 (Pa. Cmwlth. 2006).

⁴ Claimant’s brief touches on a number of arguments, including that: Employer may have wished to discharge her for reasons not having to do with any misrepresentations on her application; and Claimant had good cause for quitting her previous job in favor of working for Employer because Employer paid substantially more. We need not address the additional claims raised by Claimant in her brief because these arguments were not raised before the Board. Pursuant to Pennsylvania Rule of Appellate Procedure 1551(a), this Court will not review
(Continued...)

were not material to her employment. Specifically, Claimant argues, “It was said by [Employer’s] representatives that it didn’t matter that petitioner had a record, yet [p]etitioner was fired for [a record] that had absolutely nothing to do with the job that I was hired for (picking up trash).” (Claimant’s Br. at 10.)

Section 402(e) provides, in relevant part, that “[a]n employee shall be ineligible for compensation for any week . . . [i]n which [her] employment is due to [her] discharge or temporary suspension from work for willful misconduct connected with [her] 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 employe’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 initial burden of proving that the claimant’s actions constitute willful misconduct. Docherty v. Unemployment Compensation Board of Review, 898 A.2d 1205, 1208 (Pa. Cmwlth. 2006). The issue of whether an employee’s actions constitute willful misconduct is a question of law and, therefore, reviewable by this Court. Id. at 1209.

questions that were “not raised before the government unit.” Pa. R.A.P. 1551(a). Even if they had been raised, they are not relevant to the dispositive issue before us.

This Court has consistently held that “[UC] benefits are properly denied when a claimant’s discharge stems from a false or incomplete statement on an employment-related application document if the misrepresentation is knowing and material to the employee’s qualifications for the job at issue.” Sill-Hopkins v. Commonwealth, 563 A.2d 1288, 1290 (Pa. Cmwlth. 1989) (holding that claimant’s misrepresentation regarding her availability to sell securities was material because a “significant nexus” existed between the misrepresentation and the ability to perform the job at issue). The materiality of a misrepresentation is determined based on “the factual matrix present in each case.” Id. (citing Albater v. Unemployment Compensation Board of Review, 423 A.2d 9, 11 (Pa. Cmwlth. 1980)).

In Albater, this Court held that “we must look at the circumstances surrounding each case in order to determine whether information concealed from the employer is material to the employment.” Albater, 423 A.2d at 11. Thus, this Court looked both to the nature of the job at issue—a janitorial position that occasionally afforded access to private offices—and also to the nature of the criminal record concealed—three convictions for theft and pending prosecution on a fourth charge—holding that, under the circumstances, the claimant’s omissions constituted willful misconduct. Id. However, in other cases, after considering the nature of the job at issue and the nature of the information concealed, this Court has concluded that such concealment did not constitute willful misconduct. For example, in Sun Shipbuilding & Dry Dock Co. v. Unemployment Compensation Board of Review, 385 A.2d 1047, 1048-49 (Pa. Cmwlth. 1978), this Court held that a claimant’s failure to disclose an arrest for an unspecified crime in an

application for a position as a machinist's helper was not willful misconduct. Noting that the charges stemming from the arrest were discharged through an accelerated rehabilitative disposition program, this Court concluded that the charges were most likely minor. Id. at 1049. Therefore, this Court held that it could not conclude that likely minor charges were material to the claimant's position as a machinist's helper. Id.

In this case, it appears that Claimant's position was not one requiring a great deal of trust or an unblemished criminal record. Indeed, as Claimant points out in her brief, Employer's witness credibly testified that Employer would have hired Claimant despite her criminal record. (Hr'g Tr. at 6.) However, the information Claimant concealed was not merely an arrest, as in Sun Shipbuilding, but a lengthy history of convictions for crimes involving dishonesty, such as forgery and identity theft. Moreover, at issue in this case is not merely Claimant's criminal history, but her active concealment of this history *despite* Employer's instruction to Claimant that it was important that she be honest on her application. (Hr'g Tr. at 6.)

Dishonesty in connection with one's employment constitutes a disregard of expected standards of behavior where the employee's actions are affirmatively deceptive. DeRiggi v. Unemployment Compensation Board of Review, 856 A.2d 253, 256-57 (Pa. Cmwlth. 2004). Contrary to Claimant's arguments, Claimant "was well aware of the importance of accuracy" and truthfulness to Employer. Simonds v. Unemployment Compensation Board of Review, 535 A.2d 742, 744 (Pa. Cmwlth. 1988). Employer's witness testified, "I tell everyone, just be truthful, okay, just be truthful on your application." (Hr'g Tr. at 6.) In Claimant's

testimony, she stated, “I knew that *when you typed in my name*, everything was going to come up.” (Hr’g Tr. at 11 (emphasis added).) Nonetheless, Claimant deliberately omitted⁵ the details of her criminal history, despite knowing that Employer intended to verify the truthfulness of Claimant’s application. Employer may not have cared about Claimant’s past criminal history when making its employment decision, which is consistent with the “deeply ingrained public policy of this State to avoid unwarranted stigmatization of and unreasonable restrictions upon former offenders.” Unemployment Compensation Board of Review v. Dixon, 365 A.2d 668, 669 (Pa. Cmwlth. 1976). However, Employer emphasized the importance of truthfulness during the application process to its applicants. Given the nature and length of Claimant’s criminal history and her active concealment thereof, despite Employer’s emphasis regarding the importance of honesty on the job application, we hold that the Board did not err in finding that Claimant’s deception was material to her employment.

Accordingly, based on the circumstances of this case, we affirm the Board’s Order.

RENÉE COHN JUBELIRER, Judge

⁵ Claimant argues that she was not being untruthful by omitting criminal convictions. We disagree. Considering the fact that Claimant understood the details of her criminal convictions, to omit the most relevant criminal convictions—those related to identity theft and forgery—clearly creates the impression that she was being untruthful.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Janice E. Moore,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 209 C.D. 2012
	:	
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

ORDER

NOW, April 8, 2013, the Order of the Unemployment Compensation Board of Review in the above-captioned matter is hereby **AFFIRMED**.

RENÉE COHN JUBELIRER, Judge