IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Brenna C. MacFann,	:	
Petitioner	:	
	:	No. 2185 C.D. 2012
v.	:	
	:	Submitted: May 17, 2013
Unemployment Compensation	:	
Board of Review,	:	
Respondent	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ANNE E. COVEY, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McCULLOUGH FILED: July 12, 2013

Brenna C. MacFann (Claimant) petitions for review of the November 2, 2012 order of the Unemployment Compensation Board of Review (Board), which affirmed a referee's determination that Claimant is ineligible for benefits pursuant to section 402(e) of the Unemployment Compensation Law (Law).[1] We affirm.

Claimant was employed as a full-time, permanent substitute teacher by Community Action Southwest (Employer) for approximately two years until Employer terminated her employment on March 20, 2012. Employer has a policy that provides that if an employee needs to leave work early, he or she must obtain

[1] Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. §802(e). Section 402(e) states that an employee shall be ineligible for compensation for any week in which her unemployment is due to her discharge or temporary suspension from work for willful misconduct connected with her work.

approval from a supervisor. Employer's policy also prohibits dishonesty and falsification of Employer's work records. Claimant signed for Employer's handbook and should have been aware of these policies. Employer discharged Claimant for leaving work early without permission, dishonesty, and falsification of work hours. (Board's Findings of Fact Nos. 1-4.)

Following her termination, Claimant filed a claim for benefits. On April 16, 2012, the local service center determined that Claimant was ineligible for benefits on the basis that she committed willful misconduct. Claimant appealed, and a referee conducted hearings on May 18, 2012, and June 11, 2012.

At the hearings, Employer introduced testimony from witnesses Trenna Wheeler, Employer's Vice President of Human Resources, and Jamie Roux, Employer's Education Supervisor. Employer also introduced the testimony of Beverly Rudman, Pre-K Teacher at the Central Green Elementary School (Central Green School), and Peggy Ocker, Teaching Assistant at the Central Green School. The testimony of these witnesses may be summarized as follows.

On March 13, 2012, Claimant was scheduled to work at the Central Green School in Waynesburg, Green County, until 3:00 p.m. Claimant left the classroom at 2:00 p.m., said goodbye to Rudman and Ocker, and took her personal belongings with her. At 3:10 p.m., Roux observed Claimant at the Beth Center Elementary School (Beth Center School), picking up her children and wearing jeans and a t-shirt. The drive from the Central Green School to the Beth Center School takes 30 minutes. When Roux approached Claimant and asked her what she was doing at the Beth Center School, Claimant responded that she had "high tailed" it from the Central Green School. At this time, Claimant did not mention to Roux that she was picking up her children because she had an emergency situation with her

babysitter. (Board's Findings of Fact Nos. 5-10; Notes of Testimony (N.T.), 5/18/12, at 16.)

Claimant did not ask for or obtain permission from Employer to leave work early, and she recorded on her timesheet for March 13th that she had worked a full eight hours, until 3:00 p.m. On March 20, 2012, Wheeler had a meeting with Claimant and confronted her about the fact that Roux had seen and spoken to her on March 13th at the Beth Center School. Claimant denied being at the Beth Center School on that day and asserted that she had not spoken to Roux. (Board's Findings of Fact Nos. 11-15.)

Claimant testified that she left the classroom at the Central Green School at 2:15 p.m. to take her 30 minute afternoon lunch break and 10 minute morning break. She stated that she returned to the classroom at 2:40 p.m., but Rudman and Ocker were not in the room. Claimant testified that she went to the teacher's lounge until 3:00 p.m. and then left the Central Green School to head home. Claimant said that at 3:05 p.m., she received a telephone call that her babysitter would be unable to pick up her children, and that she drove at a high rate of speed on familiar, "back roads," arriving at the Beth Center School at 3:19 p.m. Claimant further testified that she told Roux at the Beth Center School about the emergency with her babysitter. During her testimony, Claimant admitted that she denied being at the Beth Center School when confronted by Wheeler at the March 20th meeting. However, Claimant testified that by her denial, she actually meant that she was not at the school at 3:10 p.m. but, instead, arrived there at 3:19 p.m. Claimant said she was never provided with an opportunity to clarify or otherwise explain this to Wheeler at the March 20th meeting. (N.T., 6/11/12, at 17-23.)

By decision and order dated June 15, 2012, the referee determined that Claimant was ineligible for benefits under section 402(e) of the Law. Claimant appealed to the Board, which affirmed the referee's decision by order dated November 2, 2012.

In so doing, the Board found that it takes 30 minutes to drive from the Central Green School to the Beth Center School. The Board further found that Employer's witnesses testified credibly that on March 13th, Claimant was scheduled to work at the Central Green School until 3:00 p.m., left the Central Green School at 2:00 p.m., and picked up her children at the Beth Center School at 3:10 p.m. Additionally, the Board found that Claimant did not obtain permission to leave work early, falsely recorded on her timesheet that she had worked a full day, and engaged in dishonesty when she told Wheeler that she had not been to the Beth Center School on March 13th and had not spoken to Roux. Based upon these facts, the Board determined that Claimant violated Employer's policies and committed willful misconduct.[2] The Board recounted Claimant's testimony in its decision and expressly found that it was not credible. (Board's Decision at 3.)

[2] Although the Law does not define the term willful misconduct, our courts have defined it as including: "(1) the wanton and willful disregard of the employer's interests; (2) the deliberate violation of rules; (3) the disregard of standards of behavior which an employer can rightfully expect from its employee; or (4) negligence which manifests culpability, wrongful intent, evil design, or intentional and substantial disregard for the employer's interests or the employee's duties and obligations." Guthrie v. Unemployment Compensation Board of Review, 738 A.2d 518, 521 (Pa. Cmwlth. 1999). The burden of proving willful misconduct rests with the employer. Id.

If the employer carries its burden, the burden then shifts to the claimant to prove that she had good cause for her actions. Good cause is shown "where the action of the employee is justified or reasonable under the circumstances." Id. at 522.

On appeal to this Court,[3] Claimant first argues that the Board erred in failing to consider as evidence an exhibit that she sought to introduce before the referee. The exhibit is a student sign-out sheet containing Claimant's children's signatures and a notation that they signed themselves out of the Beth Center School at 3:12 p.m. Employer objected to the admission of this exhibit on grounds of hearsay, and the referee deferred ruling on the matter. (N.T., 6/11/12, at 4.)

In her brief, Claimant does not dispute that the exhibit's statements constitute hearsay, but she argues that the exhibit was nevertheless admissible because it was corroborated by her own testimony. We disagree. "It has long been established in this Commonwealth that hearsay evidence, properly objected to, is not competent evidence to support a finding of the Board, whether or not corroborated by other evidence." Meyers v. Unemployment Compensation Board of Review, 533 Pa. 373, 377, 625 A.2d 622, 625 (1993). Because Employer objected to the exhibit, and Claimant does not assert that an exception to the hearsay rule is applicable, we conclude that the Board did not err in failing to consider Claimant's proposed exhibit as evidence.

Claimant next argues that based upon the circumstances of this case, the "most plausible explanation of what occurred … is that [she] did in fact arrive at the [Beth Center School] at 3:19 p.m., as she testified, and was not seen at 3:10 p.m., as claimed by Employer's witnesses." (Claimant's brief at 14.)

In unemployment cases, the Board is the ultimate finder of fact, empowered to resolve conflicts in evidence, assess the credibility of witnesses, and

[3] Our scope of review is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with the law, and whether findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa.C.S. §704.

determine the weight to be accorded evidence. Bell v. Unemployment Compensation Board of Review, 49 A.3d 49 (Pa. Cmwlth. 2012). Here, the Board resolved all conflicts in the evidence in Employer's favor and rejected Claimant's testimony as not credible. It is well-settled that "[q]uestions of credibility are for the [B]oard, [and] its findings will not be disturbed because the claimant presented conflicting testimony." Kemper v. Unemployment Compensation Board of Review, 452 A.2d 927, 929 (Pa. Cmwlth. 1982). Therefore, we reject Claimant's argument because it is nothing more than an impermissible attack on the Board's fact-finding function.[4]

Finally, Claimant asserts that the Board capriciously disregarded her testimony. However, "[t]o accord greater credibility to one witness' testimony than to that presented by others is simply a manifestation of the Board's fact-finding role and does not constitute a capricious disregard of evidence." Borough of Tyrone v. Unemployment Compensation Board of Review, 415 A.2d 146, 148 (Pa. Cmwlth. 1980). Similarly, the express consideration and rejection of evidence, by definition, is not capricious disregard of that evidence. Taliaferro v. Darby Township Zoning Hearing Board, 873 A.2d 807, 816-17 (Pa. Cmwlth. 2005). Here, the Board expressly considered and rejected Claimant's testimony as not credible.

[4] Claimant further argues that the referee erred in finding that she was seen at the Beth Center School "between 3:12 p.m. and 3:15 p.m.," when Roux only testified that she saw Claimant at 3:10 p.m. However, "[w]here … the Board makes its own findings of fact, it is the Board's determination, rather than the referee's, which is subject to [appellate court] review." Viglino v. Unemployment Compensation Board of Review, 525 A.2d 450, 453 (Pa. Cmwlth. 1994). As noted above, the Board is the ultimate finder of fact, and the Board found that Claimant was seen at the Beth Center School at 3:10 p.m. (Board's Finding of Fact No. 7.)

Consequently, we conclude that the Board did not capriciously disregard Claimant's evidence.[5]

Accordingly, we affirm.

PATRICIA A. McCULLOUGH, Judge

[5] In her brief, Claimant does not contend that the Board erred in concluding that Employer established that she committed willful misconduct or that she had good cause for her actions. In any event, we note that when there are multiple reasons for the termination of employment, the employer only needs to establish that one reason amounts to willful misconduct. Glenn v. Unemployment Compensation Board of Review, 928 A.2d 1169, 1172 (Pa. Cmwlth. 2007). This Court has long held that an employee who leaves work early without having the employer's permission or good cause has committed willful misconduct. Jackamonis v. Unemployment Compensation Board of Review, 408 A.2d 581, 582 (Pa. Cmwlth. 1979); Blystone v. Unemployment Compensation Board of Review, 342 A.2d 772, 772-73 (Pa. Cmwlth. 1975).

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ORDER

AND NOW, this 12th day of July, 2013, the November 2, 2012 order of the Unemployment Compensation Board of Review is affirmed.

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PATRICIA A. McCULLOUGH, Judge