

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Randy J. Wagner,	:	
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Petitioner	:	
	:	
v.	:	No. 427 C.D. 2014
	:	Submitted: January 16, 2015
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE MARY HANNAH LEAVITT, Judge  
HONORABLE JAMES GARDNER COLINS, Senior Judge

**OPINION NOT REPORTED**

**MEMORANDUM OPINION BY  
SENIOR JUDGE COLINS**

**FILED: March 11, 2015**

Randy J. Wagner (Claimant), *pro se*, petitions for review of the December 4, 2013 order of the Unemployment Compensation Board of Review (Board), affirming and adopting the decision of the Referee to deny Claimant unemployment compensation benefits. The Board concluded that Claimant was ineligible for benefits due to willful misconduct under section 402(e) of the Unemployment Compensation Law (Law)<sup>1</sup> because his discharge from employment by Danville Ambulance Services (Employer) was the result of his

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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). Section 402(e) of the Law provides that an employee shall be ineligible for compensation for any week in which his or her unemployment is due to discharge for willful misconduct connected to his or her work. 43 P.S. § 802(e).

failure to notify Employer of his suspended driver's license and his false statement on his employment application that he possessed a valid Pennsylvania license. We affirm.

Claimant was last employed on March 29, 2013. (Record Item (R. Item) 13, Referee's Decision and Order, Finding of Fact (F.F.) ¶1.) Claimant filed for unemployment compensation and the Department of Labor and Industry issued an April 25, 2013 determination finding Claimant ineligible for unemployment compensation due to his discharge for willful misconduct. (R. Item 5, Notice of Determination.) Claimant appealed and a hearing was initially scheduled before the Referee on July 1, 2013, and then continued to July 2, 2013. (R. Item 10, Hearing Transcript; R. Item 12, Continued Hearing Transcript.) The Referee issued a July 8, 2013 decision and order affirming the Notice of Determination. (R. Item 13.) Claimant appealed to the Board and the Board issued an August 27, 2013 order remanding the matter to the Referee for an additional hearing because Employer was not given proper notice of the July 2, 2013 hearing before the Referee. (R. Item 17, Board Remand Order.) A remand hearing was held before the Referee on September 13, 2013, however, Employer again chose not to appear or offer any additional evidence. (R. Item 21, Remand Hearing Transcript.) Following the remand hearing, the Board issued a December 4, 2013 decision and order, which concluded that Claimant was ineligible to receive unemployment compensation under the Law due to willful misconduct and which incorporated and adopted the following facts found by the Referee:

1. The Claimant was last employed as a full-time EMT with [Employer] from June 2011 until March 29, 2013, at a final rate of pay of \$10.60 per hour.

2. When the Claimant completed his EMT Employment Application on June 6, 2011, he indicated he had a current PA driver's license.
3. Pa Code §1005.10, Licensure and general operating standards, provides in part, ambulance drivers must have a valid driver's license.
4. EMTs are required to have a valid driver's license in order to drive the ambulance.
5. The Claimant was issued a citation in 2010, to which he failed to respond. The Claimant did not pay the citation fee after receiving the citation.
6. In January 2011, the Claimant's driver's license was suspended due to his failure to respond to the citation.
7. A notice was mailed to the Claimant.
8. The Claimant moved sometime between November 2010 and the beginning of 2011 from Sellersville PA to Mt. Carmel PA, but did not change the address on his license.
9. The Claimant's former friend resided at the address listed on the Claimant's driver's license.
10. The Claimant received another citation in early 2011, to which he also failed to respond and failed to pay.
11. In July 2011, the Claimant's driver's license was again suspended.
12. A notice was again mailed to the Claimant.
13. By email dated February 12, 2013, the Claimant and his coworkers were asked to complete a *Request for Driver Information* form and return it to the Administrative Assistant as soon as possible.
14. The Claimant paid the fines in March 2013 and his operating privileges were restored March 8, 2013.
15. The Claimant did not inform the Employer of the suspended license.

16. The Claimant did not sign the *Request for Driver Information* form until March 22, 2013.

17. On March 26, 2013, the Claimant was pulled over by a police officer for careless driving while the Claimant was driving the ambulance.

18. The Claimant received a citation for careless driving.

19. On April 1, 2013, the Claimant informed the Employer of the citation and advised the Employer his license was previously suspended, but had been restored as he had paid the fines.

20. The Employer suspended the Claimant April 1, 2013, pending the outcome of the violation for careless driving.

21. On April 12, 2013, the Employer notified the Claimant via letter that he was terminated for failure to notify the Employer of the suspended driving privileges and for falsifying his EMT Employment Application by stating he had a valid PA driver's license.

(R. Item 22, Board Decision and Order *incorporating and adopting* R. Item 13, Referee's Decision, F.F. ¶¶ 1-21.) In addition to adopting and incorporating the facts found by the Referee, the Board also found that Claimant's testimony was not credible and that he intentionally provided false information concerning his driving record to Employer. (R. Item 22.) The Board stated:

The Board does not credit [Claimant's] testimony that he changed the address on his license after moving. The Board also does not credit [Claimant's] testimony that he was unaware of the license suspensions, especially in light of the fact that his driving record reflects a history of license suspensions due to failure to respond to traffic citations. The Board finds that [Claimant] intentionally falsified his employment application in regard to the status of his license, which was material to his qualifications to the job. The Board also finds that [Claimant] intentionally delayed in responding to [Employer's] request for driver information because he was aware of his license suspension due to unpaid traffic citations. Using Section 3 as an interpretive aide, [Claimant] clearly cannot be said to not be at

fault in his unemployment. [Claimant] has not credibly established good cause for falsifying his employment application and failure to provide notice to the employer about his license suspension.

(R. Item 22.) Claimant appealed the Board's order to this Court.<sup>2</sup>

Claimant first argues on appeal that the Board's order is improper because he was previously found not ineligible for unemployment compensation following his suspension from employment and Employer failed to appeal that order. The proceedings which resulted in the prior decision and order concerned Claimant's suspension from employment. The issue in the instant matter is Claimant's termination from employment. Claimant's termination was not retroactive; the issue of whether Claimant was ineligible for unemployment compensation during his suspension has been decided and has no bearing on whether Claimant is ineligible to receive unemployment compensation following his termination. (R. Item 12, Continued Hearing Transcript (Cont. H.T.) at 5, 7; R. Item 13, Referee's Decision; R. Item 22, Board's Decision and Order.) Claimant's second argument on appeal is that Employer failed to carry its burden of demonstrating that he committed willful misconduct because it did not appear or offer testimony at any of the hearings before the Referee.<sup>3</sup>

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<sup>2</sup> Our scope of review is limited to determining whether necessary findings of fact are supported by substantial evidence, whether an error of law was committed or whether constitutional rights were violated. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704; *Smithley v. Unemployment Compensation Board of Review*, 8 A.3d 1027, 1029 n.5 (Pa. Cmwlth. 2010). Resolution of evidentiary conflicts and questions of credibility are within the sound discretion of the Board and the Board's exercise of this discretion is binding on appeal. *Peak v. Unemployment Compensation Board of Review*, 501 A.2d 1383 (Pa. 1985). Whether or not a claimant's actions constitute willful misconduct is a question of law over which this Court has plenary review. *Rossi v. Unemployment Compensation Board of Review*, 676 A.2d 194, 197 (Pa. 1996).

<sup>3</sup> Claimant also argues that Employer's failure to appear violated his right under the Sixth Amendment to the United States Constitution to confront his accuser. The Sixth Amendment, by

Willful misconduct is defined as: (1) an act of wanton or willful disregard of the employer's interest; (2) a deliberate violation of the employer's rules; (3) a disregard of standards of behavior which the employer has a right to expect of an employee; or (4) negligence indicating an intentional disregard of the employer's interest or of the employee's duties and obligations to the employer. *Grieb v. Unemployment Compensation Board of Review*, 827 A.2d 422, 425 (Pa. 2003); *Caterpillar, Inc. v. Unemployment Compensation Board of Review*, 703 A.2d 452, 456 (Pa. 1997). The burden of proving willful misconduct is born by the employer. *Myers v. Unemployment Compensation Board or Review*, 625 A.2d 622, 625 (Pa. 1993). Where it is alleged that the termination of employment stems from a false or incomplete statement on a job application, the employer must show that the claimant knew the statement was a misrepresentation and that the misrepresentation was material to the qualifications for the job at issue. *Still-Hopkins v. Unemployment Board of Review*, 563 A.2d 1288, 1290 (Pa. Cmwlth. 1989); *Scott v. Unemployment Compensation Board of Review*, 474 A.2d 426, 427 (Pa. Cmwlth. 1984). If the employer satisfies its initial burden, the burden shifts to the claimant to prove that his or her actions did not constitute willful misconduct or that there was good cause for the behavior under the circumstances. *Navickas v. Unemployment Compensation Board of Review*, 787 A.2d 284, 288 (Pa. 2001); *Caterpillar*, 703 A.2d at 457; *Frumento v. Unemployment Compensation Board of Review*, 351 A.2d 631, 634 (Pa. 1976).

Claimant contends that his testimony and evidence should not be considered because it was unfairly elicited by the Referee, who should have adjourned the hearing when Employer failed to appear and granted him

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its own terms, is only applicable to criminal prosecutions and does not provide a basis for an appeal in a civil administrative matter. U.S. Const. amend. VI.

unemployment compensation. Claimant's argument misconstrues both the assignment of the burden of proof and the role of the Referee under the Law.

A referee is charged with informing the parties of their rights, the procedure to be followed, and with developing an adequate record, which includes clearly establishing the allegations made and the facts at issue to insure that compensation is paid in instances where a claimant is eligible and that it is not paid where a claimant is ineligible under the Law. *Bennett v. Unemployment Compensation Board of Review*, 445 A.2d 258, 259 (Pa. 1982); *Hackler v. Unemployment Compensation Board of Review*, 24 A.3d 1112, 1116 (Pa. Cmwlth. 2011); *Robinson v. Unemployment Compensation Board of Review*, 431 A.2d 378, 379 (Pa. Cmwlth. 1981); *see also* 34 Pa. Code § 101.21. The referee is not required to "advise an uncounseled claimant on specific evidentiary questions or points of law, nor need the referee show any greater deference to an uncounseled claimant than that afforded a claimant with an attorney." *Brennan v. Unemployment Compensation Board of Review*, 487 A.2d 73, 77 (Pa. Cmwlth. 1985) (internal citations omitted).

In unemployment compensation matters, "the assignment of the burden of proof to one or the other party can only be understood as an indication of the quantum of evidence required to sustain a result in a party's favor. The question of the sufficiency of the evidence must be examined against the complete record. The effect of the claimant's testimony remains the same whether presented before or after an employer's." *Vann v. Unemployment Compensation Board of Review*, 494 A.2d at 1081, 1085 (Pa. 1985). As this Court and our Supreme Court have repeatedly made clear, the referee is not there to act as an advocate for the claimant and "any layperson choosing to represent himself in a legal proceeding

must, to some reasonable extent, assume the risk that his lack of expertise and legal training will prove his undoing.” *Id.* at 1086 (*quoting Groch v. Unemployment Compensation Board of Review*, 472 A.2d 286, 288 (Pa. Cmwlth. 1984)).

Moreover, we have long held that a claimant’s admissions are sufficient to carry an employer’s burden. *Sargent v. Unemployment Compensation Board of Review*, 630 A.2d 534, 537 (Pa. Cmwlth. 1993) (“Employer in this case did not present any evidence. Claimant, however, chose to testify and [our] Supreme Court has made it clear that in such a situation a claimant’s own testimony can be a basis to deny benefits.”); *Robinson*, 431 A.2d at 379 (“[claimant] himself admitted that he neither reported to work as instructed on October 22 nor notified his employer of the reason for his absence. It is, therefore readily apparent that claimant is guilty of willful misconduct and that his employer has met its burden in that regard.”); *Rodgers v. Unemployment Compensation Board of Review*, 397 A.2d 1286, 1288 (Pa. Cmwlth. 1979) (holding that the claimant’s own testimony carried the employer’s burden of proof).

The evidence supporting the Board’s findings of fact consists of documents submitted into the record by both Claimant and Employer, and testimony offered by Claimant at the continued hearing and at the remand hearing. Contrary to Claimant’s contention, Employer was not required to offer testimony in order to carry its burden under the Law. Claimant had an opportunity to object to the documentary evidence submitted by Employer and declined to do so. (R. Item 12, Cont. H.T. at 5.).

The evidence submitted by Employer included: (a) Claimant’s Pennsylvania Department of Transportation driving record, which clearly showed his suspensions; (b) the Magisterial District Court docket reflecting the summons



issued to Claimant for careless driving; (c) Employer's EMT position description, which includes a requirement that the applicant have a valid driver's license; (d) Claimant's job application and signed certification that the information provided in his application was true and correct, including that he possessed a current Pennsylvania driver's license; and (e) Employer's request to Claimant to submit a driver record check on February 12, 2013. (R. Item 3, Employer Separation Information; R. Item 6, Additional Employer Separation Information.) This evidence supports the Board's findings that Claimant falsely claimed on his job application that he had a valid Pennsylvania license, a requirement necessary to work as an ambulance driver for Employer, and that he did so knowingly, as his driving record reflected a pattern of unpaid citations and the timeline created by the documents demonstrates that Claimant took steps to restore his operating privileges only after Employer asked him to complete a driver record check. *Compare Simonds v. Unemployment Compensation Board of Review*, 535 A.2d 742 (Pa. Cmwlth. 1988) (claimant's failure to inform employer of material mistake at the time of discovery and deliberate concealment of the discovery amounted to willful misconduct). However, this is not the only evidence that supported the Board's findings. The documentary evidence and testimony submitted by Claimant also provided support for the Board's conclusion that Claimant committed willful misconduct and served to corroborate the documentary evidence submitted by Employer.

Claimant submitted into the record a letter he had received from Employer that stated he was being terminated from employment because he failed to advise Employer that his license had been suspended from January 18, 2011 until March 8, 2013 and because he falsified his employment application. (R. Item

4, Claimant Separation Information.) In his testimony, Claimant admitted that his license had been suspended, that he did not inform Employer, and that he stated that he had a valid Pennsylvania license on his employment application. (R. Item 12, Cont. H.T. at 8, 13-15.) Claimant also submitted into the record a letter written by him in which he admitted that his license had been suspended but alleged that he had been unaware of this fact because the Pennsylvania Department of Transportation failed to update his address following his submission of a change of address card and that he informed Employer of this fact when he met with Employer to discuss receiving a careless driving citation. (R. Item 4, Claimant Separation Information.) Claimant offered testimony that he attempted to change his address each time he moved, but that he was never sent a change of address card, and, as a result, each new citation Claimant received was mailed to his old address. (R. Item 12, Cont. H.T. at 9-12; Remand Hearing at 5.) Claimant testified that because of the incorrect address on file with the Pennsylvania Department of Transportation he did not receive copies of his citations in the mail or notice of his suspension, although he did recall receiving the citations at the time each was issued. (*Id.*) The Board rejected this testimony as not credible and concluded that Claimant failed to demonstrate good cause for his conduct.

Accordingly, we discern no error in the Board's conclusion that Claimant was terminated from employment for willful misconduct and we affirm the order of the Board.

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**JAMES GARDNER COLINS, Senior Judge**

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	:
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**ORDER**

AND NOW, this 11<sup>th</sup> day of March, 2015, the Order of the Unemployment Compensation Board of Review in the above-captioned matter is hereby AFFIRMED.

**JAMES GARDNER COLINS, Senior Judge**