

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Thomas Varughese,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1099 C.D. 2013
	:	SUBMITTED: February 7, 2014
Unemployment Compensation	:	
Board of Review,	:	
	:	
Respondent	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
JUDGE LEADBETTER**

FILED: May 6, 2014

Claimant Thomas Varughese petitions for review of an order of the Unemployment Compensation Board of Review (Board) that affirmed the decision of a referee and denied him unemployment compensation benefits, concluding that his actions constituted willful misconduct under Section 402(e) of the Unemployment Compensation Law (Law).¹ We affirm.²

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. § 802(e).

² Whether a claimant's actions constitute willful misconduct is a question of law over which we exercise plenary review. *Yost v. Unemployment Comp. Bd. of Review*, 42 A.3d 1158, 1162 (Pa. Cmwlth. 2012).

Claimant worked for Employer City of Philadelphia from June 1983 to March 2013. His final position was as an assistant engineer manager with the City's Division of Aviation at an annual salary of \$95,267. This matter originated with his decision to loan his church \$10,000 for a new parsonage and to solicit "contractors with whom he had dealings as an assistant engineer manager to buy ads for a church fundraising event, the proceeds of which were intended, in part, to repay the loan to [Claimant]." Board's Finding of Fact No. 5. Through this solicitation, Claimant "not only received the loaned principal but also interest on the loan that he gave to his church." *Id.*, No. 6. Subsequently, Employer discharged Claimant for violating its policies prohibiting employees from soliciting gifts from those doing business with the City. Specifically, Employer has a policy "which provides that no employee of the city shall accept or solicit directly or indirectly a Gift from a person whose interests may be substantially affected by the performance or nonperformance of the employee's official duties." Board's Finding of Fact No. 2. Employer's Code of Ethics additionally "prohibits any city employee from soliciting or accepting, directly or indirectly, anything of value including any gift, gratuity, favor, entertainment, or loan from: any person or business doing business with [a] City agency or quasi-public agency." *Id.*, No. 3.

Claimant applied for unemployment compensation benefits and the Erie UC Service Center determined that he was ineligible. After a hearing at which Claimant, with counsel, and two witnesses for Employer, with a representative, appeared and testified, the referee affirmed. Claimant appealed to

the Board, which affirmed and made its own findings of fact.³ Claimant’s timely petition for review to this Court followed.

Section 402(e) of the Law provides, in pertinent part, that an employee shall be ineligible for compensation for any week “[i]n which his unemployment is due to his discharge or temporary suspension from work for willful misconduct connected with his work” In relevant part, the term “willful misconduct” has been defined to include: (1) the deliberate violation of work rules; and (2) the disregard of standards of behavior which an employer can rightfully expect of its employee. *Brown v. Unemployment Comp. Bd. of Review*, 49 A.3d 933, 936-37 (Pa. Cmwlth. 2012). The employer bears the initial burden of proving that the claimant engaged in willful misconduct. *Id.* at 937. If the willful misconduct charge is based upon a violation of a work rule, the employer must prove the existence of the rule, its reasonableness, and that the employee was aware of the rule. *Id.* Once the employer establishes a *prima facie* case of willful misconduct, the burden then shifts to the claimant to demonstrate that the rule was unreasonable or that he had good cause for his conduct. *Id.* The claimant has good cause if his conduct “is justifiable or reasonable under the circumstances.” *Fruemento v. Unemployment Comp. Bd. of Review*, 466 Pa. 81, 87, 351 A.2d 631, 634 (1976).

³ The Board’s decision is essentially an amplification of the referee’s decision. In any event, “the Board is the ultimate factfinding body empowered to resolve conflicts in evidence, to determine the credibility of witnesses, and to determine the weight to be accorded evidence.” *Oliver v. Unemployment Comp. Bd. of Review*, 5 A.3d 432, 438 (Pa. Cmwlth. 2010). Its findings of fact are conclusive on appeal when the record, in its entirety, contains substantial evidence supporting those findings. *Guthrie v. Unemployment Comp. Bd. of Review*, 738 A.2d 518, 521 (Pa. Cmwlth. 1999).

As a threshold matter, Claimant contends that Employer failed to establish its rules or that he was aware of them. We disagree. Employer's Human Resources (HR) Manager, Yvonne Howard, testified regarding the substance of the applicable rules and how the Office of HR distributed them to HR managers for distribution to Employer's Philadelphia Airport employees, including Claimant. Referee's May 10, 2013 Hearing, Notes of Testimony (N.T.) at 26-7. The Board could reasonably infer that they were so distributed.⁴ In any event, the Board's findings also clearly support a determination that Claimant's conduct was contrary to the behavior standards which Employer, a public entity, had a right to expect of a professional employee, whose job duties included ensuring contractors' compliance with approved plans and specifications and negotiating and resolving their payment claims. Certified Record, Employer's Notice of Application with attachments, Item No. 4 at 12.

As the evidence established, Claimant solicited contractors, with whom he did business in his official capacity as an assistant engineer manager, to buy advertisements for his church fundraising event. Claimant never denied this solicitation; he merely maintained that he never intended to violate any City policies or to solicit gifts for his personal benefit. Referee's May 10, 2013 Hearing, N.T. at 29. As the Board found, however, Claimant had a direct financial interest in the success of the fundraising event as it enabled the church to repay its loan to him. In making that finding, the Board accepted the testimony of Jordan Segall, an investigator with the City's Office of Inspector General. As the

⁴ We are bound to examine the testimony of Employer's witnesses in the light most favorable to Employer, who bore the burden of proof and in whose favor the Board found, giving it the benefit of all inferences that can logically and reasonably be drawn from the testimony. *Spencer v. Unemployment Comp. Bd. of Review*, 602 A.2d 484, 485 (Pa. Cmwlth. 1992).

investigator who initiated and completed the investigation into Claimant's activities, Segall testified as follows: "Mr. Varughese gave a loan to the church before the fundraiser of \$10,000. As part -- after that fundraiser was held, of which these contractors contributed, he was paid back for his loan with interest." *Id.* at 16.

Moreover, as the Board determined, Claimant should have known that his solicitation created a prohibited conflict of interest and the appearance of undue influence with regard to the contractors. In that regard, we agree with the Board that it is irrelevant whether the contractors received any direct benefit from the advertisements, *e.g.*, further business. As the Board noted:

What is relevant is that Claimant used his position to solicit the contractors to contribute to the fundraiser, whether they believed that it was beneficial to their businesses or not. There was, at least, the appearance that the contractors bought the advertisements because they believed that that could influence their relationship with Claimant and, thus, Employer. This was exactly what Employer's policies were intended to prevent.

Board's Brief at 7.

Accordingly, we affirm.

BONNIE BRIGANCE LEADBETTER,
Judge

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	:	
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ORDER

AND NOW, this 6th day of May, 2014, the order of the Unemployment Compensation Board of Review is hereby AFFIRMED.

BONNIE BRIGANCE LEADBETTER,
Judge