

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Christopher P. Zuraski, :
 : No. 275 C.D. 2013
 Petitioner : Submitted: August 9, 2013
 :
 v. :
 :
 Unemployment Compensation :
 Board of Review, :
 :
 Respondent :

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FRIEDMAN

FILED: September 6, 2013

Christopher P. Zuraski (Claimant) petitions for review of the February 14, 2013, order of the Unemployment Compensation Board of Review (UCBR) affirming the decision of a referee to deny Claimant unemployment compensation benefits. The UCBR determined that Claimant was ineligible for benefits because he was discharged for willful misconduct under section 402(e) of the Unemployment Compensation Law (Law).¹ We affirm.

Claimant worked as a full-time tool and dye maker for Clarion Sintered Metals (Employer) from March 20, 1989, through July 30, 2012. (Findings of Fact,

¹ 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 is ineligible for benefits for any week in which his or her unemployment is due to discharge from work for willful misconduct.

No. 1.)² Employer has a policy prohibiting intimidating and threatening behavior in the workplace; the policy allows for an employee's discharge for a third offense. (Findings of Fact, No. 2.) Before the incident that led to his termination, Claimant had received two written warnings and a three-day suspension for other incidents of threatening behavior. (Findings of Fact, No. 3.)

Employer required all employees to work mandatory Saturdays. (Findings of Fact, No. 4.) On July 26 or 27, 2012, Claimant's supervisor, Thomas Fedorko, notified Claimant that he would be required to work on Saturday, July 28, 2012. (Findings of Fact, No. 5.) Claimant believed that was unfair, and a co-worker heard Claimant say, "Fedorko and [Dave] Bosnik don't deserve to live, I'm going to come in to this place and spray it with bullets." (Findings of Fact, No. 6.) Employer discharged Claimant on July 30, 2012, for his third incident of threatening behavior. (Findings of Fact, No. 7.)

Claimant filed a claim for unemployment benefits, which the local service center denied. Claimant timely appealed to the referee, who held a telephone hearing on November 13, 2012. The referee credited Employer's testimony that it had a policy prohibiting threatening and intimidating behavior in the workplace and that Claimant was aware of the policy. The referee found that Claimant's statements that his supervisors "don't deserve to live" and that he would "spray [the place] with bullets" violated Employer's policy. Claimant's statements also amounted to a disregard of the standards of behavior that Employer had a right to expect of its

² The UCBR adopted the referee's findings of fact and conclusions of law with a few modifications, which have been incorporated herein.

employees. Therefore, the referee concluded that Claimant committed willful misconduct and affirmed the service center's decision.

Claimant timely appealed to the UCBR. The UCBR agreed with the referee's conclusion that Claimant committed willful misconduct and affirmed. Claimant now petitions for review of that decision.³

On appeal, Claimant asserts that the UCBR's willful misconduct determination is unsupported by substantial evidence. Claimant contends that his remarks were not threatening in nature because he merely wished his supervisors dead and did not exhibit any overt acts of harm.⁴ We disagree.

³ Our scope of review is limited to determining whether constitutional rights were violated, whether an error of law was committed, or whether the findings of fact were unsupported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

⁴ At the hearing, Claimant characterized his statements as follows:

C: I don't know what's threatening about wishing someone dead. This is what I said.

R: Wait, wait, wait. You don't know what's threatening about wishing someone dead? Did you just say that?

C: Yeah. Yeah. What's threatening? So I wish someone dead? I didn't say I was going to do anything about it, there's nothing threatening about that, in my eyes. . . .

* * *

C: Right, I said, people like Tom Fedorko don't deserve to live and neither does Bosnik because he don't do nothing about it. . . . I didn't say I was going to come in there, I said you're lucky that someone don't come in here and spray bullets. That's what I said.

(N.T., 11/13/12, at 12-13.)

“Willful misconduct” is defined as: (1) a wanton and willful disregard of the employer’s interests; (2) a deliberate violation of the employer’s rules; (3) a disregard of the standards of behavior that an employer rightfully can expect from its employees; or (4) negligence that manifests culpability, wrongful intent, evil design, or an intentional and substantial disregard of the employer’s interests or the employee’s duties and obligations. *Oliver v. Unemployment Compensation Board of Review*, 5 A.3d 432, 438 (Pa. Cmwlth. 2010) (*en banc*). When an employee is discharged for violating a work rule, the employer must prove the existence of the rule and its violation. *Id.* The burden then shifts to the employee to prove that he or she had good cause for violating the rule. *Id.* It is well settled that threats of harm toward a supervisor or co-worker constitute willful misconduct under the Law. *See Sheets v. Unemployment Compensation Board of Review*, 708 A.2d 884, 885 (Pa. Cmwlth. 1998); *Andrews v. Unemployment Compensation Board of Review*, 633 A.2d 1261, 1263 (Pa. Cmwlth. 1993).

Here, Employer credibly testified that it had a policy prohibiting threatening and intimidating behavior in the workplace and that Claimant was aware of the policy. (N.T., 11/13/12, at 10.) Employer also testified that Claimant had received two prior written warnings for threatening behavior in the workplace. (*Id.* at 9.) An employee testified that on July 26 or 27, 2012, he heard Claimant say to a co-worker that Claimant would “come in and spray the place with bullets and that Fedorko and Bosnik don’t deserve to live.” (*Id.* at 10.) Claimant was angry when he made the statements. (*See id.* at 12; Referee’s Op. at 2.) We agree with the UCBR that Claimant’s statements were threatening on their face. Therefore, the record contains substantial evidence to establish a work rule violation under the Law.

Moreover, Claimant's conduct was beneath the standards of behavior that Employer had a right to expect of its employees. Contrary to Claimant's assertion, the fact that Claimant made the threatening statements to a third party rather than to the supervisors themselves is irrelevant. *See Sheets*, 708 A.2d at 885 (noting that threats of harm toward a supervisor, even if communicated only to a third party, "create[] discord and interrupt[] the employer's operation").

Finally, Claimant asserts that he had good cause for violating Employer's policy because the work environment was hostile. The UCBR, however, specifically discredited Claimant's testimony that he was subject to a hostile work environment and that he was provoked into making the statements. (UCBR's Op. at 1.) As the UCBR found, all employees were required to work mandatory Saturdays; thus, Claimant's remarks after being notified that he had to work on a Saturday were unreasonable. (*See Findings of Fact*, No. 4; Referee's Op. at 2.) We find no error in the UCBR's decision.

Accordingly, we affirm.

ROCHELLE S. FRIEDMAN, Senior Judge

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ORDER

AND NOW, this 6th day of September, 2013, we hereby affirm the February 14, 2013, order of the Unemployment Compensation Board of Review.

ROCHELLE S. FRIEDMAN, Senior Judge