IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Lori L. Staudt, Petitioner	:	
v.	:	No. 768 C.D. 2014
	:	Submitted: October 31, 2014
Unemployment Compensation Board of Review, Respondent	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE BROBSON **FILED: January 30, 2015**

Petitioner Lori L. Staudt (Claimant) petitions for review of an order of the Unemployment Compensation Board of Review (Board). The Board affirmed an Unemployment Compensation Referee's (Referee) decision denying Claimant unemployment compensation benefits pursuant to Section 402(e) of the Unemployment Compensation Law (Law),[1] because Claimant engaged in willful misconduct without good cause. For the reasons set forth below, we affirm the Board's order.

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

Claimant filed for unemployment compensation benefits after Troy Area School District (Employer) terminated her employment. The Scranton UC Service Center (Service Center) issued a determination granting Claimant benefits because Employer, by failing to provide information concerning Claimant's discharge, did not carry its burden to prove that Claimant had engaged in willful misconduct. (Reproduced Record (R.R.) at 12a.) Employer appealed the Service Center's determination, and a Referee conducted an evidentiary hearing.

At the hearing before the Referee, Claimant testified that during her work as a teacher's aide, she began to feel ill due to low blood sugar related to her diabetic condition. (*Id.* at 68a.) While the student she was assigned to care for was with a substitute teacher, she went to the back of the classroom and laid down on a mat, but did not fall asleep. (*Id.* at 69a.) She testified that she did not notify the teacher that she was feeling ill and that she did not go to the school nurse, because she already knew her blood sugar was low.[2] (*Id.* at 70a.)

Employer presented the testimony of four witnesses. The first witness was W. Charles Young, Superintendent of Troy Area School District. Mr. Young testified that Claimant had been warned before about sleeping at work. (*Id.* at 53a.) He became aware of the incident leading to Claimant's discharge after receiving an email from another witness, Donna Williams, who explained to Mr. Young that she entered the classroom and saw Claimant sleeping in the back of the room. (*Id.* at 54a.) He further testified that Claimant's only scheduled break was her lunch break. (*Id.* at 59a.)

[2] In her brief, "Claimant maintains that she asked the substitute teacher if she minded if she went to the back of the room to put her head down as she was feeling ill," but that statement is contrary to Claimant's testimony before the Referee. (Pet'r's Br. at 11.)

Next, Jessica Williams, a personal care aide who was in the room when the incident occurred, testified that Claimant was lying face down in the back of the room and "she was breathing quite heavy or . . . snoring." (*Id.* at 60a.) She explained that Claimant remained in this position for fifteen to twenty minutes, and that Claimant could not have cared for her assigned student while she was in this position. (*Id.*) She further testified that when Claimant's assigned student was done working with the teacher, he was wandering and another aide had to care for him although it was Claimant's job to do so. (*Id.* at 62a.)

Donna Williams testified next. She stated that she also observed Claimant lying on the mat in the back of the room and that it was obvious from her position that she was sleeping. (*Id.* at 63a.) She observed Claimant lying in this position for three or four minutes, and then left the room. (*Id.*) She reported the incident to the teacher the following day. (*Id.* at 63a-64a.)

Lastly, Steve Brion, principal of the elementary school at which the incident took place, testified that Claimant's assigned student's needs necessitated an aide being with him at all times. (*Id.* at 65a.) He explained that the aide should be close at hand, even when the student is with the teacher. (*Id.*)

The Referee denied Claimant benefits, concluding that Claimant's conduct amounted to willful misconduct. The Referee made the following findings of fact:

> 1. The Claimant was last employed by Troy Area School District from August 14, 1995 until October 31, 2013.
>
> 2. The claimant was employed as a full time personal care aide at the rate of $13.20 per hour.
>
> 3. The claimant was suspended without pay effective October 31, 2013.

> 4. The claimant's suspension was due to her being found asleep on the floor of the life skills classroom to which she was assigned.
>
> 5. The claimant had previously received a written warning on October 1, 2013 regarding drifting off and sleeping while on duty. (employer exhibit 1)
>
> 6. On November 26, 2013, the claimant was notified via letter that the Troy Area School District Board of Education was terminating her employment effective October 31, 2013 due to neglecting her duties by sleeping in the classroom.
>
> 7. The claimant admits that she was laying face down on the mat in the back of the classroom on October 29, 2013.

(*Id.* at 82a.) The Referee further reasoned:

> The employer witnesses established first hand testimony that the claimant was in fact laying on mats in the back of the life skills classroom on October 29, 2013 while on duty. The claimant's position as a personal care aide is to shadow a six year old special education student who was known to be a "flight risk." Although the student was taking a lesson with the classroom teacher within the same room at the time, the claimant's position requires her to be vigilant of the student at all times.
>
> The claimant states that she was not feeling well due to having diabetes. However, the claimant did not seek help at the nurse's station or inform the classroom teacher she was too ill to perform her job duties.
>
> The claimant also stated that "she was on a break." However, the principal testified that employees do not get breaks but they get their lunch hour at the appropriate time. The claimant was not on lunch break during the period she was laying face down on the mat in the back of the classroom.
>
> The claimant's actions clearly do rise to the level of willful misconduct in that she was sleeping and not performing her job duties during the time period at issue and benefits are denied.

(*Id.* at 83a.) Claimant appealed to the Board, which affirmed the Referee's determination and adopted the Referee's findings and conclusions. Claimant then petitioned this Court for review.

On appeal,[3] Claimant first argues that substantial evidence of record does not support the Referee's finding that Claimant was sleeping at work. She further argues that her conduct did not rise to the level of willful misconduct. Lastly, Claimant argues that even if Claimant did engage in willful misconduct by sleeping at work, she had good cause for doing so.

We first address Claimant's argument that substantial evidence of record does not support the Referee's finding that she was sleeping at work. Substantial evidence is defined as relevant evidence upon which a reasonable mind could base a conclusion. *Johnson v. Unemployment Comp. Bd. of Review*, 502 A.2d 738, 740 (Pa. Cmwlth. 1986). In determining whether there is substantial evidence to support the Board's findings, this Court must examine the testimony in the light most favorable to the prevailing party, giving that party the benefit of any inferences that can logically and reasonably be drawn from the evidence. *Id.* A determination as to whether substantial evidence exists to support a finding of fact can only be made upon examination of the record as a whole. *Taylor v. Unemployment Comp. Bd. of Review*, 378 A.2d 829, 831 (Pa. 1977). The Board's findings of fact are conclusive on appeal only so long as the record, taken as a whole, contains substantial evidence to support them. *Penflex, Inc. v. Bryson*,

[3] This Court's standard of review is limited to determining whether constitutional rights were violated, whether an error of law was committed, or whether necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. § 704.

485 A.2d 359, 365 (Pa. 1984). "The fact that [a party] may have produced witnesses who gave a different version of the events, or that [the party] might view the testimony differently than the Board is not grounds for reversal if substantial evidence supports the Board's findings." *Tapco, Inc. v. Unemployment Comp. Bd. of Review*, 650 A.2d 1106, 1108-09 (Pa. Cmwlth. 1994). Similarly, even if evidence exists in the record that could support a contrary conclusion, it does not follow that the findings of fact are not supported by substantial evidence. *Johnson v. Unemployment Comp. Bd. of Review*, 504 A.2d 989, 990 (Pa. Cmwlth. 1986).

Substantial evidence of record exists to support the Board's finding that Claimant was sleeping during work. Employer presented the testimony of several witnesses who explained that Claimant was sleeping at work. Jessica Williams testified that Claimant was face down on the mat for at least fifteen minutes and that she was breathing heavily. (R.R. at 60a.) Donna Williams also testified that Claimant was sleeping on the mat. (*Id.* at 63a.) Although Claimant argues that she was not sleeping, an examination of the record as a whole demonstrates that Employer provided substantial evidence to support the finding that Claimant was asleep. Claimant's insistence that she was awake does not mean that substantial evidence does not exist to support the Board's finding; rather, it demonstrates that Claimant and Employer presented conflicting evidence and the Board resolved the conflict in Employer's favor.[4] Thus, substantial evidence exists to support the Board's finding that Claimant fell asleep during work.

[4] "Where there is a conflict in testimony, credibility determinations and the resolution of evidentiary conflicts are within the [Board's] discretion and are not subject to reevaluation on judicial review." *Duquesne Light Co. v. Unemployment Comp. Bd. of Review*, 648 A.2d 1318, 1320 (Pa. Cmwlth. 1994).

We next address Claimant's argument that falling asleep at work does not amount to willful misconduct. Section 402(e) of the Law provides, in part, that an employee shall be ineligible for compensation for any week in which "his unemployment is due to his discharge or temporary suspension from work for willful misconduct connected with his work." The employer bears the burden of proving that the claimant's unemployment is due to the claimant's willful misconduct. *Walsh v. Unemployment Comp. Bd. of Review*, 943 A.2d 363, 368 (Pa. Cmwlth. 2008). The term "willful misconduct" is not defined by statute. The courts, however, have defined willful misconduct as:

> (a) wanton or willful disregard for an employer's interests; (b) deliberate violation of an employer's rules; (c) disregard for standards of behavior which an employer can rightfully expect of an employee; or (d) negligence indicating an intentional disregard of the employer's interest or an employee's duties or obligations.

Grieb v. Unemployment Comp. Bd. of Review, 827 A.2d 422, 425 (Pa. 2003). An employer, seeking to prove willful misconduct by showing that the claimant violated the employer's rules or policies, must prove the existence of the rule or policy, and that the claimant violated it. *Walsh*, 943 A.2d at 369. In the absence of a specific work rule forbidding sleeping while on duty, falling asleep at work generally is *prima facie* evidence of willful misconduct as it demonstrates either a wanton or willful disregard for an employer's interest or a disregard for the standards of behavior which an employer can rightfully expect of an employee. *Biggs v. Unemployment Comp. Bd. of Review*, 443 A.2d 1204, 1205 (Pa. Cmwlth. 1982). Once a *prima facie* showing of willful misconduct is made, an employee may rebut such a showing by demonstrating good cause for sleeping on the job. *Id.* Whether or not an employee's actions amount to willful misconduct is

a question of law subject to review by this Court. *Nolan v. Unemployment Comp. Bd. of Review*, 425 A.2d 1203, 1205 (Pa. Cmwlth. 1981).

Here, Employer sustained its burden to establish a *prima facie* case of willful misconduct. Even in the absence of a written policy forbidding sleeping, Employer need only establish that Claimant was sleeping at work. As discussed above, substantial evidence of record exists to support the Board's finding that Claimant fell asleep during work. This conduct represents a *prima facie* case of willful misconduct, thus, Employer met its burden to prove that Claimant engaged in willful misconduct.

In support of her argument that sleeping at work does not amount to willful misconduct, Claimant cites *Philadelphia Parking Authority v. Unemployment Compensation Board of Review*, 1 A.3d 965 (Pa. Cmwlth. 2010), a case which involved a violation of a work rule prohibiting sleeping on the job. In *Philadelphia Parking Authority*, we concluded that, based upon the lack of work during the claimant's shift, the claimant's attempt to address the problem with the employer, and the employer's lack of response, the employer failed to establish that the claimant's actions were deliberate. *Id.* at 969.

Philadelphia Parking Authority is distinguishable from the instant matter. The employer in *Philadelphia Parking Authority* attempted to show that the claimant deliberately violated a work rule. As a result, it did not rely on those cases in which sleeping on the job, in and of itself, constituted *prima facie* evidence of willful misconduct and in which a showing of deliberateness was not required. Here, in contrast, the Board concluded that Claimant disregarded the standards of behavior which an employer can rightfully expect of an employee by falling asleep at work. (R.R. at 83a.) Employer did not attempt to prove that

Claimant had violated a work rule; rather, Employer simply presented evidence that Claimant was sleeping at work. (*Id.*) Thus, Employer established a *prima facie* case of willful misconduct, and the Board did not err in concluding that Claimant's conduct amounted to willful misconduct.

Lastly, we address Claimant's argument that the Board erred in concluding that she did not have good cause for her willful misconduct. Once an employer has met its burden to prove that a claimant's conduct amounts to willful misconduct, the burden then shifts to the claimant to show good cause as justification for the conduct considered willful. *McKeesport Hosp. v. Unemployment Comp. Bd. of Review*, 625 A.2d 112, 114 (Pa. Cmwlth. 1993). To prove "good cause," a claimant must demonstrate that her actions were justifiable and reasonable under the circumstances. *Kelly v. Unemployment Comp. Bd. of Review*, 747 A.2d 436, 439 (Pa. Cmwlth. 2000). A claimant's illness may constitute good cause for violating an employer's work rule or refusing to comply with an employer's directive. *Kindrew v. Unemployment Comp. Bd. of Review*, 388 A.2d 801, 802 (Pa. Cmwlth. 1978).

Claimant again relies on *Philadelphia Parking Authority* to support her contention. As discussed above, *Philadelphia Parking Authority* involved the deliberateness of the claimant's actions in falling asleep at work. Having concluded that the claimant's conduct was not deliberate and, thus, did not amount to willful misconduct, it was unnecessary to evaluate the claimant's actions as they related to good cause. *Philadelphia Parking Authority*, 1 A.3d at 969. *Philadelphia Parking Authority* is not a case about good cause, thus, it is inappropriate to rely on it in evaluating whether Claimant had good cause.

Claimant contends that because she was feeling ill she had good cause for sleeping at work. Claimant argues that "it is completely justifiable and reasonable for a person experiencing low blood sugar along with hypothyroidism to sit down or to lay down for a moment in anticipation that the illness may pass." (Pet'r's Br. at 24.) Here, however, the Board found that although Claimant did have diabetes, she did not seek help at the nurse's station nor did she inform Employer that she was not feeling well. Thus, the Board was not persuaded by Claimant's testimony that sleeping at work was justified by her illness. Although illness may constitute good cause in some situations, the Board concluded that Claimant's actions here were not reasonable or justifiable. Claimant was charged with the extremely important task of constantly supervising a young, special needs student who was deemed a flight risk. Claimant essentially abandoned her assigned student without informing Employer and allowing Employer to secure a replacement. We agree with the Board that Claimant did not act reasonably or justifiably in falling asleep at work without informing Employer that she was not feeling well. Good cause, therefore, does not exist to justify Claimant's willful misconduct, and the Board did not commit an error of law.

Alternatively, Claimant contends that her belief that she was on a break justifies her willful misconduct.[5] She argues that although it was not referred to as a break, the time that an assigned student spent with a teacher was often used by aides to use the restroom, make phone calls, or to visit the break room. Even if

[5] The Board appears to have concluded that Claimant was not entitled to any breaks other than her lunch break. (R.R. at 83a.) This conclusion is supported by Mr. Young's testimony that the only scheduled break is the lunch break. (*Id.* at 59a.) Thus, substantial evidence supports the finding that Claimant was not entitled to a break during the time her assigned student was with the teacher.

Claimant were on a permitted break during the time she was sleeping, however, her conduct amounted to willful misconduct:

> As a matter of public policy, an employer has a right to expect that his employes will not go to sleep when they have a short period of forced idleness. Absent proof that the employer either permits or tolerates such sleeping, . . . sleeping during a period of forced idleness constitutes willful misconduct.

Unemployment Comp. Bd. of Review v. Simone, 355 A.2d 614, 616 (Pa. Cmwlth. 1976). Even if a claimant falls asleep on an acknowledged break, sleeping still amounts to willful misconduct unless an employer permits or tolerates such conduct. *Kelley v. Unemployment Comp. Bd. of Review*, 429 A.2d 1227, 1228 (Pa. Cmwlth. 1981). Claimant's belief that she was on a break does not justify her sleeping during work and, thus, does not constitute good cause for her conduct.

Accordingly, we affirm the order of the Board.

P. KEVIN BROBSON, Judge

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O R D E R

AND NOW, this 30th day of January, 2015, the order of the Unemployment Compensation Board of Review is hereby AFFIRMED.

P. KEVIN BROBSON, Judge