

List of Attached UC Forms – Quits and Discharges

(Separation Issues)

Recent Court Cases

- People on house arrest can get unemployment compensation, Supreme Court Rules
- 'Accidental' nip of alcohol costs airline worker job, unemployment aid
- Security guard who quit over fears for his safety can't get jobless aid, court rules
- Woman fired for absenteeism while helping injured puppy can get jobless aid, Pa. court says

Fact Finding Questionnaires

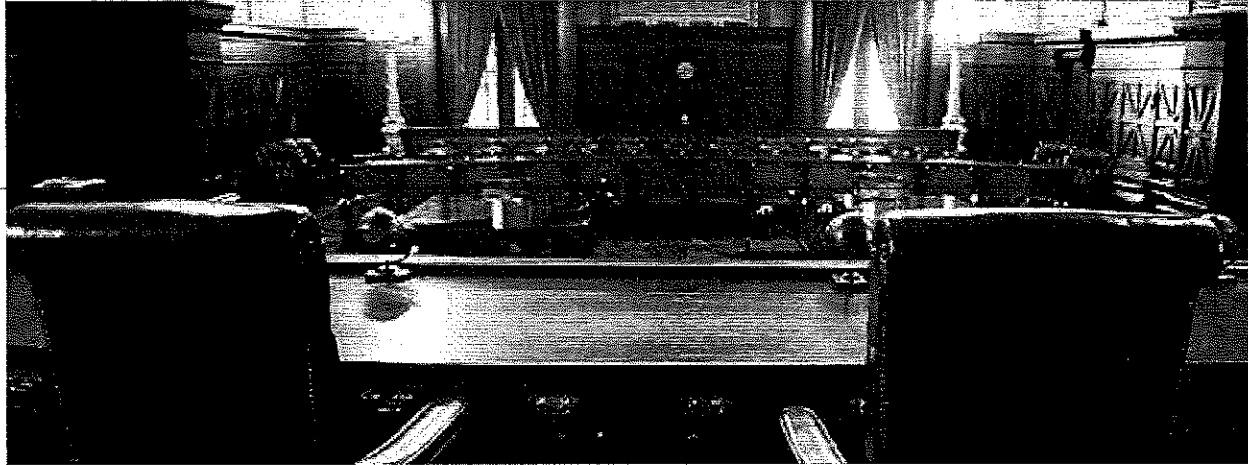
- UC-1930E Voluntary Quit – Health Problems
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Significant Court Cases

- Deevile Blouse
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- James Lyons
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- Kentucky Fried Chicken
- McKeesport Hospital
- Henry Powell
- Richard A Sprague
- Welded Tube Company of America

People on house arrest can get unemployment compensation, Supreme Court rules



The Supreme Court hearing room in the state Capitol.

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By Matt Miller | mmiller@pennlive.com

Email the author | [Follow on Twitter](#)

on April 28, 2015 at 12:10 PM, updated April 28, 2015 at 12:45 PM

With one voice sharply dissenting, the state Supreme Court has ruled that someone sentenced to house arrest for a criminal conviction is not automatically ineligible for unemployment compensation.

The high court's 4-1 ruling, which upholds a **January 2014 decision by Commonwealth Court**, dealt with a case involving a York County man who was sentenced to 60 days of house arrest for driving while under license suspension.

The call on whether that man, Charles H. Chamberlain, could collect unemployment comp while serving his sentence revolved around one word - "incarceration."

Had Chamberlain been sent to prison, there would have been no issue. He would have been out of luck because state law specifically says a criminal who is behind bars cannot get jobless aid.

However, the Supreme Court decided to take on an appeal the Unemployment Compensation Board of Review filed challenging the Commonwealth Court ruling because the law doesn't specifically state whether house arrest is a disqualifier for unemployment comp.

In 25-page ruling issued this week, Justice Max Baer concluded house arrest doesn't equate to incarceration where unemployment compensation is concerned. He was joined in that stance by Chief Justice Thomas G. Saylor and fellow Justices J. Michael Eakin and Debra McCloskey Todd.

Justice Corrales F. Stevens filed a dissenting opinion in which he pulled no punches.

Surely the Pennsylvania Legislature did not intend a policy to provide unemployment benefits at the expense of Pennsylvania taxpayers to someone who is serving time, albeit on house arrest, for a crime," Stevens wrote.

"In this case, the criminal is enjoying all the amenities of a house arrest as opposed to stark imprisonment in a state institution," he added. "He should not be rewarded with unemployment compensation."

Yet Steven's colleagues came to the conclusion, shared by the Commonwealth Court, that Chamberlain's house arrest term didn't take him out of the job pool and make him incapable of finding new employment.

In fact, Baer noted the Dover man, who was already jobless and receiving unemployment comp when he pleaded guilty in his criminal case, worked nine days while serving his house arrest sentence in late 2012.

"The terms of (Chamberlain's) house arrest restricted him to the home of his sister, but permitted him to work, run errands and Christmas shop," Baer wrote. Chamberlain also made regular visits to the local CareerLink job center, the justice observed.

Baer stressed that his court's decision in the Chamberlain case doesn't make everyone sentenced to house arrest eligible for jobless aid. It simply means being on house arrest does not on its own disqualify them, he wrote, although other factors in their individual cases might bar them from receiving compensation.

'Accidental' nip of alcohol costs airline worker job, unemployment aid

Print

Matt Miller | mmiller@pennlive.com By Matt Miller | mmiller@pennlive.com

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on November 04, 2014 at 12:08 PM, updated November 04, 2014 at 1:49 PM

An airline worker who was fired for what he claimed was inadvertent drinking on the job can't get unemployment compensation because he violated his employer's no-alcohol policy, Commonwealth Court has ruled.

What the case comes down to is Parvez Gill's ultimately ill-advised decision to stop by a samples table a bar set up at the Philadelphia International Airport in late May 2013.

DAN GLEITER, THE PATRIOT-NEWSfile

At the time, Gill was a customer assistance representative for US Airways, a job he had held for nearly 11 years. The airline had a policy barring employees from consuming or possessing any alcohol or even entering a bar while on duty.

Yet, according to the state court's recent opinion by Judge Patricia A. McCullough, Gill was on duty and in uniform when he stopped by a sample beverage table Cibo's Bistro and Wine Bar set up outside its establishment in Terminal A.

Surveillance video shows Gill drinking from a cup taken from a table, which held a display of bottles of beer.

While he later conceded that the cup contained an alcoholic drink, Gill claimed his imbibing of alcohol was unintentional, McCullough noted. He said he had asked the Cibo's worker manning the sample table for a sweet, nonalcoholic beverage, but was instead given a cup containing booze.

Gill claimed he ditched the drink as soon as he realized it was alcoholic, but the video showed him taking a sip, then finishing the entire drink, the judge wrote.

The state unemployment compensation service center in Philadelphia initially granted Gill unemployment compensation after he was fired over the incident. A referee and the state Unemployment Compensation Board of Review then denied Gill that aid because it found he had committed willful misconduct in violating the airline's alcohol on duty ban.

Gill then appealed to the state court, which did not accept his argument that his policy violation was accidental.

Security guard who quit over fears for his safety can't get jobless aid, court rules

By Matt Miller

Source: The Patriot-News, Harrisburg, Pa.

Created: June 17, 2014

Pa. court denies unemployment compensation for man saying job is 'inherently dangerous'

June 17--Saying such a job is "inherently dangerous," Commonwealth Court has refused to grant unemployment compensation for a private security guard who quit because he feared for his safety.

Harold I. Lieljuriis appealed to the state court when he was denied jobless aid by the state Unemployment Compensation Board of Review after leaving his job patrolling the private Towamensing Trails housing development in Carbon County in May 2013.

Lieljuriis voiced concern about gang-related activity in his bailiwick, which has about 2,500 houses and 60 miles of roads, according to court records. He said his worries heightened after information he gave to state police resulted in several drug arrests in the community.

The initial denial of his request for compensation came after a state referee concluded he had quit his job with Legion Security Services Inc. without a compelling reason. As for his fears, the referee noted that Lieljuriis should have perceived the danger of the job when he accepted a post where he was required to carry a gun and wear a bullet-proof vest.

Also, the referee found that his employer did provide Lieljuriis with options to reduce the element of risk, including allowing him work at another site and advising him not to be aggressive or make patrol stops at night. Lieljuriis had asked his boss to assign another officer to work with him on night shifts, but the referee noted that contractual issues prevented his employer from approving that request.

In her court's recent opinion upholding the denial of jobless aid, Commonwealth Court Judge Renee Cohn Jubelirer noted there was no evidence of any specific threat against Lieljuriis when he quit. She also cited the compensation review board's finding that Lieljuriis' work environment "was no more dangerous than usual."

"A subjective concern over an unsafe work environment, absent a showing that the work environment is more unsafe than usual, is not sufficient to constitute a necessitous and compelling cause to quit," Jubelirer wrote

Woman fired for absenteeism while helping injured puppy can get jobless aid, Pa. court says



By Matt Miller | mmiller@pennlive.com

[Email the author](#) | [Follow on Twitter](#)

on April 04, 2014 at 12:20 PM, updated April 04, 2014 at 12:24 PM

A woman who was fired for absenteeism while she was rushing around getting medical treatment for her injured puppy is eligible to receive unemployment compensation, Commonwealth Court has ruled.

The court issued that decision this week, turning aside arguments by Melissa A. Fortini's former employer that she shouldn't get jobless aid because she was fired for excessive absenteeism while still serving her probationary period.

Although the state judges agreed that Howard Hanna Holdings Inc. had a right to ax Fortini from her sales manager job, it concluded that the puppy incident, and several other days she missed work, constituted justifiable absences.

Therefore, President Judge Dan Pellegrini found in the court's opinion, Fortini had not committed "willful misconduct" that would have barred her from receiving jobless aid.

Court filings in the Westmoreland County case show Fortini was fired a month after she started her job in January 2013.

Two weeks after she was hired, she called off work because she was in an auto accident. She also missed a day due to lack of transportation, took an option to leave early during a snow emergency, and once called in sick. Once, she left 15 minutes early after starting work early, but departed without telling a supervisor.

The day before her puppy was hurt, Fortini received a written warning regarding her attendance, records show.

She was fired on Feb. 8, 2013 as she sought aid for her 10-week-old dog, which began having seizures and other medical problems after it fell off a bed.

When Fortini called her office to say she needed to get help for the pup, she was told to leave the animal with a neighbor and come to work. She did so, but left when her veterinarian told her the dog needed immediate care.

As she left the office, a supervisor told Fortini she was expected to return and work at least half a shift that day. Records state that she was fired over the phone as she took the dog for medical treatment that afternoon.

Howard Hanna appealed the dispute to Commonwealth Court after the state Unemployment Compensation Board of Review sided with Fortini, finding that she had justification for her absenteeism.

When her dog was injured, there is no doubt that Fortini "reasonably felt compelled" to get it treated, Commonwealth Court agreed.

"Even where a history of absenteeism is present, a claimant is entitled to receive (unemployment) compensation benefits where the final absence which precipitated his or her discharge was based on good cause," Pellegrini wrote in finding in Fortini's favor.

Claimant Social Security No.

**I certify that the information I have provided is true and correct.
Employer information provided by telephone to UC Representative:**

By Title On 8/13/2015

EMPLOYER QUESTIONNAIRE
Voluntary Quit – Personal Reasons

Claimant Social Security No.

Employer's Name:

Employer's Address:

Employer's Telephone No.

Employer's FAX No.

In order to determine the claimant's eligibility for UC, it is requested that you answer the following questions:

1. What was the claimant's: first date worked? ; last date worked?
2. Did the claimant earn more than \$3120 during most recent period of employment?
 Yes No If No, the amount earned was \$
3. Was the claimant's job a full-time or part-time job? Full-time Part-time
If Part-time, please list the claimant's hourly earnings and the average number of hours that the claimant worked per week.
4. Was the job temporary or permanent? Temporary Permanent
If Temporary, on what date would the job have ended?
5. Did the claimant voluntarily quit or take a leave of absence?
 Voluntary Quit Leave of Absence
If Leave of Absence, the leave began on , and ended, or is expected to end on .

For UC purposes, a leave of absence is considered a quit for the period of the leave of absence.

6. Please indicate the reason the claimant voluntarily quit or took a leave of absence.
 Personal Reasons Other Unknown
If Other, please list the reason(s) that the claimant voluntarily quit or took a leave of absence.
7. Was continuing work available had the claimant not voluntarily quit or taken a leave of absence? Yes No
8. Prior to the separation, did the claimant discuss the situation with you, or make any other attempts to resolve the situation that caused him/her to voluntarily quit or take a leave of absence? Yes No If Yes, please explain.
9. Do you want to provide any **additional information** that you feel may have a bearing on the claimant's eligibility for unemployment compensation?

Claimant's Name Social Security No.

I certify that the information I have provided is true and correct.

Employer information provided by telephone to UC Representative:

By Title On 8/13/2015

Employer's Telephone No.

Employer's FAX No.

**EMPLOYER QUESTIONNAIRE
VQ to Attend School or Training**

Claimant Social Security No.

Employer's Name:

Employer's Address:

Employer's Telephone No. Employer's FAX No.

In order to determine the claimant's eligibility for UC, it is requested that you answer the following questions:

1. What was the claimant's: first date worked? ; last date worked?
2. Did the claimant earn more than \$ 3120 during his/her most recent period of employment?
 Yes No If No, the amount earned was \$

3. Was the claimant's job a full-time or a part-time job? Full-time Part-time
If Part-time, please list the hourly rate and the average number of hours that the claimant worked per week.

4. Was the job temporary or permanent? Temporary Permanent
If Temporary, on what date was the job scheduled to end?

5. Did the claimant voluntarily quit or take a leave of absence?
 Voluntary Quit Leave of Absence

If Leave of Absence, the leave began on , and ended, or is expected to end on .

For UC purposes, a leave of absence is considered a quit for the period of the leave of absence.

6. Please indicate the reason the claimant voluntarily quit or took a leave of absence.
 To Enter Training Program/School Other Unknown
If Other, please list the reason(s) that the claimant voluntarily quit or took a leave of absence.

7. Was continuing work available had the claimant not voluntarily quit or taken a leave of absence? Yes No

8. Do you want to provide any **additional information** that you feel may have a bearing on the claimant's eligibility for unemployment compensation?

I certify that the information I have provided is true and correct.

Employer information provided by telephone to UC Representative:

By Title On 8/13/2015

Employer's Telephone No. Employer's FAX No.

EMPLOYER QUESTIONNAIRE
VQ – Seek Work Employer 1

Claimant Social Security No.

Employer's Name:

Employer's Address:

Employer's Telephone No.

Employer's FAX No.

In order to determine the claimant's eligibility for UC, it is requested that you answer the following questions:

1. What was the claimant's: first date worked? ; last date worked?
2. Did the claimant earn more than \$3120 during most recent period of employment?
 Yes No If No, the amount earned was \$
3. Was the claimant's job a full-time or part-time job? Full-time Part-time
If Part-time, please list the claimant's hourly earnings and the average number of hours that the claimant worked per week.
4. Was the job temporary or permanent? Temporary Permanent
If Temporary, on what date would the job have ended?
5. Did the claimant voluntarily quit or take a leave of absence?
 Voluntary Quit Leave of Absence
If Leave of Absence, the leave began on , and ended, or is expected to end on .

For UC purposes, a leave of absence is considered a quit for the period of the leave of absence.

6. Please indicate the reason the claimant voluntarily quit or took a leave of absence.
 To Seek Other Work To Accept another Job Other Unknown
If Other, please list the reason(s) that the claimant voluntarily quit or took a leave of absence.
7. Was continuing work available had the claimant not voluntarily quit his/her job?
 Yes No
8. Do you want to provide any **additional information** that you feel may have a bearing on the claimant's eligibility for unemployment compensation?

I certify that the information I have provided is true and correct.

Employer information provided by telephone to UC Representative:

By Title On 8/13/2015

Employer's Telephone No.

Employer's FAX No.

EMPLOYER QUESTIONNAIRE
Seek Work Employer 2

Claimant Social Security No.

Employer's Name:

Employer's Address:

Employer's Telephone No.

Employer's FAX No.

In order to determine the claimant's eligibility for UC, it is requested that you answer the following questions:

1. Did you make an offer of employment to the claimant? Yes No
If Yes: On what date did you make the offer of employment?

What was the start date of the position offered to the claimant?

What was the job title of the position?

What was the starting hourly wage or weekly salary?

Was the job a full-time or part-time job? Full-time Part-time

If Part-time, please list the average number of hours per week.

2. Was the job temporary or permanent? Temporary Permanent
If Temporary, on what date was the job scheduled to end?

3. Did the claimant begin employment as expected? Yes No
If Yes: What was the claimant's: first date worked? ; last date worked?

4. Did the claimant earn more than \$3120 during most recent period of employment?
 Yes No If No, the amount earned was \$

5. Please explain why the claimant is unemployed.

6. Do you want to provide any **additional information** that you feel may have a bearing on the claimant's eligibility for unemployment compensation?

I certify that the information I have provided is true and correct.

Employer information provided by telephone to UC Representative:

By Title On 8/13/2015

Employer's Telephone No.

Employer's FAX No.

**EMPLOYER QUESTIONNAIRE
VQ to Enter into Self-Employment**

Claimant Social Security No.

Employer's Name:

Employer's Address:

Employer's Telephone No. Employer's FAX No.

In order to determine the claimant's eligibility for UC, it is requested that you answer the following questions:

1. What was the claimant's: first date worked? ; last date worked?
 2. Did the claimant earn more than \$3120 during most recent period of employment?
 Yes No If No, the amount earned was \$
 3. Was the claimant's job a full-time or part-time job? Full-time Part-time
If Part-time, please list the hourly rate and the average number of hours that the claimant worked per week.
 4. Was the job temporary or permanent? Temporary Permanent
If Temporary, on what date would the job have ended?
 5. Did the claimant voluntarily quit or take a leave of absence?
 Voluntary Quit Leave of Absence
If Leave of Absence, the leave began on and ended, or is expected to end on
- Note: For UC purposes, a leave of absence is considered a voluntary quit for the period of the leave of absence.
6. Please indicate the reason the claimant voluntarily quit.
 To Enter Self-Employment Other Unknown
If Other, please provide the reason(s) that the claimant voluntarily quit.
 7. Was continuing work available had the claimant not voluntarily quit or taken a leave of absence? Yes No
 8. Do you want to provide any **additional information** that you feel may have a bearing on the claimant's eligibility for unemployment compensation?

I certify that the information I have provided is true and correct.

Employer information provided by telephone to UC Representative:

By Title On 8/13/2015

Employer's Telephone No. Employer's FAX No.

EMPLOYER QUESTIONNAIRE
VQ – to Follow Spouse

Claimant Social Security No.

Employer's Name:

Employer's Address:

Employer's Telephone No. Employer's FAX No.

In order to determine the claimant's eligibility for UC, it is requested that you answer the following questions:

1. What was the claimant's: first date worked? ; last date worked?

2. Did the claimant earn more than \$ 3120 during most recent period of employment?
 Yes No If No, the amount earned was \$ _____

3. Was the claimant's job a full-time or a part-time job? Full-time Part-time
If Part-time, please list the claimant's hourly rate and the average number of hours that the claimant worked per week.

4. Was the job temporary or permanent? Temporary Permanent
If Temporary, on what date was the job scheduled to end?

5. Did the claimant voluntarily quit or take a leave of absence?
 Voluntary Quit Leave of Absence
If Leave of Absence, the leave began on _____ and ended, or is expected to end on _____.

For UC purposes, a leave of absence is considered a quit for the period of the leave of absence.

6. Please indicate the reason the claimant voluntarily quit or took a leave of absence.
 To Follow Spouse Unknown Other
If Other, please provide the reason(s) that the claimant voluntarily quit or took a leave of absence.

If quit to Follow Spouse, Did you have work available for the claimant in the area where the claimant relocated? Yes No Unknown If yes, please explain:

7. Was continuing work available had the claimant not voluntarily quit or taken a leave of absence?
 Yes No

8. Do you want to provide any **additional information** that you feel may have a bearing on the claimant's eligibility for unemployment compensation?

I certify that the information I have provided is true and correct.

Employer information provided by telephone to UC Representative:

By Title On 8/13/2015

Employer's Telephone No. Employer's FAX No.

**EMPLOYER QUESTIONNAIRE
VQ – Transportation Problems**

Claimant Social Security No.

Employer's Name:

Employer's Address:

Employer's Telephone No.

Employer's FAX No.

In order to determine the claimant's eligibility for UC, it is requested that you answer the following questions:

1. What was the claimant's: first date worked? ; last date worked?

2. Did the claimant earn more than \$3120 during most recent period of employment?
 Yes No If No, the amount earned was \$

3. Was the claimant's job a full-time or part-time job? Full-time Part-time
If Part-time, please list the claimant's hourly earnings and the average number of hours that the claimant worked per week.

4. Was the job temporary or permanent? Temporary Permanent
If Temporary, on what date was the job scheduled to end?

5. Did the claimant voluntarily quit or take a leave of absence?
 Voluntary Quit Leave of Absence
If Leave of Absence, the leave began on , and ended, or is expected to end on .

For UC purposes, a leave of absence is considered a quit for the period of the leave of absence.

6. Please indicate the reason the claimant voluntarily quit or took a leave of absence.
 Transportation Problems Unknown Other
If Other, please list the reason(s) that the claimant voluntarily quit or took a leave of absence.

7. Are you aware of any other transportation alternatives that the claimant could have used to come to work? Yes No If Yes, Please explain:

8. Was continuing work available had the claimant not voluntarily quit or taken a leave of absence?
 Yes No

9. Do you want to provide any **additional information** that you feel may have a bearing on the claimant's eligibility for unemployment compensation?

I certify that the information I have provided is true and correct.

Employer information provided by telephone to UC Representative:

By Title On 8/13/2015

Employer's Telephone No.

Employer's FAX No.



pennsylvania

DEPARTMENT OF LABOR & INDUSTRY

OFFICE OF UNEMPLOYMENT COMPENSATION BENEFITS

EMPLOYER QUESTIONNAIRE

Voluntary Quit – Voluntary Layoff/Employer Downsizing

Claimant: _____

Social Security No.: _____

Employer Name: _____

Employer Address: _____

Employer's Telephone No.: _____

Fax Number: _____

Employer Acct No: _____

In order to determine the claimant's eligibility for unemployment compensation, please answer the following questions:

1. What was the claimant's: first actual date worked? _____; last actual date worked? _____
 - On what date did the resignation become effective? _____

2. Did the claimant have gross earnings of at least \$3,438 or more in his/her most recent employment?
 - Yes No
 - If no, what were the gross earnings? _____

3. Was the claimant's job full-time or part-time? Full-time Part-time
 - Please list the claimant's hourly rate or salary. _____
 - What was the average number of hours that the claimant worked per week? _____

4. Please provide the reason the claimant:
 - Voluntary Layoff Employer Downsizing/Is Unemployed Early Retirement Separation Incentive
 - Other
 - If other reason(s), please provide the reason(s) given by the claimant for quitting or taking a leave of absence from his/her job. _____.

5. Was the claimant's job a permanent or temporary position? Permanent Temporary
 - If temporary, on what date was the job expected to end had the claimant not voluntarily quit? _____

6. If laid off, is the layoff permanent or temporary? Permanent Temporary
 - If temporary, please provide the date the claimant is expected to return to work. _____

7. Do you have an established plan, policy or agreement that provides for your employees to accept a temporary voluntary layoff option or permanent separation incentive package?
 - Temporary Layoff Permanent Separation Both None

8. Were any incentives offered to the claimant for voluntary separating? Yes No

(Please provide a copy of all incentives offered to the claimant, including a severance package agreement, where applicable.)

 - If yes, please explain what incentives were offered. _____

9. Was continuing work available to the claimant had he/she not accepted a voluntary lay off option or employer incentive package? Yes No Unknown
 - If no, please explain why continuing work was not available to the claimant? _____

10. Is there any additional information that you feel may affect the claimant's eligibility for unemployment compensation? _____

Claimant: _____

Social Security No.: _____

I certify that all information I have provided in this document is correct and complete. I acknowledge that false statements in this document are punishable pursuant to 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

Employer Signature: _____

Date Employer Signed: _____

Employer information provided by telephone to UC representative: _____ on 8/13/2015 12:52 PM

EMPLOYER QUESTIONNAIRE
Approved Apprenticeship Training VQ

Claimant: Social Security No:

Employer's Name:

Employer's Address:

Employer's Telephone No. Employer's FAX No.

In order to determine the claimant's eligibility for UC, it is requested that you answer the following questions:

1. What was the claimant's job title?
2. What was the claimant's: First date worked? ; Last date worked?
3. Was the claimant's job full-time or part-time? Full-time Part-time
If Part-time, provide the following claimant information: Hourly rate of pay \$;
Average number of hours you work per week:
4. Was the job permanent or temporary? Temporary Permanent
If Temporary, on what date would the job have ended?
5. Is the claimant enrolled in Apprenticeship Training Program? Yes No
If Yes, what is the name of the Apprenticeship Training Program?
6. Was the claimant enrolled in the Apprenticeship Training Program prior to the separation from this job? Yes No If No, what was the date enrolled?
7. Did the claimant quit his or her job, or take a leave of absence, to attend an Apprenticeship Training Program? Yes No
If No, please explain the reason for the claimant's separation.
8. Does the Apprenticeship Training Program Agreement require the individual to attend the the training to remain in the program? Yes No If No, please explain.
9. Is the training schedule fixed, rather than permitting the apprentice to have a choice in the scheduling of the training sessions? Yes No
If No, what other scheduling options were available?
10. What is the schedule for this training session?
Date from to , Time from to .
11. Is continued employment for the apprentice contingent upon the claimant completing the training program? Yes No
12. Is the claimant paid while attending the apprenticeship training? Yes No
If yes, what is the gross amount that the claimant will be paid for the week of training? \$
13. Other than the claimant's required attendance at the apprenticeship training, is there any other circumstance(s) that would prevent the claimant from working, to your knowledge? Yes No If yes, please explain.
14. Is there any **additional information** that you feel may affect the claimant's eligibility for unemployment compensation:

I certify that the information I have provided is true and correct.

Employer information provided by telephone to UC Representative:

By Title On 8/13/2015

Employer's Telephone No.
Claimant's Name:

Employer's FAX No.
Social Security No.

EMPLOYER QUESTIONNAIRE
Discharge for Absenteeism/Tardiness

Claimant _____ Social Security No. _____

The claimant named above has filed an application for Unemployment Compensation (UC). In order to determine the claimant's eligibility for UC, it is requested that you answer the following questions:

Employer Name: _____

Employer Address: _____

Employer's Telephone No. _____

Employer's FAX No. _____

1. What was the claimant's: first date worked? _____ last date worked? _____ date discharged? _____

2. Did the claimant earn more than \$3120 during most recent period of employment?
 Yes No If No, the amount earned was \$ _____
3. Was the claimant's job a full-time or part-time job? Full-time Part-time
If Part-time, please list the claimant's hourly rate and the average number of hours that the claimant worked per week. _____
4. Was the claimant's job temporary or permanent? Temporary Permanent
If Temporary, on what date would the job have ended? _____
5. Was the claimant discharged or suspended? Discharged Suspended
If Suspended: The suspension began on _____ and ended, or will end, on _____
Note: For UC purposes, a suspension is treated as a discharge for the period of the suspension.
6. Please indicate the reason the claimant was discharged or suspended.
 Absenteeism Tardiness (being late for work) Other
If Other, please list the reason(s) that the claimant was separated. _____
Please describe the final incident that caused the claimant to be separated. _____
7. Please list the date of the last absence or tardiness. _____
8. Did the claimant provide a reason for the last absence or tardiness? Yes No If Yes, Please list the claimant's reason for the last absence or tardiness: _____
9. Was the claimant previously warned about absenteeism or tardiness? Yes No
If Yes, please explain how the claimant was warned: _____
10. Did the claimant properly follow the call-off procedure for the absence or tardiness?
 Yes No If no, please describe your call-off procedures. _____
11. Was the claimant discharged as a result of a progressive discipline point system for absenteeism or tardiness? Yes No If Yes, please list the dates for the absences or tardiness and the reasons the claimant provided for the absences or tardiness. _____
12. Is there any additional information you would like to provide which you feel may have a bearing on the claimant's eligibility for UC?

Claimant Social Security No.

I certify that the information I have provided is true and correct.

Employer information provided by telephone to UC Representative:

By Title On 8/13/2015

EMPLOYER QUESTIONNAIRE
Discharge – Attitude

Claimant Social Security No.

In order to determine the claimant's eligibility for UC, it is requested that you answer the following questions:

Employer's Name:

Employer's Address:

Employer's Telephone No.

Employer's FAX No.

1. What was the claimant's: first date worked? ; last date worked?
2. Did the claimant earn more than \$ 3120 during most recent period of employment?
 Yes No If No, the amount earned was \$
3. Was the claimant's job a full-time or part-time job? Full-time Part-time
If Part-time, please list the claimant's hourly rate and the average number of hours that the claimant worked per week.
4. Was the claimant's job temporary or permanent? Temporary Permanent
If Temporary, on what date would the job have ended?
5. Was the claimant discharged or suspended? Discharged Suspended
If Suspended, the suspension began on and ended, or will end, on .
For UC purposes, a suspension is treated as a discharge for the period of the suspension.
6. Please indicate the reason the claimant was discharged or suspended.
 Claimant's Attitude Disruptive Influence Other
If Other, please list the reason(s) that the claimant was separated.
Please describe the final incident that caused the claimant to be separated.
7. What reason did you give the claimant for the separation?
8. Was the claimant's separation the result of a specific incident; or, was the claimant separated solely for his/her attitude or for being a disruptive influence?
 Specific Incident Attitude Alone Disruptive Influence Alone
9. Please describe the incident which caused the separation.
 - a. On what date did the incident which caused the separation occur?
 - b. On what date did you become aware of the incident which caused the separation?
10. Were you or your business adversely affected as a result of the claimant's conduct?
 Yes No If Yes, please explain.
11. If a warning was needed prior to a discharge or suspension, was the claimant warned about his/her conduct? Yes No Not Needed If Yes, please provide the date of the warning and the name of the individual who gave the warning.

12. Do you want to provide any **additional information** that you feel may have a bearing on the claimant's eligibility for unemployment compensation?

Claimant's Name Social Security No.

I certify that the information I have provided is true and correct.

Employer information provided by telephone to UC Representative:

By Title On 8/13/2015

EMPLOYER QUESTIONNAIRE
Discharge – Damage to Equipment/Property

Claimant _____ Social Security No. _____

In order to determine the claimant's eligibility for UC, it is requested that you answer the following questions:

Employer's Name:

Employer's Address:

Employer's Telephone No.

Employer's FAX No.

1. What was the claimant's: first date worked? _____ ; last date worked? _____
2. Did the claimant earn more than \$3120 during most recent period of employment?
 Yes No If No, the amount earned was \$ _____
3. Was the claimant's job a full-time or part-time job? Full-time Part-time
If Part-time, please list the claimant's hourly rate and the average number of hours that the claimant worked per week.
4. Was the claimant's job temporary or permanent? Temporary Permanent
If Temporary, on what date would the job have ended? _____
5. Was the claimant discharged or suspended? Discharged Suspended
If suspended, the suspension began on _____ and ended, or is expected to end on _____
For UC purposes, a suspension is treated as a discharge for the period of the suspension.
6. Please indicate the reason the claimant was discharged or suspended.
 Damage to Equipment or Property Other
If Other, please list the reason(s) the claimant was separated.
Please describe the final incident that caused the claimant to be separated.
7. Please describe the damage.
8. On what date did the damage occur? _____
9. On what date did you first become aware of the damage? _____
10. Did the claimant intentionally damage the equipment or property? Yes No
If No, was the damage to the equipment or property the result of an accident over which the claimant had no control; or, was the damage due to the claimant's negligence?
 Accident Negligence
11. Was training necessary in order for the claimant to properly perform the job?
 Yes No
If Yes, was training on the proper use of the equipment provided? Yes No
12. Did the claimant have a history of work-related accidents? Yes No
If Yes, please explain.
13. Do you want to provide any **additional information** that you feel may have a bearing on the

claimant's eligibility for unemployment compensation?

Claimant's Name Social Security No.

I certify that the information I have provided is true and correct.

Employer information provided by telephone to UC Representative:

By Title On 8/13/2015

EMPLOYER QUESTIONNAIRE
Discharge – Drug or Alcohol Test

Claimant Social Security No.

Employer's Name:
Employer's Address:
Employer's Telephone No. Employer's FAX No.

In order to determine the claimant's eligibility for unemployment compensation, it is requested that you answer the following questions:

1. What was the claimant's: first date worked? ; last date worked?
2. Did the claimant earn more than \$3120 during most recent period of employment?
 Yes No If No, the amount earned was \$
3. Was the claimant's job a full-time or part-time job? Full-time Part-time
If Part-time, please list the claimant's hourly rate and the average number of hours that the claimant worked per week.
4. Was the claimant's job temporary or permanent? Temporary Permanent
If Temporary, on what date would the job have ended?
5. Was the claimant discharged or suspended? Discharged Suspended
If Suspended: The suspension started on and ended, or will end on .
For UC purposes, a suspension is treated as a discharge for the period of the suspension.
6. Please indicate the reason the claimant was discharged or suspended.
 Failed Drug/Alcohol Test Refused Drug/Alcohol Test Other
If Other, please list the reason(s) that the claimant was separated.
Please describe the final incident that caused the claimant to be separated.
7. Do you have an established substance abuse policy? Yes No

Did the test detect the presence of drugs or alcohol? Yes No
If Yes, please list the substance(s) indicated on the drug/alcohol test results or explain why you are not providing this information.
8. Do you want to provide any additional information that you feel may have a bearing on the claimant's eligibility for unemployment compensation?

Employer information provided by telephone to UC Representative:

I certify that the information I have provided is true and correct.

By Title On **8/13/2015**

EMPLOYER QUESTIONNAIRE
Discharge - Fighting

Claimant Social Security No.

Employer's Name:

Employer's Address:

Employer's Telephone No. Employer's FAX No.

In order to determine the claimant's eligibility for unemployment compensation, it is requested that you answer the following questions:

1. What was the claimant's: first date worked? ; last date worked?
2. Did the claimant earn more than \$3120 during most recent period of employment?
 Yes No If No, the amount earned was \$
3. Was the claimant's job a full-time or part-time job? Full-time Part-time
If Part-time, please list the claimant's hourly rate and the average number of hours that the claimant worked per week.
4. Was the claimant's job temporary or permanent? Temporary Permanent
If Temporary, on what date would the job have ended?
5. Was the claimant discharged or suspended? Discharged Suspended
If Suspended: The suspension started on and ended, or will end, on .
For UC purposes, a suspension is treated as a discharge for the period of the suspension.
6. Please indicate the reason the claimant was discharged or suspended.
 Fighting Other If Other, please list the reason(s) the claimant was discharged or suspended.
7. Please describe the final incident which caused the claimant to be discharged or suspended.
8. On what date did the incident that caused the separation occur?
9. On what date did you become aware of the incident which caused the separation?
10. Did the fight occur while the claimant was working? Yes No
11. Was the fight work related? Yes No
12. Did the fight affect the claimant's ability to perform his/her job? Yes No
If Yes, please explain.
13. Did the claimant's actions have an adverse effect on your business? Yes No
If Yes, please explain.
14. Do you want to provide any additional information that you feel may have a bearing on the claimant's eligibility for unemployment compensation?

Claimant's Name Social Security No.

I certify that the information I have provided is true and correct.

Employer information provided by telephone to UC Representative:

By Title On 8/13/2015

EMPLOYER QUESTIONNAIRE
Discharge - Honesty

Claimant Social Security No.

Employer's Name:

Employer's Address:

Employer's Telephone No. Employer's FAX No.

In order to determine the claimant's eligibility for unemployment compensation, it is requested that you answer the following questions:

1. What was the claimant's: first date worked? ; last date worked?
2. Did the claimant earn more than \$3120 during most recent period of employment?
 Yes No If No, the amount earned was \$
3. Was the claimant's job a full-time or part-time job? Full-time Part-time
If Part-time, please list the claimant's hourly rate and the average number of hours that the claimant worked per week.
4. Was the claimant's job temporary or permanent? Temporary Permanent
If Temporary, on what date would the job have ended?
5. Was the claimant discharged or suspended? Discharged Suspended
If Suspended: The suspension started on and ended, or will end, on .
For UC purposes, a suspension is treated as a discharge for the period of the suspension.
6. Please indicate the reason the claimant was discharged or suspended.
 Dishonesty Other If Other, please list the reason(s) the claimant is unemployed.
7. Please list the final incident that caused the claimant to be separated.
8. Please describe the dishonest act and the claimant's involvement.
9. On what date did the incident that caused the separation occur?
10. On what date did you become aware of the incident that caused the separation?
11. Did the incident occur as the result of actual dishonesty, or was the claimant unable to do the job? Actual Dishonesty Unable to do the Job

If Unable to do the job, can you prove that the claimant did not work to the best of his/her ability. Yes No If Yes, please provide information to show that the claimant was not working to the best of his/her ability.
12. Do you want to provide any additional information that you feel may have a bearing on the claimant's eligibility for unemployment compensation?

Claimant Social Security No.

I certify that the information I have provided is true and correct.

Employer information provided by telephone to UC Representative:

By Title On **8/13/2015**

EMPLOYER QUESTIONNAIRE
Discharge – Insubordination

Claimant Social Security No.

Employer's Name:

Employer's Address:

Employer's Telephone No. Employer's FAX No.

In order to determine the claimant's eligibility for unemployment compensation, it is requested that you answer the following questions:

1. What was the claimant's: first date worked? ; last date worked?
2. Did the claimant earn more than \$3120 during most recent period of employment?
 Yes No If No, the amount earned was \$
3. Was the claimant's job a full-time or part-time job? Full-time Part-time
If Part-time, please list the claimant's hourly rate and the average number of hours that the claimant worked per week.
4. Was the claimant's job temporary or permanent? Temporary Permanent
If Temporary, on what date would the job have ended?
5. Was the claimant discharged or suspended? Discharged Suspended
If Suspended: The suspension started on and ended, or will end, on .
For UC purposes, a suspension is treated as a discharge for the period of the suspension.
6. Please indicate the reason the claimant was separated.
 Refused to comply with employer's order or request.
What was the claimant asked to do?
Did the claimant give a reason for refusing to comply with the order or request?
 Yes No If yes, what was the reason for refusing to comply with the order or request?

 Initiated an act of insubordination.
What was the insubordinate act?
Did the claimant give a reason for the insubordinate act? Yes No If yes, what was the reason for the insubordinate act?

 Other
If Other, please list the reason(s) the claimant was separated. Please provide a statement describing the final incident that caused the claimant to be separated.
7. On what date did the incident, which caused the claimant to be separated, occur?
8. On what date did you become aware of the incident?
9. Do you want to provide any additional information that you feel may have a bearing on the claimant's eligibility for unemployment compensation?

Claimant's Name Social Security No.

I certify that the information I have provided is true and correct.

Employer information provided by telephone to UC Representative:

By Title On 8/13/2015

EMPLOYER QUESTIONNAIRE
Discharge – License

Claimant Social Security No.

Employer's Name:

Employer's Address:

Employer's Telephone No.

Employer's FAX No.

In order to determine the claimant's eligibility for unemployment compensation, it is requested that you answer the following questions:

1. What was the claimant's: first date worked? ; last date worked?
2. Did the claimant earn more than \$ 3120 during most recent period of employment?
 Yes No If No, the amount earned was \$
3. Was the claimant's job a full-time or part-time job? Full-time Part-time
If Part-time, please list the claimant's hourly rate and the average number of hours that the claimant worked per week.
4. Was the claimant's job temporary or permanent? Temporary Permanent
If Temporary, on what date would the job have ended?
5. Was the claimant discharged or suspended? Discharged Suspended
If Suspended: The suspension started on and ended, or will end, on .
For UC purposes, a suspension is treated as a discharge for the period of the suspension.
6. Please indicate the reason the claimant was discharged or suspended.
 Loss of License Other If Other, please list the reason(s) the claimant was separated.
7. Please provide a statement describing the final incident that caused the claimant to be separated.
8. What type of license did the claimant lose?
9. Did the incident that caused the claimant to lose the license occur while he/she was working? Yes No
10. Was the license necessary in order for the claimant to perform the job? Yes No
11. Do you want to provide any additional information that you feel may have a bearing on the claimant's eligibility for unemployment compensation?

Claimant's Name Social Security No.

I certify that the information I have provided is true and correct.

Employer information provided by telephone to UC Representative:

By Title On 8/13/2015

EMPLOYER QUESTIONNAIRE
Discharge - Other

Claimant _____ Social Security No. _____

In order to determine the claimant's eligibility for UC, it is requested that you answer the following questions:

Employer's Name _____

Employer's Address _____

Employer's Telephone No. _____

Employer's FAX No. _____

1. What was the claimant's: first date worked? _____ ; last date worked? _____
 2. Did the claimant earn more than \$3120 during most recent period of employment?
 Yes No If No, the amount earned was \$ _____
 3. Was the claimant's job a full-time or part-time job? Full-time Part-time
If Part-time, please list the claimant's hourly rate and the average number of hours that the claimant worked per week. _____
 4. Was the job temporary or permanent? Temporary Permanent
If Temporary, on what date would the job have ended? _____
 5. Was the claimant discharged or suspended? Discharged Suspended
If Suspended: The suspension started on _____ and ended, or is expected to end, on _____
- Note: For UC purposes, a suspension is treated as a discharge for the period of the suspension.
6. Please list the reason(s) the claimant was separated. _____ Please provide a statement describing the final incident that caused the claimant to be separated. _____
 7. Was the claimant working at the time of the incident that caused his/her discharge or suspension? Yes No
If No, was the incident that caused the separation work related? Yes No
If No, did the claimant's actions directly affect his/her ability to perform the job?
 Yes No
 8. On what date did the incident that caused the separation occur? _____
 9. On what date did you become aware of the incident that caused the separation? _____
 10. Did your company suffer an adverse effect as a result of the claimant's actions?
 Yes No If Yes, please describe the adverse effect. _____
 11. Do you want to provide any additional information that you feel may have a bearing on the claimant's eligibility for unemployment compensation?

Claimant's Name Social Security No.

I certify that the information I have provided is true and correct.

Employer information provided by telephone to UC Representative:

By Title On 8/13/2015

EMPLOYER QUESTIONNAIRE
Discharge – Overtime

Claimant Social Security No.

Employer's Name:

Employer's Address:

Employer's Telephone No.

Employer's FAX No.

In order to determine the claimant's eligibility for unemployment compensation, it is requested that you answer the following questions:

1. What was the claimant's: first date worked? ; last date worked?
2. Did the claimant earn more than \$3120 during most recent period of employment?
 Yes No If No, the amount earned was \$ _____
3. Was the claimant's job a full-time or part-time job? Full-time Part-time
If Part-time, please list the claimant's hourly rate and the average number of hours that the claimant worked per week.
4. Was the claimant's job temporary or permanent? Temporary Permanent
If Temporary, on what date would the job have ended?
5. Was the claimant discharged or suspended? Discharged Suspended
If Suspended: The suspension started on _____ and ended, or will end, on _____
For UC purposes, a suspension is treated as a discharge for the period of the suspension.
6. Please indicate the reason the claimant was discharged or suspended.
 Refused to Work Overtime Other If Other, please list the reason(s) the claimant was separated. Please provide a statement describing the final incident that caused the claimant to be separated.
7. What was the reason for the overtime request?
8. Was the claimant provided with advance notice of the overtime? Yes No
If Yes, how much notice was provided?
If No, were you required by a labor contract or by an agreement of hire to provide advance notice of the overtime request? Yes No If Yes, please explain why the advance notice was not provided.
9. Did the claimant explain the reason(s) he/she refused to work overtime? Yes No
If Yes, what was the claimant's reason(s) for refusing to work overtime?
10. Do you want to provide any additional information that you feel may have a bearing on the claimant's eligibility for unemployment compensation?

Claimant's Name Social Security No.

I certify that the information I have provided is true and correct.

Employer information provided by telephone to UC Representative:

By Title On 8/13/2015

EMPLOYER QUESTIONNAIRE
Discharge – Work Performance

Claimant Social Security No.

Employer's Name
Employer's Address
Employer's Telephone No. Employer's FAX No.

In order to determine the claimant's eligibility for UC, it is requested that you answer the following questions:

1. What was the claimant's: first date worked? ; last date worked?
2. Did the claimant earn more than \$3120 during most recent period of employment?
 Yes No If No, the amount earned was \$
3. Was the claimant's job a full-time or part-time job? Full-time Part-time
If part-time, please list the claimant's hourly rate and the average number of hours that the claimant worked per week.
4. Was the job temporary or permanent? Temporary Permanent
If Temporary, on what date would the job have ended?
5. Was the claimant discharged or suspended? Discharged Suspended
If Suspended: The suspension started on and ended, or will end, on .
Note: For UC purposes, a suspension is treated as a discharge for the period of the suspension.
6. Please indicate the reason the claimant was discharged or suspended.
 Unsatisfactory Work Performance Other

If Unsatisfactory Work Performance, please explain.

If Other, please list the reason(s) the claimant was separated. Please provide a statement describing the final incident that caused the claimant to be separated.
7. Can you show that the claimant was not working to the best of his/her ability? Yes No
If Yes, please explain.
8. Was the claimant warned about the poor work performance? Yes No
If Yes, please provide the date of the warning and the name of the individual who gave the warning.
9. Was there any misconduct involved in the claimant's unsatisfactory work performance?
 Yes No If Yes, please explain.
10. Do you want to provide any additional information that you feel may have a bearing on the claimant's eligibility for unemployment compensation?

Claimant's Name Social Security No.

I certify that the information I have provided is true and correct.

Employer information provided by telephone to UC Representative:

By Title On 8/13/2015

EMPLOYER QUESTIONNAIRE
Discharge - Profanity

Claimant Social Security No.

Employer's Name:

Employer's Address:

Employer's Telephone No. Employer's FAX No.

In order to determine the claimant's eligibility for unemployment compensation, it is requested that you answer the following questions:

1. What was the claimant's: first date worked? ; last date worked?
2. Did the claimant earn more than \$3120 during most recent period of employment?
 Yes No If No, the amount earned was \$
3. Was the claimant's job a full-time or part-time job? Full-time Part-time
If Part-time, please list the claimant's hourly rate and the average number of hours that the claimant worked per week.
4. Was the claimant's job temporary or permanent? Temporary Permanent
If Temporary, on what date would the job have ended?
5. Was the claimant discharged or suspended? Discharged Suspended
If Suspended: The suspension started on and ended, or will end, on .
For UC purposes, a suspension is treated as a discharge for the period of the suspension.
6. Please indicate the reason the claimant was discharged or suspended.
 Use of Profanity Other If Other, please list the reason(s) the claimant was separated. Please provide a statement describing the final incident that caused the claimant to be separated.
7. Please list, to the best of your knowledge, the exact language used by the claimant.
8. On what date did the incident that caused the claimant's separation occur?
9. On what date did you become aware of the incident?
10. Was the language used normal for your industry or profession? Yes No
11. Did the claimant, or did the person to whom the claimant was talking, use the language first?
 Claimant Other Person
12. Had the claimant previously used this language in your presence? Yes No
13. Was the claimant warned about the use of inappropriate language? Yes No
If yes, please provide the date of the warning and the name of the individual who gave the warning.
14. Did the claimant provide a reason for using the inappropriate language? Yes No

If Yes, please list the reason(s) the claimant used the language.

15. Do you want to provide any **additional information** that you feel may have a bearing on the claimant's eligibility for unemployment compensation?

Claimant's Name **Social Security No.**

I certify that the information I have provided is true and correct.

Employer information provided by telephone to UC Representative:

By **Title** **On 8/13/2015**

EMPLOYER QUESTIONNAIRE
Discharge for Rule Violation

Claimant Social Security No.

Employer's Name:

Employer's Address:

Employer's Telephone No. Employer's FAX No.

In order to determine the claimant's eligibility for unemployment compensation, it is requested that you answer the following questions:

1. What was the claimant's: first date worked? ; last date worked?
2. Did the claimant earn more than \$3120 during most recent period of employment?
 Yes No If No, the amount earned was \$
3. Was the claimant's job a full-time or part-time job? Full-time Part-time
If Part-time, please list the claimant's hourly rate and the average number of hours that the claimant worked per week.
4. Was the claimant's job temporary or permanent? Temporary Permanent
If Temporary, on what date would the job have ended?
5. Was the claimant discharged or suspended? Discharged Suspended
If Suspended: The suspension started on and ended on .
For UC purposes, a suspension is treated as a discharge for the period of the suspension.
6. Please indicate the reason the claimant was discharged or suspended.
 Rule Violation Other If Other, please list the reason(s) the claimant was separated. Please provide a statement describing the final incident that caused the claimant to be separated.

If Rule Violation:

7. What was the rule that was violated?
8. Should the claimant have been aware of the rule? Yes No If Yes, how was the claimant informed of the rule?
9. If a warning was required prior to discharge or suspension, was the warning given?
 Yes No Not Needed If Yes, please provide the date of the warning and the name of the individual who gave the warning.
10. Did violation of the rule require a discharge or suspension? Yes No If No, please explain.
11. Did the claimant provide a reason for violating the rule? Yes No If Yes, what was the claimant's reason for violating the rule?
12. Do you want to provide any additional information that you feel may have a bearing on the claimant's eligibility for unemployment compensation?

Claimant's Name Social Security No.

I certify that the information I have provided is true and correct.

Employer information provided by telephone to UC Representative:

By Title On 8/13/2015

EMPLOYER QUESTIONNAIRE
Discharge – Seeking Work

Claimant Social Security No.

Employer's Name:

Employer's Address:

Employer's Telephone No. Employer's FAX No.

In order to determine the claimant's eligibility for unemployment compensation, it is requested that you answer the following questions:

1. What was the claimant's: first date worked? ; last date worked?

2. Did the claimant earn more than \$3120 during most recent period of employment?
 Yes No If No, the amount earned was \$

3. Was the claimant's job a full-time or part-time job? Full-time Part-time
If Part-time, please list the claimant's hourly rate and the average number of hours that the claimant worked per week.

4. Was the claimant's job temporary or permanent? Temporary Permanent
If Temporary, on what date would the job have ended?

5. Was the claimant discharged or suspended? Discharged Suspended
If Suspended: The suspension started on and ended, or will end, on .
For UC purposes, a suspension is treated as a discharge for the period of the suspension.

6. Please indicate the reason the claimant was discharged or suspended.
 Seeking Another Job Other If Other, please list the reason(s) the claimant was separated. Please provide a statement describing the final incident that caused the claimant to be separated.

7. Was the claimant prohibited by contract or legal agreement from seeking another job in the same occupation or business? Yes No

8. Was there a mileage limit or territory in which the claimant was prohibited from seeking another job in the same occupation or business? Yes No If Yes: Did the claimant seek other employment in the same business or occupation within the prohibited territory? Yes No
Please provide the mileage limitations.

9. Do you want to provide any additional information that you feel may have a bearing on the claimant's eligibility for unemployment compensation?

Claimant's Name Social Security No.

I certify that the information I have provided is true and correct.

Employer information provided by telephone to UC Representative:

By Title On 8/13/2015

EMPLOYER QUESTIONNAIRE
Discharge – Sleeping on the Job

Claimant _____ Social Security No. _____

Employer Name: _____

Employer Address: _____

Telephone No. _____ FAX No. _____

In order to determine the claimant's eligibility for UC, it is requested that you answer the following questions:

1. What was the claimant's: first date worked? _____ ; last date worked? _____
2. Did the claimant earn more than \$3120 during most recent period of employment?
 Yes No If No, the amount earned was \$ _____
3. Was the claimant's job a full-time or part-time job? Full-time Part-time
If Part-time, please list the claimant's hourly rate and the average number of hours that the claimant worked per week.
4. Was the job temporary or permanent? Temporary Permanent
If Temporary, on what date would the job have ended?
5. Was the claimant discharged or suspended? Discharged Suspended
If Suspended: The suspension started on _____ and ended, or will end on _____
For UC purposes, a suspension is treated as a discharge for the period of the suspension.
6. Please indicate the reason the claimant was discharged or suspended.
 Sleeping on the Job Other If Other, please list the reason(s) the claimant was separated. Please provide a statement describing the final incident that caused the claimant to be separated.
7. At what time and on what date was the claimant sleeping on the job?
8. Did the claimant provide a reason for sleeping on the job? Yes No If Yes, what was the reason?
9. Do you want to provide any additional information that you feel may have a bearing on the claimant's eligibility for unemployment compensation?

Claimant Social Security No.

I certify that the information I have provided is true and correct.

Employer information provided by telephone to UC Representative:

By Title On 8/13/2015

EMPLOYER QUESTIONNAIRE

Incarceration DVQ

Claimant: Social Security No:

Employer's Name:

Employer's Address:

Employer FAX No.

Employer Telephone No.:

In order to determine the claimant's eligibility for UC, it is requested that you answer the following questions:

1. What was the claimant's: First date worked? ; Last date worked?
2. Did the claimant earn more than \$ 3120 during most recent period of employment?
 Yes No If No, the amount earned was \$
3. Was the claimant's job a full-time or part-time job? Full- time Part-time
If Part-time, please list the claimant's hourly rate and the average number of hours that the claimant worked per week.
4. Was the claimant's job temporary or permanent? Temporary Permanent
If Temporary, on what date would the job have ended?
5. Please indicate whether the claimant quit or was discharged. Quit Discharged
If the claimant quit, did the claimant resign in lieu of being discharged? Yes No
6. Which party initiated the separation? Claimant Employer If the claimant initiated the separation, did he/she take any steps to resolve the situation prior to quitting?
 Yes No Unknown If Yes, Please explain.
7. Please indicate the reason the claimant was separated from your employ.
Incarcerated Other If Other, please list the reason(s) the claimant was separated. Please provide a statement describing the final incident that caused the claimant to be separated.
8. Has the claimant been convicted of a crime? Yes No Unknown
9. Does the claimant have charges of a crime pending? Yes No Unknown
10. To your knowledge, has, or will the claimant, be incarcerated for a crime during the period from to ? Yes No Unknown
(AB Date) (BYE Date)
11. Do you have information regarding the name of the sentencing court, the name of the penal institution, the date the claimant was incarcerated, the anticipated release date, the claimant's eligibility for work release, or whether the claimant is in a halfway house?
 Yes No If Yes, please provide whatever information if available.

IF THE CLAIMANT WAS SEPARATED FROM EMPLOYMENT DUE TO BEING INCARCERATED, PLEASE ANSWER THE FOLLOWING:

Claimant: **Social Security No:**

12. Did the claimant's actions, which caused the incarceration, prevent the claimant from performing his/her job? Yes No Unknown
If Yes, please explain.

13. Did the claimant's actions, which caused the incarceration, have an adverse effect on your business? Yes No If Yes, please explain.

14. Is there any additional information that you feel may affect the claimant's eligibility for unemployment compensation?

I certify that the information I have provided is true and correct.

By: **Title:** **Date: 8/13/2015**

Employer's Statement was taken by telephone by UC Representative:

EMPLOYER QUESTIONNAIRE

Sexual Harassment DVQ

Claimant: Social Security No:

Employer's Name:

Employer's Address:

Employer's Telephone No.

Employer's FAX No.

In order to determine the claimant's eligibility for UC, it is requested that you answer the following questions:

1. What was the claimant's: First date worked? ; Last date worked?
2. Did the claimant earn more than \$ 3120 during most recent period of employment?
 Yes No If No, the amount earned was \$.
3. Was the claimant's job a full-time or part-time job? Full- time Part-time If Part-time, please list the claimant's hourly rate and the average number of hours that the claimant worked per week.
4. Was the claimant's job temporary or permanent? Temporary Permanent
If Temporary, on what date would the job have ended?
5. Was the claimant discharged or did the claimant voluntarily quit?
 Discharged Voluntarily Quit

If Voluntarily Quit:

- a. Was continuing work available had the claimant not voluntarily quit? Yes No
- b. Was the resignation in lieu of discharge? Yes No If Yes, please explain why the claimant was going to be discharged.

6. Is the claimant's separation permanent or temporary? Permanent Temporary
If Temporary: The temporary separation began on and ended, or will end, on .
Is the claimant's separation due to a suspension or a leave of absence?
 Suspension Leave of Absence

Note: For UC purposes: A suspension is considered a discharge for the period of the suspension and a leave of absence is considered a quit for the period of the leave of absence.

7. Please indicate the reason the claimant is separated from employment.
 Sexual Harassment Other If Other, please list the reason(s) the claimant was separated. Please provide a statement describing the final incident that caused the claimant to be separated.
8. Please describe the incident(s) that caused the claimant's separation.

If the claimant voluntarily quit:

9. Prior to the separation, did you and the claimant discuss the situation that caused the claimant's separation? Yes No If Yes: On what date did you first become aware of the situation?
10. Prior to the separation, what steps were taken to resolve the situation?
11. Did you have established procedures for reporting incidents of sexual harassment in your workplace? Yes No If Yes:
a. Were the established procedures followed? Yes No
b. What are your established procedures for reporting sexual harassment in your workplace?
12. Is there any additional information that you feel may affect the claimant's eligibility for unemployment compensation?

Claimant's Name Social Security No.

I certify that the information I have provided is true and correct.

Employer information provided by telephone to UC Representative:

By Title On 8/13/2015

EMPLOYER QUESTIONNAIRE Discrimination DVQ

Claimant: Social Security No:

Employer's Name:

Employer's Address:

Telephone No. FAX No.

In order to determine the claimant's eligibility for UC, it is requested that you answer the following questions:

1. What was the claimant's: First date worked? ; Last date worked?
2. Did the claimant earn more than \$ 3120 during most recent period of employment?
 Yes No If No, the amount earned was \$
3. Was the claimant's job a full-time or part-time job? Full-time Part-time
If Part-time, please list the claimant's hourly rate and the average number of hours that the claimant worked per week.
4. Was the claimant's job temporary or permanent? Temporary Permanent
If Temporary, on what date would the job have ended?
5. Was the claimant discharged or did the claimant voluntarily quit?
 Discharged Voluntarily Quit

If Voluntarily Quit, was continuing work available had the claimant not voluntarily quit?
 Yes No

If the claimant was discharged, please describe the final incident that caused the claimant to be separated.

6. Is the claimant's separation permanent or temporary? Permanent Temporary
If Temporary: The temporary separation began on and ended, or will end on .
7. Is the claimant's separation due to a suspension or a leave of absence?
 Suspension Leave of Absence
For UC purposes: A suspension is considered a discharge for the period of the suspension.
A leave of absence is considered a quit for the period of the leave of absence.
8. Please indicate the reason the claimant is separated from employment.
 Discrimination Other If Other, please explain.
9. Please describe the incident(s) that caused the claimant's separation.
10. Prior to the separation, did you and the claimant discuss the situation which caused the claimant's separation? Yes No If Yes, On what date did you first become aware of the situation?
11. Prior to the separation what steps were taken to resolve the situation?

Claimant: Social Security No:

12. Did you have established procedures for reporting incidents of discrimination in your workplace? Yes No

If Yes, What are your established procedures for reporting discrimination in your workplace?

Were the established procedures followed? Yes No

13. Is there any additional information that you feel may affect the claimant's eligibility for unemployment compensation?

I certify that the information I have provided is true and correct.

By: Title: Date: 8/13/2015

Employer's Statement was taken by telephone by UC Representative:



2 of 50 DOCUMENTS

Unemployment Compensation Board of Review of The Commonwealth of Pennsylvania v Dreiville Blouse, Appellant. Anna Bear, Intervening Appellee

No. 635 C.D. 1975

Commonwealth Court of Pennsylvania

23 Pa. Commw. 66; 350 A.2d 220; 1976 Pa. Commw. LEXIS 808

December 5, 1975, Argued
January 22, 1976, Decided

PRIOR HISTORY: [***] Appeal from the Order of the Unemployment Compensation Board of Review in case of In Re: Claim of Anna Bear, No. B-1125227.

DISPOSITION: Affirmed.

CASE SUMMARY:

PROCEDURAL POSTURE: Appellant employer sought review of an order of respondent, Unemployment Compensation Board of Review (Pennsylvania), which reversed a referee's denial of benefits to claimant employee upon a finding of willful misconduct under 43 P.S. § 802(e). Respondent found that the excessive absenteeism of claimant was due to illness and the absences were properly reported to appellant.

OVERVIEW: Claimant employee was a sewing machine operator and was discharged. She exhibited excessive absenteeism, allegedly due to an illness, yet she reported the absences to appellant employer. A referee denied claimant unemployment compensation benefits finding willful misconduct 43 P.S. § 802(e). Respondent, Unemployment Compensation Board of Review, reversed the denial, finding claimant's absenteeism was due to illness, and claimant properly reported her absences. The appellate court affirmed respondent's grant of benefits. Regarding illness causing the absences, respondent and the referee arrived at opposite findings because of a

credibility problem in the record. There was no deliberate disregard of competent evidence, there was credible evidence of illness, and therefore respondent's finding was proper. Repeated absences due to illness, in the face of warnings by an employer, could have constituted willful misconduct if an employee failed to give requisite notice. Warnings were given, but claimant gave proper notice of her absences by observing a regular reporting practice in the absence of a clear, definable policy.

OUTCOME: The court affirmed the grant of benefits to claimant employee by respondent. Unemployment Compensation Board of Review. Regarding illness causing claimant employee's excessive absences, there was no deliberate disregard of competent evidence, yet there was credible evidence of illness. Claimant's notice of repeated illness absences to appellant employer was proper because she observed a regular reporting practice.

LexisNexis(R) Headnotes

Administrative Law > Judicial Review > Standards of Review > Arbitrary & Capricious Review
Labor & Employment Law > Disability & Unemployment Insurance > Unemployment Compensation > Review
[HN] Reviewing the record for a capricious disregard of

competent evidence in an unemployment compensation challenge is required.

Labor & Employment Law > Disability & Unemployment Insurance > Unemployment Compensation > Eligibility > General Overview

[HN2] Although absences due to illness will not constitute willful misconduct, repeated absences due to illness, in the face of warnings by the employer may constitute willful misconduct if the employee fails to give requisite notice.

Labor & Employment Law > Disability & Unemployment Insurance > Unemployment Compensation > Review

[HN3] The question of whether notice of absences from work is given at all is one of fact, while the sufficiency of that notice is one of law.

COUSNER, Daniel E. Cohen, with him Norman Seidel, and Seidel and Cohen, for appellant.

Charles G. Hesson, Assistant Attorney General, for appellee.

Eller A. Spokoff, with him Handler, Carter & Weinstein, for intervening appellee.

JUDGES: Judges Crumlish, Jr., Mencer and Blah, sitting as a panel of three. Opinion by Judge Crumlish, Jr.

OPINION BY: CRUMLISH, JR.

OPINION

[*67] [**221] The question for our determination in this unemployment compensation appeal of Decville Blouse, employer (Appellant), is whether Anna Bear (Claimant) was properly awarded benefits by the Unemployment Compensation Board of Review (Board) which reversed a referee's denial of benefits upon a finding of willful misconduct under Section 402(e) of the Pennsylvania Unemployment Compensation Law. ¹ We hold that Claimant is entitled to benefits and affirm the Board.

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

[**22] Simply stated, we are here dealing with a

situation in which Claimant exhibited excessive absenteeism, primarily on Fridays and Mondays, from her position of sewing machine operator. The bases of the Board's reversal of the referee's disallowance of benefits were the Board's independent findings of fact that (1) "during the period of employment, due to illness, claimant was absent on many occasions" and (2) "claimant properly reported her [68] absences to the employer." These findings are in direct conflict with the referee's findings.

[HN1] Reviewing the record for a capricious disregard of competent evidence, as we must, see *Walsh v. Unemployment Compensation Board of Review*, 16 Pa. Commonwealth Ct. 155, 329 A.2d 523 (1974), we conclude that at least, as to the finding of illness causing the absences, there was no deliberate disregard of competent evidence. That the Board and the referee arrived at directly opposite findings of fact based on the same testimony bespeaks the credibility problem presented by this record. It is extremely difficult to distinguish whether the absences which occurred on Fridays and Mondays were indeed attributable to illness or were, in reality, [**3] mere attempts to extend Claimant's week-ends. Although the record is inconclusive on this issue, we must sustain the Board's finding as we are unable to find a deliberate disregard of relevant evidence. There is credible evidence of illness which the Board found caused the absences. As such, we reject Appellant's argument on this point for we are in no position to re-try issues of credibility.

[**22] It is now well settled that [HN2] although absences due to illness will not constitute willful misconduct, repeated absences due to illness, in the face of warnings by the employer may constitute willful misconduct if the employer fails to give requisite notice. See *Feliso v. Unemployment Compensation Board of Review*, 12 Pa. Commonwealth Ct. 250, 315 A.2d 340 (1974); *Quinn Unemployment Compensation Case*, 197 Pa. Superior Ct. 346, 178 A.2d 797 (1962); *Byrn Unemployment Compensation Case*, 174 Pa. Superior Ct. 71, 98 A.2d 490 (1953). See also *Dannally Unemployment Compensation Case*, 182 Pa. Superior Ct. 22, 124 A.2d 386 (1956). That Claimant had been counseled and warned with respect to the absences by both her union and employer is not in dispute. Therefore, we must [**4] examine the sufficiency of the notice given.

[*69] In deciding this issue, we are again constrained to say that the record before us is far from clear. At the outset, however, we can say that [HN3] the question of whether notice was given at all is one of fact, while the sufficiency of that notice is one of law. All parties agree that at various times Claimant did give notice of her absences to her employer by informing a girl with whom she rode to work, a foreman, a night watchman, and other fellow workers. The legal adequacy of these kinds of notice must be established by looking to the company's policy with regard to reporting absences. Unfortunately, the testimony of Mr. Leuhn, the company president, is all too equivocal to know exactly what procedure Claimant should have followed. Claimant's testimony is far less

equivocal on this point and indicates that she followed procedures in effect and commonly understood in the company.

Because she observed a regular reporting practice in the absence of clear, definable methods prescribed by the company, the Board's result is sound.

Order

And Now, this 22nd day of January, 1976, the Order of the Unemployment Compensation Board [**5] of Review is affirmed.

behavior is minimal to an employer's interest. Employer testified that if one of his employees doesn't show up for work it puts a burden on those who do. Claimant by his actions has disregarded the standards expected of him and has disregarded his duties and obligations to his Employer.

Despite Claimant's contention he did not intend to harm his Employer, we have many times before held: "To be guilty of willful misconduct, an employee need not intend to wrong the employer." *American Process Lettering, Inc.*, 50 Pa. Commonwealth Ct. at 276, 412 A.2d at 1125. Such conscious disregard of the Employer's interest as is evidenced in this case is enough. *Smith v. Unemployment Compensation Board of Review*, 28 Pa. Commonwealth Ct. 89, 191, 367 A.2d 811, 812 (1977).

[*499] Claimant also contends that the Board erred in finding number six (6) where it stated: "The Claimant suffered from emotional problems for which he had received counselling and rehabilitation." Claimant contends he has not been rehabilitated, but [***10] rather is still undergoing mental depression and as a

result the Board erred in finding he was rehabilitated. We find this argument without merit. Our interpretation of finding number six (6) is not that Claimant has been cured or rehabilitated, but rather that he received counselling and rehabilitation treatment. The record supports this interpretation.

2 Claimant had an interview at the Bureau of Vocational Rehabilitation.

On the basis of the above we affirm the order of the Board.

Order

It is ordered that the order of the Unemployment Compensation Board of Review, decision number B-189405, dated November 5, 1980, reversing the order of the referee and denying unemployment compensation benefits to Bruce N. Fritz is hereby affirmed.

Judge Mencer did not participate in the decision in this case.



Positive
As of: May 01, 2013

Bruce N. Fritz, Petitioner v. Commonwealth of Pennsylvania, Unemployment Compensation Board of Review, Respondent
No. 3036 C.D. 1980
Commonwealth Court of Pennsylvania

66 Pa. Commw. 492, 446 A.2d 330, 1982 Pa. Commw. LEXIS 1285

March 3, 1982, Argued
May 14, 1982, Decided

PRIOR HISTORY: [***1] Appeal from the Order of the Unemployment Compensation Board of Review in the case of In Re: Claim of Bruce N. Fritz, No. B-189405.

DISPOSITION: Affirmed.

COUNSEL: Andrew F. Erba, for petitioner.

Charles Hasson, Associate Counsel, with him Steven J. Neary, Associate Counsel, and Richard L. Cole, Jr., Chief Counsel, for respondent.

JUDGES: Judges Rogers, Craig and MacPhail, sitting as a panel of three. Opinion by Judge MacPhail. Judge Mencer did not participate in the decision in this case.

OPINION BY: MacPHAIL

OPINION

[*493] [***331] Bruce N. Fritz (Claimant) appeals here from an order of the Unemployment Compensation Board of Review which reversed a referee's award of

benefits. The referee found Claimant's absences and lateness were mainly due to his health problems and state of mind. On that basis the referee reversed the decision of the Office of Employment Security and found Claimant was not guilty of willful misconduct and therefore eligible for unemployment compensation benefits. The Unemployment Compensation Board of Review reversed the referee's determination and [*494] denied benefits on the basis of willful misconduct, Section 402(e) of the Unemployment [***2] Compensation Law (Law), Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. § 802(e).

1 When the Employer first filed an appeal from the referee's decision, the Board remanded the case to the referee who acted as a Hearing Officer for the Board. The Employer presented testimony at the remand hearing but was not present at the initial hearing.

The facts of this case are not in dispute. Claimant was last employed by Philadelphia Electric Company (Employer) as an Apprentice Machine Helper for seven and one-half years. During his tenure Claimant had a

long history of attendance related problems which resulted in numerous warnings and suspensions. On December 14, 1979, Claimant returned to work after one of his suspensions. From that point in time until February

December 20, 1979	Late 3/4 hours
January 14, 1980	Late 1 1/2 hours
January 18, 1980	Late 3/4 hour
February 4, 1980	Absent
February 8, 1980	Late 10 minutes
February 19, 1980	Late 1 1/2 hours
February 21, 1980	Left early without permission 1/2 hour
February 22, 1980	Late 3/4 hour

[***31] This is a total of eight (8) occurrences in two months.

After Claimant's tardiness of February 19, 1980, the Employer sent Claimant to the Employer's Medical Department for counselling as had been done many times before. Claimant was warned future instances of tardiness and absence would jeopardize his job.

At the hearing, when given a chance to explain his tardiness, Claimant wasn't able to advance any reason other than that he overslept. When asked how his depression and feelings affected his work, Claimant said, "Well the only way they would be interfering would be as far as me waking up. Once I was on the job my depression sort of ceased until I came back [**495] home." Claimant said his emotional state affected his sleeping habits which affected his ability to be prompt and timely.

Claimant testified that he understood and was aware of the Employer's attendance policy. He also repeatedly signed his Employer's memorandums of reprimand which stated: "I have reviewed the above summary and I understand that if my lateness and absence continue or if I violate any of the terms of the memorandum, I will be suspended and the Maintenance Division will recommend termination [***4] of employment."

On February 22, 1980, Claimant was suspended

22, 1980, Claimant's last day of work, his attendance record was as follows:

December 20, 1979	Late 3/4 hours
January 14, 1980	Late 1 1/2 hours
January 18, 1980	Late 3/4 hour
February 4, 1980	Absent
February 8, 1980	Late 10 minutes
February 19, 1980	Late 1 1/2 hours
February 21, 1980	Left early without permission 1/2 hour
February 22, 1980	Late 3/4 hour

indefinitely by his Employer as a result of his failure to improve and his continuing unsatisfactory service record. This suspension was converted to a discharge on March 31, 1980.

[***32] Prior to and during this period, Claimant developed a history of anxiety and depression for which he received treatment and was hospitalized from October 21, 1979 to November 20, 1979. Employer had referred Claimant to this clinic where he was hospitalized and later treated as an out-patient. Claimant had trouble sleeping and frequently used alcohol as a sleep aid and to deal underlying feelings of depression.

The issue before us is whether or not Claimant was as a matter of law guilty of willful misconduct and thereby ineligible for benefits under Section 402(c) of the Law.

In a case such as this, where the party with the burden of proof succeeds on the merits before the Board, our scope of review is limited to a determination of whether substantial evidence exists in the record to support the Board's findings and whether any errors of law were committed. *Placid v. Unemployment Compensation Board of Review*, 58 Pa. [***5] Commonwealth Ct. 250, 427 A.2d 748 (1981). The burden of [**496] proving willful misconduct is on the employer. *American Process Lettering, Inc. v. Unemployment Compensation Board of Review*, 50 Pa.

Commonwealth Ct. 272, 412 A.2d 1123 (1980). Whether Claimant's behavior constituted willful misconduct is a question of law and, as such, subject to review by this Court. *Mancini v. Unemployment Compensation Board of Review*, 50 Pa. Commonwealth Ct. 286, 412 A.2d 708 (1980). We are aware that a violation of an employer's rule or demand is not willful misconduct "if the evidence shows that the employer's action was justifiable and reasonable in light of all circumstances and was taken with good cause." *Kaufman v. Unemployment Compensation Board of Review*, 37 Pa. Commonwealth Ct. 9, 12, 388 A.2d 801, 802 (1978). Where claimant attempts to justify alleged willful misconduct by a showing of good cause, the claimant bears the burden of proving such good cause. *Lake v. Unemployment Compensation Board of Review*, 48 Pa. Commonwealth Ct. 138, 409 A.2d 126 (1979).

After reviewing the record, we are satisfied that the Board's findings are based upon substantial evidence. As [***4] a result, those findings are deemed conclusive upon this Court. *Patrick v. Unemployment Compensation Board of Review*, 41 Pa. Commonwealth Ct. 238, 398 A.2d 1095 (1979). We must now determine whether these findings support the conclusion that Claimant's conduct amounted to willful misconduct. Willful misconduct has been defined in the law as:

[A]n act of wanton or willful disregard of the employer's interest, a deliberate violation of the employer's rules, a disregard of standards of behavior which the employer had the right to expect of his employees, or negligence in such degree or recurrence as to manifest culpability, wrongful intent or evil design, or show an intentional substantial disregard of the employer's [**497] interest or of the employer's duties and obligations to the employer.

Hartman v. Unemployment Compensation Board of Review, 10 Pa. Commonwealth Ct. 235, 236, 309 A.2d 840, 841 (1973).

Claimant in his brief says that his mental illness, that is his severe depression, has affected his ability to conform to the Employer's regulations and argues that

under *Nedvik v. Unemployment Compensation Board of Review*, 37 Pa. Commonwealth Ct. 466, [***7] 391 A.2d 27 (1978) we should find that Claimant's behavior was not willful, but rather taken with good cause. In *Nedvik*, this Court held a psychiatric illness was a compelling and necessary reason for terminating employment within the meaning of § 402(c)(1) of the Law, 43 P.S. § 802(b)(1). Claimant argues that if manic depression is sufficient to justify a voluntary quit, then it should likewise be a defense for willful misconduct and thereby evidence good cause for Claimant's behavior. It is not necessary for us to resolve this issue because the Board's findings in *Nedvik* were far different from those in the instant case. In *Nedvik*, the Board found that the claimant suffered from a medically certified illness which precluded the claimant from thinking rationally. In the instant case, the Board found only that [***33] Claimant suffered from emotional problems for which he received counselling and rehabilitation. The record supports nothing more.

Claimant has not demonstrated that his emotional problems prevented him from meeting his job at the time he was scheduled to begin. Claimant's attempt to treat himself by using alcohol as a sleep aid was undertaken [***8] even though he was aware from a long history of tardiness and absenteeism that this could cause him to oversleep. Claimant freely chose to handle his sleeping problems in this manner despite several warnings that if his poor attendance habits continued [**498] he would be out of a job. Claimant stated that once he arrived at work his depression subsided throughout the working day. Since this is so, Claimant's depression does not explain the February 21, 1980 incident of leaving work early without permission or the February 4, 1980 absence. An employer has the right to expect that his employees will attend work when they are scheduled, that they will be on time and that they will not leave work early without permission. We have repeatedly held that habitual tardiness is adequate grounds for a finding of willful misconduct. *Unemployment Compensation Board of Review v. Gian, 23 Pa. Commonwealth Ct. 240, 330 A.2d 890 (1976)*. Certainly six (6) instances of Claimant's unexcused, extremely late behavior, within a two (2) month period, is sufficient for a finding of willful misconduct. See *Boyers v. Unemployment Compensation Board of Review*, 38 Pa. Commonwealth Ct. 171, [***9] 392 A.2d 890 (1978). In addition to Claimant's lateness, he had a chronic absence problem and had been known to leave work early without permission. Surely such



2 of 50 DOCUMENTS

Raymond Crilly, Petitioner v. Commonwealth of Pennsylvania, Unemployment Compensation Board of Review, Respondent

No. 1821 C.D. 1977

Commonwealth Court of Pennsylvania

40 Pa. Commw. 221; 397 A.2d 48; 1979 Pa. Commw. LEXIS 1239

December 4, 1978, Argued
January 31, 1979, Decided

PRIOR HISTORY: [***1] Appeal from the Order of the Unemployment Compensation Board of Review in case of In Re: Claim of Raymond J. Crilly, No. B-125462-B.

DISPOSITION: Affirmed

CASE SUMMARY:

PROCEDURAL POSTURE: Petitioner employee appealed the decision from the Unemployment Compensation Board of Review (Pennsylvania), which held that petitioner was ineligible to receive unemployment compensation benefits because of conduct described as willful misconduct under the provisions of § 402(e) of the Unemployment Compensation Law, 43 P.S. §802(e).

OVERVIEW: The lower court held that petitioner employee was ineligible to receive unemployment compensation benefits because of conduct described as willful misconduct under the provisions of § 402(e) of the Unemployment Compensation Law, 43 P.S. §802(e). The lower court's decision was affirmed. The court held that petitioner's repeated lateness for work and absenteeism amounted to willful misconduct. The court held that tardiness, in combination with a history of absenteeism, may also constitute a disregard of the standards of behavior which the employer has a right to expect of his

employees. The lower court properly concluded that petitioner was ineligible for unemployment compensation benefits.

OUTCOME: The lower court's decision that held that petitioner employee was ineligible to receive unemployment compensation benefits because of willful misconduct was affirmed. The court held that petitioner's repeated lateness for work and absenteeism amounted to willful misconduct.

LexisNexis(R) Headnotes

Labor & Employment Law > Disability & Unemployment Compensation > Coverage & Definitions
Labor & Employment Law > Disability & Unemployment Compensation > Review

[HN1] In an unemployment compensation appeal, a reviewing court's scope of review is confined to questions of law, including the question of whether an employee's actions constitute willful misconduct, and, absent fraud, to a determination of whether the findings of fact are supported by substantial evidence.

Civil Procedure > Trials > Jury Trials > Provider of Court & Jury Labor & Employment Law > Disability & Unemployment Insurance > Unemployment Compensation > Review
[HN2] The Unemployment Compensation Board of Review is the ultimate fact-finder and is empowered to resolve conflicts in the evidence and to determine credibility of witnesses.

Labor & Employment Law > Disability & Unemployment Insurance > Unemployment Compensation > Coverage & Definitions Labor & Employment Law > Disability & Unemployment Insurance > Unemployment Compensation > Eligibility > Involuntary Unemployment
[HN3] Habitual absenteeism, despite warnings from the employer, constitutes willful misconduct.

COUNSEL: Elizabeth M. Jannelli, with her *O'Brien & O'Brien Associates*, for petitioner.
Charles G. Hasson, Assistant Attorney General, with him Gerald Gornish, Acting Attorney General, for respondent.

JUDGES: Judges Wilkinson, Jr., Disalle and MacPhail, sitting as a panel of three. Opinion by Judge Disalle.

OPINION BY: DISALLE

[*222] [*40] Raymond I. Cilly (Claimant) filed this petition for review from the order of the Unemployment Compensation Board of Review (Board), dated July 28, 1977, vacating its prior decision and affirming the determination by the Bureau of Employment Security and the Referee that he was ineligible to receive unemployment compensation benefits because of conduct described [*223] as willful misconduct under the provisions of Section 402(e) of the Unemployment Compensation Law, Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. § 802(6).

This case is before us for the second time. On Claimant's first appeal from the Board's order, dated April [*41] 25, 1975, we were compelled to remand for

further findings of fact. I We concluded that the original findings were deficient in that the Board did not consider any justification presented by Claimant for his actions, nor did it determine whether the Employer maintained standards for lateness or absenteeism of its employees and, if so, whether these standards were applicable to Claimant. The Board, in compliance therewith, remanded the case to a referee for the taking of additional testimony. After the hearing, the Board reviewed the record as supplemented and, in support of its decision to [*41] deny unemployment compensation benefits to Claimant, made the following findings of fact:

1. The claimant was last employed by SEPTA-Red Arrow as a bus and trolley operator at \$ 4.90 an hour for five years, and his last day of work was June 27, 1974.

2. The claimant had accumulated a record of tardiness and absenteeism prior to October 21, 1973 when he was involved in an accident which caused the claimant to be off work. The claimant was warned about his tardiness and absences on several occasions.

3. As a result of a continuation of the conduct described in Finding Number [*43] Two, the claimant was suspended as part of a disciplinary action.

[*224] 4. The employer had a standard procedure for dealing with the employee's tardiness in reporting for work. This procedure consisted of progressive discipline which involved counseling, warnings, suspension, and finally discharge.

5. The claimant was treated by the company physician after his accident and was certified by his doctor to be able to return to work on May 28, 1974.

6. The claimant's physician had prescribed Valium during his recuperation, but this medication was not taken by the claimant after June 10, 1974.

7. After his return to work on May 28, 1974, the claimant missed several morning runs because of oversleeping.

8. The claimant was warned about his missing morning runs and, when such conduct continued, he was discharged on June 27, 1974.

9. The employer's standards relative to absenteeism and tardiness were applied equally among all employees including the claimant.

1 Reported at 257 Pa. Commonwealth Ct. 21, 358 A.2d 739 (1976).

[**4] Claimant's challenge directs our attention to findings of fact 4 and 9, which he contends are unsupported by the requisite substantial evidence. [HN1] In an unemployment compensation appeal, our scope of review is confined to questions of law, including the question of whether an employee's actions constitute willful misconduct, and, absent fraud, to a determination of whether the findings of fact are supported by substantial evidence. 2 Pa.C.S. § 704. *Berry v. Unemployment Compensation Board of Review*, 33 Pa. Commonwealth Ct. 565, 382 A.2d 487 (1978). When we review the transcript, particularly portions of the proceedings of March 16, 1977, it becomes apparent that a progressive [*225] disciplinary procedure was followed by the Employer and that its application to Claimant was no different than to other employees. Claimant, of course, disputed these findings before the

referee, as he does before us. [HN2] The Board, however, is the ultimate fact-finder and is empowered to resolve conflicts in the evidence and to determine credibility of witnesses. *Unemployment Compensation Board of Review v. Haughton Elevator Co.*, 21 Pa. Commonwealth Ct. 307, 345 A.2d 297 (1975). We can discern [*43] no reason to disturb the Board's findings here.

"Willful misconduct," as a basis for discharge from employment, has been addressed frequently by this Court. See *Kennedy Fried Chicken of Allona, Inc. v. Unemployment Compensation Board of Review*, 10 Pa. Commonwealth Ct. 90, 309 A.2d 165 (1973). We have found that [HN3] habitual absenteeism, despite warnings from the employer, constitutes willful misconduct. *Reebuck v. Unemployment Compensation Board of Review*, 33 Pa. Commonwealth Ct. 491, 382 A.2d 482 (1978); *Plutsky v. Unemployment Compensation Board of Review*, 29 Pa. Commonwealth Ct. 200, 370 A.2d 703 (1977). Tardiness, in combination with a history of absenteeism, may also constitute a disregard of the standards of behavior which the employer has a right to expect of his employees. As such, Claimant's repeated lateness for work and absenteeism amounted to willful misconduct. Accordingly, the Board properly concluded he was ineligible for unemployment compensation benefits.

[**42] Order

And Now, this 31st day of January, 1979, the order [*46] of the Unemployment Compensation Board of Review, dated July 28, 1977, denying benefits to Raymond I. Cilly, is affirmed.

105 Pa. Commw. 243, *248; 523 A.2d 1205, **1207; 1987 Pa. Commw. LEXIS 2067, ***6

employer has [***7] the right to expect of an employee.

Welded Tube Company of America v. Unemployment Compensation Board of Review, 43 Pa. Commonwealth Ct. 231, 233-34, 401 A.2d 1392, 1395 (1979) (emphasis added) (citations omitted). Accordingly, we must reject the employer's "no-fault" standard and the superficial analysis of the unemployment compensation authorities. Consequently, any absences due to illness cannot be utilized against the petitioner for the purpose of determining whether or not she was discharged for willful misconduct. *Id.*

3 Pursuant to Section 704 of the Administrative Agency Law, 2 Pa. C.S. § 704, we must affirm a Board adjudication unless a party's constitutional rights were violated, or there was an error of law, or necessary findings of fact are not supported by substantial evidence. *Worster v. Unemployment Compensation Board of Review*, 102 Pa. Commonwealth Ct. 417, 518 A.2d 350 (1986).

Our inquiry cannot end at this point, however, inasmuch as the referee found, on substantial [***8] record evidence, that the petitioner, at times, failed to give notice of her absences according to the policy. And, while such conduct would ordinarily constitute willful misconduct, *id.*, we have held that, where, as here, an employer [***9] erects a specific disciplinary system which tolerates certain conduct, which ordinarily would constitute willful misconduct that conduct cannot be held to rise to the level of willful misconduct until the specified number of repetitions has been met. Under such circumstances, the promulgation of such specific rules puts employees on notice that the employer will not consider such conduct to be adverse to its interest until the requisite number of violations has been committed. *Unemployment Compensation Board of Review v. Schmidt*, 20 Pa. Commonwealth Ct. 286, 341 A.2d 553 (1975).

Applied to the matter *sub judice*, the foregoing analysis leads us to conclude [***1208] that, unless the

petitioner's points due to improper reporting exceeded the total for discharge, that conduct, in and of itself, cannot, under the present circumstances, be held to constitute willful misconduct. *Id.*

Our review of the referee's findings, [***9] however, convinces us that we are unable to apply the foregoing analysis on the basis of those findings. Findings numbers six, eight and nine state that the petitioner alleged that she was ill and finding number eleven states that she alleged a need to care for her father due to his health, yet there is no finding which expressly or inferentially resolves these allegations. These findings, therefore, provide no "facts" for our review. Moreover, the referee failed to address the reason for the absence of April 9, 1985, unless her ambiguous finding number six was meant to relate to all absences other than those due to the petitioner's alleged need to care for her father. If the petitioner's various absences were due to her illness, *Welded Tube*, or her need to care for a severely ill family member, *Maldonado v. Unemployment Compensation Board of Review*, 94 Pa. Commonwealth Ct. 149, 503 A.2d 95 (1986), such absences simply cannot support a conclusion of willful misconduct.

[***250] Accordingly, we must remand this matter to the Board for the necessary factual findings. *McNroe G. Koggan Associates, Inc. v. Unemployment Compensation Board of Review*, 80 Pa. Commonwealth [***10] Ct. 626, 472 A.2d 277 (1984), and a reconsideration of whether or not the petitioner's failures to comply with the policy resulted in sufficient points, excluding points assessed for justified absences, to exceed the discharge limit and constitute willful misconduct.

Order

And Now, this 10th day of April, 1987, the order of the Unemployment Compensation Board of Review in the above-captioned matter is vacated and the record is remanded to the Board for further proceedings consistent with this opinion.

Jurisdiction relinquished.



3 of 50 DOCUMENTS

Betty S. Gillespie, Petitioner v. Commonwealth of Pennsylvania, Unemployment Compensation Board of Review, Respondent

No. 3063 C.D. 1985

Commonwealth Court of Pennsylvania

105 Pa. Commw. 243; 523 A.2d 1205; 1987 Pa. Commw. LEXIS 2067

January 23, 1987, Submitted on Briefs April 10, 1987, Decided

PRIOR HISTORY: [***1] Appeal from the Order of the Unemployment Compensation Board of Review, in case of In Re: Claim of Betty S. Gillespie, No. B-243990.

DISPOSITION: Vacated and remanded.

CASE SUMMARY:

PROCEDURAL POSTURE: Petitioner claimant challenged the decision of respondent, Unemployment Compensation Board of Review, which summarily affirmed a referee's decision that she was discharged for willful misconduct in connection with her work and, therefore, that she was ineligible for benefits pursuant to 43 P.S. § 802(e).

OVERVIEW: Petitioner claimant was discharged for violation of her employer's absenteeism and tardiness policy. After being discharged, petitioner applied for unemployment benefits. After a hearing, a referee determined petitioner's discharge was for willful misconduct and therefore she was ineligible for benefits pursuant to 43 P.S. § 802(e). Respondent, Unemployment Compensation Board of Review, affirmed the referee's decision. On appeal, the court reversed and remanded respondent's decision. The court found that respondent erred when it failed to consider whether or not each instance of absenteeism was justified. The court further held that absenteeism by itself did not constitute

misconduct and that in some instances employee's absenteeism did not amount to a disregard of the standards of behavior of an employer had the right to expect of an employee.

OUTCOME: The court reversed and remanded the decision of respondent, Unemployment Compensation Board of Review, which denied petitioner claimant's request for unemployment benefits. The court held that respondent erred when it determined that petitioner's absenteeism was as a result of willful conduct, because it only looked at the number of absences and not the reasons for the absences.

LexisNexis(R) Headnotes

Labor & Employment Law > Disability & Unemployment Insurance > Unemployment Compensation > Benefit Entitlements

[HN1] Absenteeism by itself does not constitute willful misconduct. An employer may be justified in discharging an employee for excessive absenteeism; however, unless the absences are unjustified or not properly reported according to the employer's rules, the employee's absenteeism does not amount to a disregard of the standards of behavior of an employer had the right to expect of an employee.

COUNSEL: *Michael Goldberg*, for petitioner.

Michael D. Aisher, Assistant Counsel, with him, *Clifford F. Blaz*, Deputy Chief Counsel, for respondent.

JUDGES: President Judge *Cunningh, Jr.*, Judge *Collins*, and Senior Judge *Blair*, sitting as a panel of three.
Opinion by Judge *Blair*.

OPINION BY: BLAIR

OPINION

[**244] [*1205] *Betsy S. Gillespie* (petitioner) petitions for review of the order of the Unemployment Compensation Board of Review (Board) summarily affirming a referee's decision that she was discharged for willful misconduct in connection with her work and, therefore, that she is ineligible for benefits pursuant to Section 402(e) of the Unemployment Compensation Law (Act), Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. § 802(b).

[**1206] In her findings of fact numbers one through five and number twelve, the referee found, and the petitioner does not dispute, that the petitioner was discharged for accumulating sixty-three points under the Kerr Glass (employer) employee [*1207] absenteeism and tardiness policy (policy). These findings further relate that the policy operates on a point system and, starting with an initial incident of absenteeism, tardiness or early departure [*245] from work, the system creates a twelve month period during which the accumulation of more than fifty points mandates discharge. Points are assessed for each incident of the above-referenced conduct without regard to any possible justification for the employee's conduct and extra points are assessed if the employee fails to notify the employer in accordance with the policy.

1 Although not the subject of an express finding of fact, the witness for the employer, a Mr. London, the Plant Industrial Relations and Personnel Manager at the time of the events here concerned, testified as to the specifics of the point system as follows:

We have a point system. It is a no-fault type policy. You receive points for different types of absences, illness or lateness or

leaving work early. If you exceed 50 points within a 12 month period, you are terminated.

If you call in, for example, and say you are sick, if you call in within the prescribed time limit, you would receive 4 points. If you call in late, you would get 5 points. If you are AWOL, you receive 12 points. . . .

[**23] As noted, during the relevant period, May 14, 1984 through April 19, 1985, the petitioner accumulated sixty-three points under the policy. From May 14, 1984 through April 5, 1985, the petitioner's total stood at thirteen points. Beginning with April 9, 1985, 2 the petitioner was absent from work until April 22, 1985.

2 The findings are silent as to April 8, 1985, a Monday, and whether or not the petitioner was scheduled to work that day.

The remainder of the referee's findings are as follows:

6. Claimant alleges her absences were due to illness.

7. Claimant was absent on April 9, April 10, April 11 and April 12, 1985, properly called in and was given 4 points in accordance with the policy.

[*246] 8. Claimant was absent allegedly due to illness April 9, 1985, through April 12, 1985. Claimant visited a doctor first on April 12, 1985, and was given medication.

9. Claimant visited her doctor again on April 19, 1985, allegedly because she was not cured and alleges she was told she could [*1208] return to work on April 22, 1985.

10. Claimant received word that her father was to be released from the Coatesville Hospital on April 15, 1985,

and she decided to bring him to her home.

11. The Claimant alleges her father was having severe health problems which required her almost continuous assistance.

12. Claimant did not report for work on April 15, 1985, and did not call the employer to report off. In accordance with the employer's policy, she was given 12 absence points.

13. Claimant was absent April 16, April 17, April 18 and April 19, 1985.

14. The employer's records show claimant did not call in on April 16 and was assessed 12 points, did call late on April 17 and was assessed 5 points, did not call on April 18 and was assessed 12 points, called in on April 19 late and was assessed 5 points. This brought claimant's total number of points to 63 in less than one year.

15. Claimant does not agree with the employer's dates of calls for the period April 15, 1985 through April 19, 1985, but states she made only one proper call and one late call during that week. Claimant indicates she may have had the wrong dates for her calls and agrees the points assessed [*1209] for that week were proper.

[*247] 16. The claimant did not call off on April 15, 1985, because her mind was on her father.

[**1207] 17. Claimant called in late on April 17, 1985, because she had admitted her father to the St. Joseph Hospital.

18. Claimant did not call in on April 18 or April 19 even though she had been reminded by the plant nurse on April 16 or April 17 that she would be required to call in daily unless she presented medical information to the employer.

19. Claimant did not present medical

evidence to the employer until she returned to work on April 22, 1985.

And, after reviewing the principles governing Section 402(e) determinations, the referee reasoned that:

Claimant was discharged because she had exceeded the number of points permitted under the employer's attendance policy. Claimant was aware of the policy. Claimant was excessively absent and after carefully reviewing the entire record, the Referee cannot find that she had good reasons for all her absences and even if she did have good reasons to be absent, a large number of the points assessed to the claimant was due to her failure to call in or to call in properly. Claimant [*1210] did not have good reasons for failing to report off and/or to properly report off. The Courts have repeatedly held that failure to properly report absences constitutes willful misconduct under Section 402(e) of the Law. Accordingly, when claimant was discharged, she became ineligible for benefits under the aforementioned Section of Law.

Clearly, then, the referee, and, by extension, the Board, did not consider whether or not each instance of absenteeism from May 14, 1984 through April 22, 1985 [*248] was justified, but merely accepted the accumulation of the necessary number of points, in and of itself, as conduct which constitutes willful misconduct. On review, the petitioner contends that in so doing the referee and the Board erred as a matter of law. 3 We agree.

It has long been settled . . . that [HN1] absenteeism by itself does not constitute willful misconduct. . . . An employer may be justified in discharging an employee for excessive absenteeism, however, unless the absences are unjustified or not properly reported according to the employer's rules, the employer's absenteeism does not amount to a disregard of the standards of behavior an



1 of 100 DOCUMENTS



Positive
As of: May 01, 2013

Grand Sport Auto Body, Petitioner v. Unemployment Compensation Board of Review, Respondent

No. 2009 C.D. 2011

COMMONWEALTH COURT OF PENNSYLVANIA

55 A.3d 186; 2012 Pa. Commw. LEXIS 298; Unemployment Ins. Rep. (CCH) P12,543

September 12, 2012, Submitted
October 24, 2012, Decided
October 24, 2012, Filed

PRIOR HISTORY: [**1]

Appealed from No. B-533551. State Agency: Unemployment Compensation Board of Review.

OPINION

[*187] **OPINION BY JUDGE COHN JUBELIRER**

COUNSEL: Randal C. Schmaer, Exton, for petitioner.
Rebecca A. McClincy, Assistant Counsel, Harrisburg, for respondent.

Grand Sport Auto Body (Employer) petitions for review of the Order of the Unemployment Compensation Board of Review (Board) that affirmed the decision of the Unemployment Compensation Referee (Referee) finding that Andrew Terrell (Claimant) was not ineligible for unemployment compensation (UC) benefits under Section 402(e) of the Unemployment Compensation Law (Law).¹ The Board determined that because Claimant's last absence was justified, Claimant's absenteeism did not rise to the level of willful misconduct. Because we conclude that the Board erred in [*2] focusing solely on Claimant's last absence, rather than on Claimant's long history of tardiness and absenteeism, which was the reason Employer discharged Claimant, we reverse.

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. § 802(e). Section 402(e) provides that "[i]f an employe shall

JUDGES: BEFORE: HONORABLE DAN PELLEGRINI, President Judge, HONORABLE BERNARD L. MCGINLEY, Judge, HONORABLE RENÉE COHN JUBELIRER, Judge, HONORABLE ROBERT SIMPSON, Judge, HONORABLE P. KEVIN BROBSON, Judge, HONORABLE PATRICIA A. MCCULLOUGH, Judge, HONORABLE ANNE E. COVEY, Judge. **OPINION BY JUDGE COHN JUBELIRER.** DISSENTING OPINION BY PRESIDENT JUDGE PELLEGRINI. Judge Brobson joins in this dissenting opinion.

OPINION BY: RENÉE COHN JUBELIRER

be ineligible for compensation for any week . . . in which his unemployment is due to his discharge . . . from work for willful misconduct connected with his work." Id.

[*188] Claimant worked for Employer as a vehicle detailer from January 2008 until March 11, 2011, his last day of work. On June 17, 2010, Employer warned Claimant about his excessive tardiness. Employer again warned Claimant about his excessive tardiness on December 27, 2010. Between September 14, 2010, and March 10, 2011, Claimant was tardy or absent without a valid excuse 19 times. Claimant requested time off from March 14, 2011, until March 21, 2011, to get married in Mexico, which Employer approved. On March 21, 2011, Claimant's flight from Mexico was overbooked. The airline rebooked Claimant to a flight that left on March 22, 2011, and, as a result, Claimant could not return to work on March 22, 2011, as scheduled. [*3] Claimant contacted Employer on March 21, 2011, to inform Employer that he was stuck in Mexico. When Claimant returned to work on March 23, 2011, Employer suspended him pending Employer's review of Claimant's situation. On March 26, 2011, [E]mployer discharged [C]laimant because of his history of attendance and tardy arrivals." (Refer to Op. Findings of Fact (FOF) ¶¶ 1-9 (emphasis added); Written Warning of June 17, 2010, R.R. at 71g; Employer's Ex. 2, R.R. at 88a, 101e-102g; Attachment to Employer Questionnaire, R.R. at 31e-32a; Written Warning of December 27, 2010, R.R. at 65a.)

Claimant applied for UC benefits, and the Erie UC Service Center (Service Center) determined that Claimant was eligible for benefits under Section 402(e) of the Law. Employer appealed, and the Referee held a hearing at which Claimant and several witnesses for Employer testified.

Employer's Shop Manager testified regarding Claimant's employment and history of tardiness and absenteeism, including Claimant's last absence on March 22, 2011. The Shop Manager indicated that, when Claimant returned on March 23rd, Employer placed him on suspension as "a culmination of prior instances of absenteeism and tardiness." (Refer to Hr'g Tr. at 5, R.R. at 85a.) He explained that Claimant's last incident of tardiness was on March 10, 2011, when Claimant was 29 minutes late without informing Employer or providing a reason for being late. The Shop Manager stated that Employer had previously warned Claimant about his

attendance issues and presented those written warnings, as well as text messages from Claimant regarding his being absent or late for work. The Shop Manager testified that Employer changed Claimant's work schedule so that he started at 8:30 a.m. instead of 8:00 a.m. to help reduce Claimant's tardiness, but he continued to be tardy. The Shop Manager indicated that Claimant's absences and tardiness were an issue because it hindered Employer's ability to get work done. According to Shop Manager, Employer previously discharged Claimant, but had rehired him pursuant to an agreement regarding Claimant's attendance. (Refer to Hr'g Tr. at 6-7, 12-14, 17, R.R. at 86a-87a, 92a-94a, 97a.)

Employer's Regional Manager testified that he had spoken with Claimant in the past about his absences and tardiness and had been involved in giving Claimant the written warnings regarding his attendance. The Regional Manager stated [*5] that Employer did not discharge Claimant because of the March 22, 2011, absence, but because of "a series of events that had happened over a course of two years" and Employer was "trying to keep [Claimant] employed [but] he ignored the written warnings and ignored the verbal warnings." (Refer to Hr'g Tr. at 7, R.R. at 87a.) The Regional Manager testified that Employer had already decided to discharge Claimant prior to Claimant's return from Mexico due to his attendance issues and that, when he discharged Claimant, he [*189] told Claimant that it was not because of the March 22nd absence, but because of the absences and tardiness that led up to that incident. (Refer to Hr'g Tr. at 7, 14-15, R.R. at 87a, 94a-95a.) Employer's Production Manager testified that he had spoken with Claimant about being late and warned Claimant that if Claimant continued to be late for work he would be discharged. The Production Manager indicated that he offered to call Claimant in the morning to make sure he was up so that Claimant would arrive at work on time. (Refer to Hr'g Tr. at 8, R.R. at 88a.) Finally, Employer's Human Resources Manager was present to support all of the documents Employer entered into evidence. [*6] (Refer to Hr'g Tr. at 8, R.R. at 88a.)

Claimant testified regarding his work history, and described the circumstances surrounding his last absence. Claimant explained that his flight home was overbooked and he was required to fly back a day later. Claimant also indicated that he was aware of Employer's attendance policy and how to notify Employer if he was going to be late for work. When asked about his attendance and

final absence, even where an employer proves a pattern of excessive absenteeism as the reason for the employee's discharge, the employee will nevertheless be eligible for benefits if he or she can show good cause for the final absence. The reason behind that holding is that without the final absence, the employee would not have otherwise been terminated.

For example, in *Runkle v. Unemployment Compensation Board of Review*, 104 Pa. Commw. 275, 521 A.2d 530, 531 (Pa. Cmwlth 1987), although the claimant had previously been warned and suspended for excessive absenteeism, the referee specifically based his finding of willful misconduct on claimant's last one-week period of absenteeism. Concluding that there was not substantial [*22] evidence to support a finding that claimant was not ill on those particular days, we reversed the Board and granted benefits. Similarly, in *Adept Corporation v. Unemployment Compensation Board of Review*, 62 Pa. Commw. 566, 437 A.2d 109 (Pa. Cmwlth. 1981), the claimant had a history of absenteeism and was eventually placed on probation, but was ultimately discharged for one particular absence resulting from automobile problems. We held that "[i]f a claimant is absent because of transportation problems beyond his control and properly reports his necessary absence, he may not be found to have engaged in willful misconduct and unemployment benefits may not be denied on that ground." *Id.* at 111.

The majority attempts to distinguish *Runkle* and *Adept Corporation* from the instant matter on the basis that the claimants in those cases provided justification for not only their final absence but also many of their earlier absences, while here, Claimant appears to have demonstrated good cause for only three of his prior 19 absences. However, regardless of how many of their

previous absences were justified [*196] or not, the fact remains that none of the claimants would have been terminated but for the final absence or period [*23] of absences. Whether there was good cause for the final absence, then, is the only relevant inquiry.¹

1 The majority also cites to *Doson* in support of its holding. In that case, this Court held that a claimant's "protestations that he was discharged for an absence justified by his illness are not meritorious." 425 A.2d at 1220. That holding was partially based on the claimant's "failure to particularize which latenesses were due to illness." *Id.* Thus, *Doson* is distinguishable because the claimant in that case failed to provide justification for his final absence, as Claimant did here.

In this case, the Board, based on substantial evidence, made a credibility determination that Claimant's final absence was justified and properly reported,² and, therefore, Claimant cannot be denied benefits regardless of his prior record of absenteeism and tardiness.

2 The Board is the ultimate fact-finding body in unemployment matters and is empowered to resolve conflicts in evidence, to determine what weight is to be accorded the evidence, and to determine the credibility of witnesses. *Guthrie v. Unemployment Compensation Board of Review*, 738 A.2d 518, 521 (Pa. Cmwlth. 1999).

DAN PELLEGRINI, President [*224] Judge Judge Brohson joins in this dissenting opinion.

tardiness. Claimant stated "I mean, who's not late more than twice in one month due to, you know, this or that or the other thing? . . . Not that it should be allowed, but I mean, let's be real." (Referee Hr'g Tr. at 11, R.R. at 91a.) Claimant could not recall why he was late on March 10, 2011, but was "sure it was a good excuse." (Referee Hr'g Tr. at 8-12, R.R. at 83a-92a.)

Based on that testimony, the Referee indicated that Employer discharged Claimant due to his record of attendance, which included tardy arrivals and absences that Employer believed were excessive. However, the Referee held that "[e]xcessive absenteeism and tardiness, where justified or where properly reported, while a legitimate basis for discharge, do not constitute willful misconduct." (Referee Op. [*7] at 2.) Concluding that Claimant's most recent absence was justified due to his being rebooked onto a later flight, the Referee held that there was no willful misconduct and Claimant was not ineligible for UC benefits. Employer appealed to the Board. The Board found no error in the Referee's determination, adopted the findings and conclusions as its own, and affirmed. Employer now petitions this Court for review.²

2 "The Court's review is limited to determining whether constitutional rights were violated, practice or procedure of the Board was not followed or whether the findings of fact are supported by substantial evidence in the record." *Western & Southern Life Insurance Co. v. Unemployment Compensation Board of Review*, 913 A.2d 331, 334 n.2 (Pa. Cmwlth. 2006).

Employer argues on appeal that the Board incorrectly based its entire determination on Claimant's absence on March 22, 2011, which was justified, rather than on Claimant's pattern of excessive, unexcused absenteeism and tardiness, none of which Claimant attempted to justify. Employer maintains that Claimant's willful misconduct is evident in his numerous absences and tardiness [*8] over a seven-month period despite Claimant signing an employment agreement and receiving numerous verbal and written warnings. Moreover, Employer argues that Claimant failed to establish that his discharge was solely the result of the last absence, particularly where Employer's witnesses indicated that Employer had made the decision to discharge Claimant before Claimant left for Mexico.

Section 402(e) of the Law provides, in pertinent part, that "[e]n employee shall be ineligible for compensation for any week . . . [i]n which this unemployment is due to his discharge or temporary suspension [*190] from work for willful misconduct connected with his work." 43 P.S. § 802(e). While the Law does not define "willful misconduct," our courts have defined it as:

(1) a wanton or willful disregard for an employer's interests; (2) a deliberate violation of an employer's rules; (3) a disregard for standards of behavior which an employer can rightfully expect of an employee; or (4) negligence indicating an intentional disregard of the employer's interest or of an employee's duties or obligations.

Philadelphia Parking Authority v. Unemployment Compensation Board of Review, 1 A.3d 965, 968 (Pa. Cmwlth. 2010). The [*9] employer bears the burden of proving that the claimant's actions rose to the level of willful misconduct. *Docherty v. Unemployment Compensation Board of Review*, 888 A.2d 1205, 1208 (Pa. Cmwlth. 2005). If the employer satisfies its burden, the burden shifts to the employee to show that he or she had good cause for his or her conduct. *McKeesport Hospital v. Unemployment Compensation Board of Review*, 155 Pa. Commw. 287, 625 A.2d 112, 114 (Pa. Cmwlth. 1993). "A claimant has good cause if his or her actions are justifiable and reasonable under the circumstances." *Docherty*, 888 A.2d at 1208-09. Whether an employee's actions constitute willful misconduct is a question of law subject to *de novo* review and must be determined based on a consideration of all of the circumstances. *Id.* at 1208.

Excessive absenteeism or tardiness may constitute willful misconduct. Employers have "the right to expect that . . . employees will attend work when they are scheduled, that they will be on time, and that they will not leave work early without permission." *Fritz v. Unemployment Compensation Board of Review*, 66 Pa. Commw. 492, 446 A.2d 330, 333 (Pa. Cmwlth. 1982). "We have repeatedly held that habitual tardiness is adequate ground[s] for a finding [*10] of willful misconduct. . . . [S]uch behavior is inimical to an employer's interest." *Id.* See also *Doson v. Unemployment Compensation Board of Review*, 57 Pa. Commw. 248, 425 A.2d 1219, 1220 (Pa. Cmwlth. 1981).

(benefits denied where court rejected claim that the reason claimant was late 27 times and absent seven times during two-year period was due to illness); *Bowers v. Unemployment Compensation Board of Review*, 38 Pa. Commw. 171, 302 A.2d 890, 892 (Pa. Cmwlth. 1981) (benefits denied where claimant he violated no-fault hardship clause in collective bargaining agreement by being late 12 times during four-month period); *Clean v.*

Date	Event
Dec. 28, 2007	Claimant's employment terminated for excessive tardiness and absences. (Employer's Ex. 3, R.R. at 34a.)
Jan. 25, 2008	Employer rehires Claimant on the condition that Claimant would be on time for work; Claimant signs Employment Agreement. (Employer's Ex. R7, R.R. at 55a.)
June 17, 2010	Claimant receives written and verbal warning for excessive tardiness. (Written Warning of June 17, 2010, R.R. at 71a.)
Sept. 14, 2010	Sixteen minutes before Claimant's shift begins, he texts Employer that he is taking his dog to the vet. Claimant states that he will be an hour late. (Employer's Ex. 2, R.R. at 101a.)
Sept. 17, 2010	Thirteen minutes before Claimant's shift begins, he texts Employer that he will be late because he is taking the dog to the vet. (Employer's Ex. 2, R.R. at 101a.)
Sept. 27, 2010	One hour and 31 minutes after Claimant's shift starts, he texts Employer that he is late and will be in soon. (Employer's Ex. 2, R.R. at 58a.)
Sept. 28, 2010	Six minutes before

be real." (Reference Hr'g Tr. at 11, R.R. at 91a.) When given opportunities to respond to Employer's evidence that he was excessively late and absent, Claimant first passed on the opportunity. (Reference Hr'g Tr. at 7, R.R. at 87a), [**18] and then, when asked if he recalled why he was 20 minutes late on March 16, his next to last day of work, Claimant stated, "At that particular day, no, but I'm sure it was a good excuse." (Reference Hr'g Tr. at 12, R.R. at 92a.) Based on Claimant's testimony regarding his history of absences, tardiness, and his failure to offer good cause to justify those absences, we conclude that Claimant did not meet his burden in this matter.

Accordingly, the Board's Order is reversed.
RENÉE COHN JUBELIRER, Judge

ORDER

NOW, October 24, 2012, the Order of the Unemployment Compensation Board of Review in the above-captioned matter is hereby REVERSED.

RENÉE COHN JUBELIRER, Judge

DISSENT BY: DAN PELLEGRINI

DISSENTING OPINION BY PRESIDENT JUDGE PELLEGRINI
 Because the Board found good cause for Claimant's last absence, and Claimant would not have been terminated but for that final absence, I respectfully dissent from the majority and would affirm the Board.

Claimant would never receive an award for being a punitive employee. In fact, Claimant had been terminated on December 28, 2007, as a result of absenteeism and tardiness, but Employer rehired him on January 25, 2008, on the condition that he sign an Employment Agreement [**19] acknowledging his attendance problems. Claimant requested time off from March 14, 2011, through March 21, 2011, because he was getting married in Mexico, and Employer approved the request. Prior to Claimant's request for time off, Employer had warned Claimant about his tardy arrivals and excessive absences from work. On March 21, 2011, Claimant's return flight from Mexico was overbooked and he was changed to another flight that departed on March 22, 2011. On the same day, Claimant informed Employer that he could not return to

work on March 22, 2011. On March 23, 2011, Claimant reported to work and was suspended at that time pending Employer's review of the situation. Claimant was ultimately terminated on March 26, 2011.

Claimant sought unemployment benefits which were granted. The Board awarded benefits because Claimant presented a justifiable reason for not returning to work on the date scheduled. The majority reverses, even though the last absence was justified, because Claimant's overall excessive absenteeism constitutes willful misconduct. While there is no doubt that [**20] Claimant was chronically late, I dissent because the precipitating event that caused his termination was that he [**20] did not report to work on the day scheduled after his honeymoon.

There is no doubt that habitual tardiness is adequate ground for a finding of willful misconduct. "Such behavior is inimical to an employer's interest." *Fritz v. Unemployment Compensation Board of Review*, 68 Pa. Commw. 482, 446 A.2d 330, 333 (Pa. Cmwlth. 1982) (citations omitted). See also *Bowers v. Unemployment Compensation Board of Review*, 38 Pa. Commw. 171, 302 A.2d 890 (Pa. Cmwlth. 1981) (claimant's tardiness on 12 occasions within period of four months was sufficient for finding of willful misconduct); *Dobson v. Unemployment Compensation Board of Review*, 57 Pa. Commw. 248, 425 A.2d 1219, 1220 (Pa. Cmwlth. 1981) (benefits denied where court rejected claimant's contention that he was late 27 times and absent seven times during two-year period due to illness); *Clean v. Unemployment Compensation Board of Review*, 23 Pa. Commw. 240, 350 A.2d 890, 892 (Pa. Cmwlth. 1976) (benefits denied where court rejected claimant's contention that his chronic lateness was due to illness).

In each of those cases, the employer at some point decided that an employee had crossed the line from being absent or late to chronically being absent or late. However, none of those cases involve, as here, an employee who proved [**21] his final absence was justified. In other words, the employees in those cases were unable to demonstrate that they did not cross the line from being absent or late to being chronically absent or late because their final absences were not justified. Even where you have a hard and fast rule as to what constitutes excessive absenteeism, the final absence is what determines whether an employee crosses the line from "regular" to "excessive" absenteeism.

Where an employee is discharged as a result of a

	his shift starts, Claimant texts Employer that he got sick and will be in soon. (Employer's Ex. 2, R.R. at 58a.)
Sept. 30, 2010	Twenty minutes after his shift starts, Claimant texts Employer that his "alann got nessed up." (Employer's Ex. 2, R.R. at 104a.)
Oct. 4, 2010	Twenty-four minutes before his shift starts, Claimant texts Employer that he has an appointment (of an unspecified nature) and that he will be in after that. Later that day, this time two hours and eight minutes after his shift starts, Claimant texts employer that he has another appointment. (Employer's Ex. 2, R.R. at 102a.)
Oct. 5, 2010	Thirty-seven minutes after his shift starts, Claimant texts Employer that his power is out and asks if he should come to work. (Employer's Ex. 2, R.R. at 102a.)
Oct. 12, 2010	Fifteen minutes before his shift starts, Claimant texts Employer that he will be in around 9:00 a.m. (30 minutes late) without giving an excuse. (Employer's Ex. 2, R.R. at 103a.)
Oct. 13, 2010	Six minutes after his shift starts, Claimant texts Employer that he is at the doctor's office. (Employer's Ex. 2, R.R. at 103a.)
Oct. 19, 2010	Fifty minutes after his shift starts, Claimant texts Employer that he lost power from a storm. (Employer's

based on the lack of justification Claimant offered for his absences and tardiness. Other than the last absence, Claimant's justification was, essentially, everyone is late a couple of times a month for one reason or another. This is not the type of good [*16] cause justification contemplated in *Adept Corporation*.

Moreover, this Court has rejected a similar argument, "as not meritorious," from a claimant who asserted that, because his last absence was "justified by his illness," he should be granted benefits. *Dobson*, 425 A.2d at 1220. In doing so we noted that, "[t]he record is clear that claimant's history and pattern of absences and tardiness precipitated his discharge, not any one incident" and that the claimant's argument was "belied by [his] own testimony that he could not particularize which latenesses were due to illness, while admitting that oversleeping and personal problems were among the causes of his unpredictable attendance." *Id.* In *Dobson*, notwithstanding the Board's finding that Claimant's last absence was justified, we stated that it was clear from the record "that [Claimant's] history and pattern of absences precipitated his discharge, not any one incident." *Id.* We thus found that claimant ineligible for benefits.

As in *Dobson*, and reviewing this matter as a question of law, we conclude that Claimant's pattern of habitual unexcused tardiness and absences, including 19 instances of unexcused absences and tardiness in a seven-[*17] month period, fell below [*194] the standard of behavior Employer had the right to expect of Claimant as its employee and were inimical to Employer's interests in completing its work in a timely fashion. Therefore, Employer satisfied its burden of showing that Claimant's actions did rise to the level of willful misconduct which, absent his showing good cause, renders Claimant ineligible for UC benefits under Section 402(e) of the Law.

Having concluded that Employer met its burden of proving willful misconduct, the burden shifted to Claimant to offer good cause to justify his numerous absences. *McKeesport*, 625 A.2d at 114. When asked to explain his ongoing tardiness and attendance issues, Claimant demonstrated a decidedly cavalier attitude toward Employer's reasonable expectation that he appear at work on time: "I mean, who's not late more than twice in one month due to, you know, this or that or the other thing. . . . Not that it should be allowed, but I mean, let's

unemployment benefits," but that "[a]n additional element, such as lack of good cause for the absence, is necessary" to deny UC benefits. *Id.* We held that an illness is [*14] good cause for an absence, and reversed the finding of willful misconduct. *Id.* This Court indicated that it did "not find that there is substantial evidence to support a finding that petitioner was not ill." *Id.* Thus, we concluded that the employer did not meet its burden of proving that the claimant's history of absences rose to the level of willful misconduct.

This matter is distinguishable from *Runkle*. Unlike the claimant's attendance history in *Runkle*, only three of Claimant's 19 absences appear to be related to his not feeling well or having a doctor's appointment. However, Claimant did not present any medical documentation to support those absences, as the claimant in *Runkle* did. It is apparent in *Runkle* that, in reversing the finding of willful misconduct, this Court looked not only at the last absences, which were justified, but at the claimant's other absences, many of which were also justified. The same cannot be said here, where Claimant offered no justification for his prior absences and late starts during the hearing.³ Accordingly, *Runkle* does not direct our analysis to this case.

3 The Board also relies on *Adept Corporation v. Unemployment Compensation Board of Review*, 62 Pa. Commw. 566, 437 A.2d 109 (Pa. Cmwlth. 1981), [*15] for the proposition that where, as here, a claimant's absence is due to transportation problems beyond the claimant's control and reports those problems to the employer, the claimant has not committed willful misconduct. However, what this Court held in *Adept Corporation* was that "[e]ven excessive absenteeism, where justified or where properly reported according to company policy . . . does not disqualify a claimant from receiving unemployment compensation benefits." *Id.* at 110 (emphasis added). We then reviewed the claimant's history of absences and concluded that he "always properly reported his absences," "received permission, on several occasions, to be absent from work for various personal reasons," was absent "due to illness for which he frequently sought medical attention," or because of transportation difficulties that were beyond the claimant's control. *Id.* at 110-11. Like *Runkle*, *Adept Corporation* is readily distinguishable

Dec. 13, 2010	Ex. 2, R.R. at 103a.) Two minutes before his shift starts, Claimant texts Employer that he is at a doctor's appointment. (Employer's Ex. 2, R.R. at 103a.)
Dec. 27, 2010	Claimant receives written and verbal warning for excessive tardiness. (Written Warning of December 27, 2010, R.R. at 63a.)
Feb. 7, 2011	Claimant one hour and 24 minutes late without a valid excuse. (Attachment to Employer Questionnaire, R.R. at 31a-32a.)
Feb. 13, 2011	Claimant absent from work without a valid excuse. (Attachment to Employer Questionnaire, R.R. at 31a-32a.)
Feb. 16, 2011	Claimant one hour and 17 minutes late without a valid excuse. (Attachment to Employer Questionnaire, R.R. at 31a-32a.)
Feb. 21, 2011	Claimant absent from work without a valid excuse. (Attachment to Employer Questionnaire, R.R. at 31a-32a.)
Feb. 22, 2011	Claimant one hour and 54 minutes late without a valid excuse. (Attachment to Employer Questionnaire, R.R. at 31a-32a.)
March 1, 2011	Claimant one hour and 41 minutes late without a valid excuse. (Attachment to Employer Questionnaire, R.R. at 31a-32a.)
March 7, 2011	Claimant absent from work without a valid excuse. (Attachment to Employer Questionnaire, R.R. at 31a-32a.)
March 10, 2011	Claimant 29 minutes late without a valid excuse. (Attachment to Employer Questionnaire, R.R. at 31a-32a.)

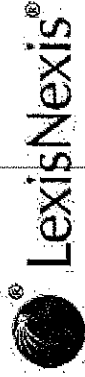
March 14-21, 2011	Claimant scheduled to be on vacation for his wedding in Mexico. (FOF ¶ 2.5)
March 22, 2011	Claimant missed work because his return flight from Mexico was overbooked. (FOF ¶ 6.)
April 4, 2011	Claimant's employment terminated due to excessive unexcused tardiness and absenteeism. (FOF ¶ 9.)

[*192]
This [*11] history evidences an excessive number of absences and tardy starts in the seven months before Claimant went on his approved trip to Mexico. The question of whether a claimant's actions rise to the level of willful misconduct is one of law, which this Court reviews *de novo*. *Ducherry*, 898 A.2d at 1208. We are bound by the Board's credibility determinations. *Guthrie v. Unemployment Compensation Board of Review*, 738 A.2d 518, 521 (Pa. Commw. 1999), and, here, the Board did not find that Employer discharged Claimant for his March 22, 2011 absence, which was excused. Rather, it found that Claimant was discharged based on his history of absenteeism and tardiness. Thus, although the Board credited Claimant's testimony regarding his last absence, the Board also found Employer's witnesses credible about Claimant's earlier unexcused tardiness and absences, which Claimant did not dispute or attempt to explain at the hearing. The Board further credited Employer's testimony that this was the reason Employer discharged Claimant.

As mentioned above, an employer has the right to expect an employee to attend work when scheduled and to be on time. *Fritz*, 446 A.2d at 333. Over the seven months prior to [*12] his discharge, Claimant was tardy or absent on 19 occasions. Indeed, Claimant was tardy without an explanation two days before he left for his wedding. Claimant continued to be tardy and absent in spite of Employer's two written warnings regarding Claimant's ongoing attendance issues and Employer's attempts to assist Claimant in avoiding more instances of tardiness by changing his start time and offering to telephone Claimant in the morning to make sure he was awake. The Shop Manager testified that Claimant's inability to arrive at work on time hindered Employer's ability to complete its work. Based on this evidence, Employer demonstrated that Claimant had a pattern of habitual, unexcused tardiness and absences. Moreover, 19 instances of unexcused absences and tardiness in a seven month period is excessive.

The Board relies on *Runkle v. Unemployment Compensation Board of Review*, 104 Pa. Commw. 275, 521 A.2d 530 (Pa. Commw. 1987), to support its position that "even where an employer proves a pattern of excessive absenteeism as the cause for the claimant's discharge, the claimant nevertheless will be eligible for benefits if the final absence was justified." (Board Br. at 6-7). According to the Board, it [*13] found Claimant's testimony regarding his last absence credible, a determination not reviewable by this Court, and concluded that, because Claimant's last absence was due to problems with transportation, beyond Claimant's control, his absence was justified and Claimant did not commit willful misconduct.

In *Runkle*, the claimant had been warned and suspended for five days for absenteeism issues and was ultimately discharged following a week of being absent. The claimant indicated that she had been absent during that time period due to medical issues, which were documented in the claimant's medical evidence. "The referee based his conclusion of willful misconduct primarily on [claimant's] last period of absenteeism." *Runkle*, 521 A.2d at 531 (emphasis added). However, we pointed out that some of the claimant's other absences were explained by doctors' notes, [*19] her having surgery, and problems with transportation. This Court noted that "[a]bsenteeism alone, while grounds for discharge, is not a sufficient basis for denial of



2 of 66 DOCUMENTS

Howard Hanna Holdings, Inc., Petitioner v. Unemployment Compensation Board of Review, Respondent

No. 1430 C.D. 2013

COMMONWEALTH COURT OF PENNSYLVANIA

2014 Pa. Commw. Unpub. LEXIS 197

March 14, 2014, Submitted

April 3, 2014, Decided

April 13, 2014, Filed

NOTICE: OPINION NOT REPORTED

JUDGES: [*1] BEFORE: HONORABLE DAN PELLEGRINI, President Judge, HONORABLE MARY HANNAH LEAVITT, Judge, HONORABLE JAMES GARDNER COLINS, Senior Judge. MEMORANDUM OPINION BY PRESIDENT JUDGE PELLEGRINI.

OPINION BY: DAN PELLEGRINI

OPINION

MEMORANDUM OPINION BY PRESIDENT JUDGE PELLEGRINI

Howard Hanna Holdings, Inc. (Employee) petitions for review of the order of the Unemployment Compensation Board of Review (Board) affirming the decision of a Referee that Melissa A. Forzini (Claimant) is not ineligible for emergency unemployment compensation (EUC) benefits under Section 4001(b) of Title IV of the Supplemental Appropriations Act of 2008 (EUC Act) because she did not engage in willful misconduct under Section 402(e) of the Unemployment Compensation Law (Law) due to excessive absenteeism during her probationary period. We affirm.

1. Pub.L. 110-252, 122 Stat. 2323, 54697 (b), 26 U.S.C. §5304 Note, Section 4001(e) of the EUC

Act, provides that a "State agency ... will make payments of [EUC benefits] to individuals who—(1) have exhausted all rights to regular compensation under the State law or under Federal law with respect to a benefit year..." Section 4001(b)(2) provides, in relevant part, that "[t]he terms and conditions of the [*2] State law which apply to claims for regular compensation and to the payment thereof (including terms and conditions relating to availability for work, active search for work, and refusal to accept work) shall apply to claims for [EUC benefits] and the payment thereof."

2. Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. §802(e). That section provides, in relevant part:

An employe shall be ineligible for compensation for any week --

(e) In which his unemployment is due to his discharge or temporary suspension from work for willful misconduct connected with his work, irrespective of whether or not such work is "employment" as defined

in this act.

Although the Law does not define the term "willful misconduct," the courts have defined it as:

(1) wanton or willful disregard for an employer's interests; (2) deliberate violation of an employer's rules; (3) a disregard for the standards of behavior which an employer can rightfully expect of an employee; or (4) negligence indicating an intentional disregard of the employer's interest or an employee's duties or obligations.

Philadelphia Parking Authority v. Unemployment Compensation Board of Review, 1 A.3d 965, 968 (Pa. Cmwh. 2010). [*3] The employer bears the burden of proving that a claimant's actions constitute willful misconduct. *McKeesport Hospital v. Unemployment Compensation Board of Review*, 625 A.2d 112, 114 (Pa. Cmwh. 1993). If the employer satisfies its burden, the burden shifts to the employee to show that he or she had good cause for his or her conduct. *Grand Sport Auto Body v. Unemployment Compensation Board of Review*, 55 A.3d 186, 190 (Pa. Cmwh. 2012). A claimant has good cause if his or her actions are justifiable and reasonable under the circumstances. *Id.* Although unexcused absences from the workplace may constitute willful misconduct, even excessive absenteeism, when justified and properly reported, does not disqualify a claimant from receiving unemployment compensation benefits. *Sprague v. Unemployment Compensation Board of Review*, 647 A.2d 673, 680 (Pa. Cmwh. 1994). Whether an employer's actions constitute willful misconduct is a question of law subject to *de novo* review and must be determined based on a consideration of all of the circumstances. *Grand Sport Auto Body*, 55 A.3d at 190.

Claimant worked as a sales manager for Employer from January 7, 2013, through February 8, 2013. Claimant reported [*4] off work on January 21, 2013, due to an automobile accident on January 18, 2013,

because she was unable to secure transportation for the one-hour commute over the weekend. Claimant left work early on January 25, 2013, due to a snow emergency. Claimant reported off sick on February 1, 2013. Because she had reported to work early on February 4, 2013, Claimant left work 15 minutes early that day without management approval. Claimant was warned in writing regarding her attendance on February 7, 2013.

3 Prior to her employment, in May 2012, Claimant was mailed a notice of her financial eligibility for EUC benefits based on her regular unemployment compensation benefit application, dated October 2, 2011.

On February 8, 2013, Claimant was scheduled to work her regular hours, from 8:30 a.m. to 5:15 p.m. Claimant called Employer to report that her dog was sick and that she may not be able to make it to work. At Employer's urging, Claimant made it to work on time. Claimant called her veterinarian and was told that her dog needed immediate veterinary assistance. Claimant left work at 9:45 a.m. to take her dog to the veterinarian. Employer requested and expected Claimant to return to work at least [*5] half of a shift that day. Claimant ended up taking her dog to an emergency clinic in the afternoon of February 8, 2013. Employer discharged Claimant that afternoon for excessive absenteeism during her 90-day probationary period.

Claimant filed a claim with the UC Service Center which determined that she was not eligible for benefits under Section 402(e) and Employer appealed. Before the Revisor, Suzanne Blasinsky (Blasinsky), Employer's Sales Manager, testified that Claimant called on Saturday, January 19, 2013, to report that she had a car accident the prior evening and that she was not going to make it to work the following Monday, (N.T. 5/14/13* at 6). Blasinsky stated that on January 25, 2013, Claimant left work early because she was fearful of driving in the snow and that she called off sick on February 1, 2013. (Id.). Blasinsky testified that Claimant was seen leaving work 15 minutes early on February 4, 2013, without management approval. Blasinsky stated that Claimant had come to work a little early that day, but Employer's protocol is that she needed to let it know that she would be leaving a little early. (Id. at 8). Blasinsky testified that Claimant's early departure prompted [*6] a conversation with Claimant and the operations manager on February 7, 2013, to talk about her absenteeism and being away from

her desk, and Claimant was provided with written documentation of the meeting. (*Id.* at 6).

4 "N.T. 5/14/13" refers to the transcript of the Referee's hearing.

Blasinsky testified that Claimant reported to work at 8:30 a.m. on February 8, 2013, but sent Blasinsky an e-mail at 9:30 a.m. that she was leaving to take her dog to the veterinarian because it was sick. (N.T. 5/14/13 at 7). Blasinsky stated that she asked Claimant at 11:30 to work at least a half-day later that day, from 3:00 p.m. to 7:00 p.m.; that Claimant asked if she could come in on Saturday; and that she told Claimant that Employer could not accommodate that request because Claimant was in the training period. (*Id.*) Blasinsky testified that Claimant called her at 3:30 p.m. to report that she could not report to work because her dog needed to go to the emergency veterinarian and that she was not cleaned up enough to come into the office. (*Id.* at 7-8). Blasinsky stated that Claimant was discharged at 4:00 or 4:30 p.m. that day because Employer wanted her the day before about absenteeism and she failed [redacted] to make it to work that day. (*Id.* at 8).

Claimant admitted to the days that she was absent from work. (N.T. 5/14/13 at 9). Regarding her absence on January 21, 2013, Claimant testified that she was in the automobile accident and that she couldn't get a rental car to get to work. (*Id.* at 10, 12). Claimant stated that she left early on January 25, 2013, because it was optional for employees to leave based on the weather and she took the option to leave early because she lives so far away from work. (*Id.* at 9). Claimant admitted that she should have notified Blasinsky when she left 15 minutes early on February 4, 2013. (*Id.* at 10).

Regarding her absence on February 8, 2013, Claimant testified that her 10-week-old dog fell off the bed while she was getting ready for work. (N.T. 5/14/13 at 10). Claimant stated that the dog started to have seizures and was throwing up and defecating, so she called Blasinsky who asked her to come into work and suggested that the dog could stay with a neighbor. (*Id.*) Claimant testified that she really wanted to take the dog to a veterinarian, but that she left the dog with a neighbor and went into work because it was too early to call the veterinarian. (*Id.*) [redacted] Claimant stated that she called the veterinarian as soon as she got to the office and the veterinarian told her that she needed to bring the dog in immediately so she took the dog to the closest hospital,

the Butler Veterinary Hospital. She testified that the hospital called her at 2:30 or 3:00 p.m. to let her know that the dog was not responding to treatment and was losing heartbeat and referred her to North Hills Veterinary. (*Id.* at 10-11). Claimant stated that she called Blasinsky to notify her that she would not be able to make it in for the half-day. (*Id.* at 11). She testified that she received a call from Blasinsky informing her that she was let go while she was picking the dog up from Butler Veterinary Hospital to transport it to North Hills Veterinary. (*Id.*) Records dated February 8, 2013, from Veterinary Emergency Clinic, Inc. and Butler Veterinary Associates, Inc. were admitted into evidence and outlined the treatments administered to Claimant's dog. (*Id.* at 12; Reproduced Record (R.R.) at 45a-49a).⁵

5 Specifically, the records from Butler Veterinary Associates, Inc. contains the following Note:

3PM -- Had episode of being unresponsive, bradycardic, slow breathing, gums pale [redacted] and gray. BQ=360.

Admin. 0.03cc epinephrine IV and HR improved. Responded and began breathing better too.

After a few minutes started to have a seizure as well. Stopped on its own w/o treatment.

Called O and informed. Offered referral to PVSEC.

O calls to transfer.

(R.R. at 48a).

The Referee found:

In the present case, the employer has established that the claimant was excessively absent from work considering her brief tenure with the company and the fact that she was still under probation. However, the claimant has shown that she had good cause for the absenteeism. The Referee in no way questions the employer's right to discharge the claimant,

but willful misconduct has not been shown and benefits cannot be denied under Section 402(e) of the Law.

(Reference's 5/16/13 Decision at 2). As a result, the Referee affirmed the UC Service Center's determination.

Employer appealed the Referee's decision to the Board which affirmed, specifically adopting the Referee's findings and conclusions. (Board's 7/24/13 Order at 1). This appeal by Employer followed in which Employer again argues that Claimant did not have good cause for her excessive absenteeism thereby precluding the award of benefits under Section 402(e) [*10] of the Law.⁶

6 Our review of the Board's decision 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. *Middletown Township v. Unemployment Compensation Board of Review*, 40 A.S3 217, 222 n.8 (Pa. Cmwlth. 2012).

An employer has the right to expect that its employees will attend work when they are scheduled, that they will be on time, and that they will not leave work early without permission. *Fritz v. Unemployment Compensation Board of Review*, 446 A.2d 330, 333 (Pa. Cmwlth. 1989). As a result, excessive absenteeism and tardiness may constitute willful misconduct as a disregard of the standards that an employer has a right to expect of its employees. *Id.*; *American Process Lettering, Inc. v. Unemployment Compensation Board of Review*, 412 A.2d 1123, 1125 (Pa. Cmwlth. 1980); *Cully v. Unemployment Compensation Board of Review*, 397 A.2d 40, 41 (Pa. Cmwlth. 1979).⁷ Although an advance warning is not a precondition or prerequisite to support a discharge for willful misconduct, a prior warning is relevant in that it reflects the employer's attitude toward his employment [*11] and adds to the willfulness of the misconduct. *American Process Lettering, Inc.*, 412 A.2d at 1125-26. However, even where a history of absenteeism is present, a claimant is entitled to receive compensation benefits where the final absence which precipitated his or her discharge was based on good cause. See *Trixie Sportswear, Inc. v. Unemployment Compensation Board of Review*, 315 A.2d 332, 334 (Pa. Cmwlth. 1980). But cf. *Grand Sport Auto Body*, 55 A.3d at 192-94 (holding that a claimant's extensive absenteeism and history of

willfulness constituted willful misconduct even if the claimant's final absence before discharge was justified).

7 While absenteeism standing alone is grounds for discharge, it is not willful misconduct. *Lyon v. Unemployment Compensation Board of Review*, 533 A.2d 1144, 1145 (Pa. Cmwlth. 1997). Absenteeism can constitute willful misconduct if any of the following additional elements are present: (1) excessive absenteeism; (2) failure to notify the employer of the absence in advance; (3) lack of good or adequate cause for the absence; (4) disobedience of existing employer rules, regulations, or policy regarding absenteeism; and (5) disregard of warnings regarding absenteeism. [*12] *Fedey v. Unemployment Compensation Board of Review*, 325 A.2d 642, 643 (Pa. Cmwlth. 1974).

The Board did not err in determining that Claimant established good cause for her absence in this case. Claimant's January 21, 2013 absence was based on good cause because she was in an automobile accident and did not have transportation to make the one-hour commute to work. See, e.g., *Adopt Corp. v. Unemployment Compensation Board of Review*, 437 A.2d 109, 111 (Pa. Cmwlth. 1981) (holding that if a claimant is absent due to transportation problems beyond his control and properly reports his absence, he may not be found to have engaged in willful misconduct and benefits may not be denied on that basis).

Claimant had good cause for leaving the office early on January 25, 2013, as she was excused from work based on her testimony⁸ that Employer gave its employees the option to leave due to the weather and she exercised the option to leave early because she lives so far from work. (N.T. 5/14/13 at 9). Claimant admitted that she should have notified Blasinsky that she left 15 minutes early on February 4, 2013; however, Blasinsky acknowledged that Claimant had arrived at work early that day and that leaving [*13] early was a permissible practice in the office, but that Employer should have been notified according to protocol. (*Id.* at 8).

8 We must "examine the testimony in the light most favorable to the party in whose favor the fact-finder has ruled, giving that party the benefit of all logical and reasonable inferences from the testimony...." *Pean Hills School District v. Unemployment Compensation Board of Review*.

496 Pa. 620, 630, 437 A.2d 1213, 1218 (1991).

Claimant's February 1, 2013 absence was also based on good cause because it is undisputed that she was ill that day. See, e.g., *Sprague*, 647 A.2d at 680 (holding that the claimant's absenteeism did not constitute disqualifying willful misconduct where she properly reported her inability to work six times and gave illness as the reason each time); *McKeesport Hospital*, 625 A.2d at 114 (holding that illness is a good cause defense to a charge of willful misconduct due to "excessive absenteeism").

Finally, Claimant's February 8, 2013 absence was also based on good cause because she reasonably felt compelled to obtain the necessary emergency veterinary care for her injured dog at the time that she was told to report to work thereby precluding a [*14] finding of willful misconduct. See, e.g., Section 5511(e)(1) of the Crimes Code, 18 Pa. C.S. §5511(e)(1) ("A person commits an offense if he ... neglects any animal as to which he has a duty of care, whether belonging to himself or otherwise, ... or deprives any animal of necessary ... veterinary care..."); *Frimmo v. Unemployment Compensation Board of Review*, 466 Pa. 81, 87, 351 A.2d 631, 634 (1976) (holding that good cause is established when the claimant's action is "justifiable or reasonable under the circumstances.");⁹ As a result, the Board did not err in determining that Claimant demonstrated the requisite good cause for her absence and that she was not ineligible for benefits under Section 402(e) of the Law.⁹

9 Employer's reliance on *Shaddock v. Unemployment Compensation Board of Review*, 477 A.2d 1298 (Pa. Cmwlth. 1984), is misplaced. In that case, this Court noted that "[i]ncluding in this record indicates the nature of the child's illness or whether it was necessary for Claimant to miss a whole day's work to care for the child.... Considering the many warnings and the two-day suspension, we believe it behooved Claimant to make every effort to report for work or to demonstrate [*15] that the child's illness justified her absence." *Shaddock*, 477 A.2d at 1299, 1300 (citations omitted). In contrast, as noted above, in this case, Claimant presented the records from the veterinary clinics demonstrating the extent of her dog's injuries and the necessity for immediate veterinary care thereby justifying her absence from work.

Accordingly, the order of the Board is affirmed.

DAN PELLBGRUNT, President Judge

ORDER

AND NOW, this 3rd day of April, 2014, the order of the Unemployment Compensation Board of Review, dated July 24, 2013, at No. B-533906, is affirmed.

DAN PELLBGRUNT, President Judge



James Lyons, Petitioner v. Commonwealth of Pennsylvania, Unemployment Compensation Board of Review, Respondent

No. 506 C.D. 1986

Commonwealth Court of Pennsylvania

111 Pa. Commw. 417, 533 A.2d 1144, 1987 Pa. Commw. LEXIS 2662

March 4, 1987, Submitted on Briefs
December 3, 1987, Decided

PRIOR HISTORY: [***1] Appeal from the Order of the Unemployment Compensation Board of Review, in case of James Lyons, No. B-246331.

DISPOSITION: Reversed.

COUNSEL: Peter V. Marks, Jr., with him, Basil L. Meranda, Meranze & Katz, for petitioner.

Clifford F. Blaze, Deputy Chief Counsel, for respondent.

JUDGES: Judges MacPhail and Barry, and Senior Judge Narek, sitting as a panel of three. Opinion by Senior Judge Narek.

OPINION BY: NAREK

OPINION

[*418] [**1145] James Lyons (Claimant) has appealed from an order of the Unemployment Compensation Board of Review (Board) which affirmed a referee's decision denying him unemployment compensation benefits pursuant to Section 402(e) of the Unemployment Compensation Law (Law), Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. § 602(e). We reverse.

Claimant was employed by Sterling Supply (Employer) as a warehouse person. He was discharged

for failing to report an absence from work between September 23 and October 4, 1985. At the referee's hearing, Claimant and Employer's office manager appeared, both unrepresented by counsel. Claimant testified that his absence was due to illness, and that he had called his Employer [***2] on the first day he was absent and left a message with the telephone operator. The office manager testified that Employer's policy was that an employee must report an absence to his immediate supervisor within three days of the absence and that Claimant had not called to report his absence.

[*419] The Board, which entered its own Findings of Fact and Conclusions of Law, determined that the Employer had a rule for reporting absences, that Claimant was aware that he had to report an absence, and that Claimant had not reported the absence in question. On appeal, Claimant argues that these findings are not supported by substantial competent evidence, which, under *Estate of McColvert v. State Employees' Retirement Board*, 512 Pa. 377, 517 A.2d 523 (1986), would be grounds for this Court to reverse the decision of the Board.

The parties agree with the general rule that it is an employer's burden to prove that a claimant has been guilty of willful misconduct so as to preclude unemployment compensation benefits. *Alberston v. Unemployment Compensation Board of Review*, 69 Pa. Commonwealth Ct. 394, 452 A.2d 275 (1982). Further, it is undisputed that absentees alone, while they [***3] may

the grounds for discharge, do not constitute willful misconduct. *Yargus v. Unemployment Compensation Board of Review*, 87 Pa. Commonwealth Ct. 158, 486 A.2d 1050 (1985). However, willful misconduct may be established where an employer proves that it has a company policy with respect to reporting absences, and that the employee was aware of that policy and failed to comply with it. *Fargger v. Unemployment Compensation Board of Review*, [**1145] 73 Pa. Commonwealth Ct. 278, 457 A.2d 1333 (1983).

Chairman disputes two of the Board's findings. He contends that the finding that he was aware of the Employer's policy was not supported by substantial evidence. Further, he argues that the Employer's testimony with respect to his failure to report his absence was entirely based upon hearsay and, as such, may not form the basis for the Board's finding. From our review of the brief record of the testimony before the referee, we must agree with both of these contentions.

[*420] Even giving the Employer the benefit of all reasonable inferences from the testimony, see e.g., *Taylor v. Unemployment Compensation Board of Review*, 474 Pa. 351, 378 A.2d 829 (1977), we must [***4] conclude that there was no evidence to support the Board's conclusion that Chairman was aware of a specific policy for reporting absences. Chairman himself denied such averments. While the Board as fact-finder was certainly entitled to reject Chairman's testimony as not credible, see e.g., *Schulz v. Unemployment Compensation Board of Review*, 54 Pa. Commonwealth Ct. 276, 420 A.2d 1358 (1980), there was a complete failure by the Employer to

demonstrate that Chairman had been informed in any way of the policy. Thus, the Board's finding to that effect was not based upon substantial evidence.

The Employer's failure was compounded by the fact that its witness, in stating that Chairman had not reported his absence, was not speaking from first-hand knowledge. Contradicting Chairman's testimony that he had called Employer's telephone operator to report off, the office manager testified that neither the operator nor Chairman's supervisor had spoken to Chairman. This testimony was obviously hearsay. While Chairman did not object to the testimony, it could only serve as the basis for the Board's finding that Chairman did not report his absence had it been corroborated by other, [***5] competent evidence. *Ziegler v. Unemployment Compensation Board of Review*, 70 Pa. Commonwealth Ct. 43, 452 A.2d 1111 (1982); *Ellis v. Unemployment Compensation Board of Review*, 56 Pa. Commonwealth Ct. 628, 423 A.2d 496 (1981). There is no corroborating evidence in the record before us, and, accordingly, the Board's finding on this point will not stand.

Because the remaining findings by the Board do not establish willful misconduct as a matter of law, we reverse its order and remand for computation of benefits.

[*421] Order

And Now, this 31d day of December, 1987, the Order of the Unemployment Compensation Board of Review, dated January 29, 1986, is reversed.



1 of 50 DOCUMENTS

Glen A. Keefer, Petitioner v. Commonwealth of Pennsylvania, Unemployment Compensation Board of Review, Respondent

No. 1794 C.D. 1978

Commonwealth Court of Pennsylvania

47 Pa. Commw. 281; 407 A.2d 934; 1979 Pa. Commw. LEXIS 2209

May 11, 1979, Argued
November 13, 1979, Decided

SUBSEQUENT HISTORY: Reargument Filed and Denied.

PRIOR HISTORY: Appeal from the Order of the Unemployment Compensation Board of Review in case of In Re: Claim of Glenn A. Keefer, No. B-160929.

DISPOSITION: Affirmed.

CASE SUMMARY:

PROCEDURAL POSTURE: Petitioner employee appealed the decision from the Unemployment Compensation Board of Review (Pennsylvania), which denied him benefits on the ground that his excessive absences, late arrivals, and early departures from work constituted willful misconduct under § 402(e) of the Pennsylvania Unemployment Compensation Law, 43 Pa. Cons. Stat. § 802(e).

OVERVIEW: Petitioner employee was denied benefits on the ground that his excessive absences, late arrivals, and early departures from work constituted willful misconduct under § 402(e) of the Pennsylvania Unemployment Compensation Law, 43 Pa. Cons. Stat. § 802(e). The lower court's decision was affirmed. The court held that the record supported the lower court's finding that petitioner had a record of excessive absenteeism, and that, in accordance with the employer's

procedure, petitioner received a written warning, followed by a three-day suspension, before he was discharged. Excessive unjustified absenteeism can constitute willful misconduct because it may evidence a wanton and willful disregard of the employer's interest or a disregard of the standards of behavior which an employer can rightfully expect from his employee. Although petitioner may have had justifiable reasons for his poor attendance, the record showed that he failed to give his employer adequate notice of those reasons. Petitioner's action represented substantial disregard for the standards of behavior that his employer was entitled to expect.

OUTCOME: The lower court's decision that denied petitioner employee unemployment benefits was affirmed. The court held that the lower court properly concluded that petitioner's behavior constituted willful misconduct.

LexisNexis(R) Headnotes

[Administrative Law > Judicial Review > Reviewability > Factual Determinations](#)
[Administrative Law > Judicial Review > Standards of Review > Substantial Evidence](#)
[Civil Procedure > Trials > Jury Trials > Province of](#)

Court & Jury
[EN1] In an unemployment compensation case, review by the Commonwealth Court is limited to questions of law and a determination of whether findings of fact are supported by substantial evidence.

Labor & Employment Law > Disability & Unemployment Insurance > Unemployment Compensation > Eligibility > General Overview

[EN2] Excessive unjustified absenteeism can constitute willful misconduct because it may evidence a wanton and willful disregard of the employer's interest or a disregard of the standards of behavior which an employer can rightfully expect from his employee.

COUNSEL: *Jolan Stember*, for appellant.

Elsa D. Newman, Assistant Attorney General, with her *Gerald Gornish*, Attorney General, for appellee.

JUDGES: Judges Metzger, Roggers and Craig, sitting as a panel of three. Opinion by Judge Craig.

OPINION BY: CRAIG

OPINION

[**33] [**935] Claimant Glen Keffer appeals from the Unemployment Compensation Board of Review's decision denying him benefits on the ground that his excessive absences, late arrivals and early departures from work constituted willful misconduct, under Section 402(a) of the Pennsylvania Unemployment Compensation Law.¹

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

The record supports the board's finding that claimant had a record of excessive absenteeism, and that, in accordance with the employer's [**2] procedure, claimant received a written warning, followed by a three-day suspension, before he was finally discharged on December 21, 1977.

The record shows that beginning in January, 1977, claimant was absent 25 days, quit early 16 times and arrived late for 8 shifts, before he received a written warning in August. Claimant was suspended on September 13, 1977 after accumulating an additional 5

absences and 2 late arrivals. Before he was discharged in December, 1977, claimant missed 5 days, left early 4 times and was late for work on 3 occasions.

Claimant alleges, however, that a key finding of the board, that he failed to report his absences properly, is not supported by substantial evidence. Accordingly, his contention is that the absenteeism cannot be considered willful misconduct.

[EN1] In an unemployment compensation case, review by the Commonwealth Court is limited to questions of law and a determination of whether findings of fact are supported by substantial evidence. *Callagher v. Unemployment Compensation Board of Review*, [**284] 36 Pa. Commonwealth Ct. 599, 388 A.2d 785 (1978).

Claimant's foreman, as the employer's agent, testified at the referee's hearing that: [**3] (1) claimant obtained a slip from a nurse in the Relief Department every time he left work early, which was the customary practice; and (2) claimant followed the proper company procedure requiring him to call in his absences by phone.

However, [EN2] excessive unjustified absenteeism can constitute willful misconduct because it may evidence a wanton and willful disregard of the employer's interest or a disregard of the standards of behavior which an employer can rightfully expect from his employee. *Unemployment Compensation Board of Review v. Young*, 23 Pa. Commonwealth Ct. 458, 353 A.2d 487 (1976).

Claimant introduced a statement from his doctor, written after his discharge, indicating generally that claimant suffered from a condition which resulted in frequent headaches, causing him to miss work. As in *Young, supra*, where doctor's certificates were presented relating to only 19 of 79 days of absence (and only 5 certificates specifically indicated illness as a reason for absence) we note here that claimant failed contemporaneously to communicate a reason. [**936] Specifically justifying each of the absences. The foreman testified that he had no knowledge of claimant's physical [**4] condition.

Although the claimant might have had justifiable reasons for his poor attendance, the record indicates that he failed to give his employer adequate notice of those reasons.

Considering claimant's history of absenteeism and the employer's issuance of warnings, we believe that claimant's action represented substantial disregard for the standards of behavior which his employer was [**285] entitled to expect. *Young, supra*, 23 Pa. Commonwealth Ct. at 463, 353 A.2d at 490.

The Board properly concluded that claimant's

behavior constituted willful misconduct. Therefore, we affirm the order of the Board.

Order

And Now, this 13th day of November, 1979, the decision of the Unemployment Compensation Board of Review, dated July 3, 1978, is affirmed.

10 Pa. Commw. 90, *, 309 A.2d 165, **, 1973 Pa. Commw. LEXIS 499, ***

Kentucky Fried Chicken of Altoona, Inc., Appellant, v. Unemployment Compensation Board of Review, Appellee

No. 417 C.D. 1972

Commonwealth Court of Pennsylvania

10 Pa. Commw. 90; 309 A.2d 165; 1973 Pa. Commw. LEXIS 499

May 11, 1973, Argued
September 7, 1973, Decided

PRIOR HISTORY: [***1] Appeal from the Order of the Unemployment Compensation Board of Review in case of In Re: Claim of Ronald R. Crist, No. 71-6-A-219

DISPOSITION: Reversed and remanded.

CASE SUMMARY:

PROCEDURAL POSTURE: Appellant employer challenged an order of appellee Unemployment Compensation Board of Review (Pennsylvania) that awarded compensation to a claimant and vacated its prior order that had affirmed the denial of benefits by the Pennsylvania Bureau of Employment Security and the referee based on the claimant's willful misconduct.

OVERVIEW: The claimant filed a claim for unemployment compensation. The Bureau and the referee denied the claimant's request for benefits based on findings of the claimant's "willful misconduct" in failing, as restaurant manager, to provide for an adequate supply of food to meet the Labor Day demand at the employer's restaurant. The Board initially upheld the denial of benefits to the claimant by the Bureau and the referee. Later, the Board, on its own motion, absent a petition for rehearing or reconsideration and without further opportunity to be heard having been granted to the parties, vacated its first order and issued a second order that reversed the initial order and granted benefits to the claimant. The employer challenged the Board's order. The court reversed and remanded because the Board's actions failed to meet the requirements of due process of law that applied equally to proceedings before administrative tribunals and judicial bodies.

OUTCOME: The court reversed and remanded the Board's order that, without a petition for reconsideration or a hearing, vacated its prior order and granted benefits to the claimant.

CORE TERMS: willful misconduct, reconsideration, unemployment compensation, oral argument, vacated, vacate, issuance, espoused, deems, chicken, principle of law, initial order, legal principles, administrative body, administrative agency, employer's interest, misconception, unemployment, mechanical, delineated, awarding, willful, notice, prior order, entitled to benefits, termination, corrected, valuation, referee

LEXISNEXIS(R) HEADNOTES

Administrative Law > Judicial Review > Reviewability > Factual Determinations
Civil Procedure > Trials > Jury Trials > Province of Court & Jury
Labor & Employment Law > Disability & Unemployment Insurance > Unemployment

Compensation > Review

HN12 In unemployment compensation cases, the court's scope of review, absent fraud, is limited to a determination as to whether the Pennsylvania Unemployment Compensation Board of Review's findings are supported by the evidence, and questions of law.

Administrative Law > Agency Adjudication > Review of Initial Decisions

Evidence > Procedural Considerations > Burdens of Proof > General Overview

HN2 An administrative agency, on its own motion, having provided the proper notice and explanation, may correct typographical, clerical, and mechanical errors obviated and supported by the record. It may likewise correct factual errors which are not in dispute. It may not, however, absent a petition for reconsideration or the granting of the opportunity to be heard by way of oral argument or brief, reverse itself on the substantive issues previously decided. On reconsideration, the party seeking the same bears the burden of proving his position or that circumstances have changed. When an agency changes its position on its own motion, the parties must at least be given an opportunity to be heard by way of oral argument or brief.

Constitutional Law > Bill of Rights > Fundamental Rights > Procedural Due Process > Scope of Protection

HN3 Procedural due process does not require more than one hearing, so long as the requisite hearing is held before the final order becomes effective.

Administrative Law > Separation of Powers > Legislative Controls > General Overview

HN4 An administrative agency is a creature of the state and has only those powers and authority as have been granted to it by the legislature.

Labor & Employment Law > Disability & Unemployment Insurance > Unemployment Compensation > Review

HN5 The Pennsylvania Unemployment Compensation Act, 43 P.S. § 829, provides that an order of the Pennsylvania Unemployment Compensation Board of Review becomes final after 10 days, to allow for modification and reconsideration.

Constitutional Law > Bill of Rights > Fundamental Rights > Procedural Due Process > Scope of Protection

HN6 The requirement of due process of law in procedural matters applies equally to proceedings before administrative tribunals as well as judicial bodies.

Labor & Employment Law > Disability & Unemployment Insurance > Unemployment Compensation > Review

HN7 The Commonwealth Court of Pennsylvania disapproves of Johnson Unemployment Compensation Case, 201 Pa. Super. Ct. 489, 193 A. 2d 615 (1963).

Labor & Employment Law > Disability & Unemployment Insurance > Unemployment Compensation > Benefit Entitlements

Labor & Employment Law > Disability & Unemployment Insurance > Unemployment Compensation > Coverage & Definitions

Labor & Employment Law > Disability & Unemployment Insurance > Unemployment Compensation > Eligibility > Involuntary Unemployment

HN8 The Pennsylvania Unemployment Compensation Act, 43 P.S. § 802(e), provides that if a claimant is discharged for willful misconduct, he is not entitled to unemployment benefits. For behavior to constitute willful misconduct, it must evidence (1) the wanton and willful disregard of the employer's interest, (2) the deliberate violation of rules, (3) the disregard of standards of behavior which an employer can rightfully expect from his employee, or (4) negligence which manifests culpability, wrongful intent, evil design, or intentional and substantial disregard for the employer's

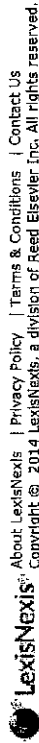
Therefore, we Order

And Now, this 7th day of September, 1973, the order of the Unemployment Compensation Board of Review dated March 22, 1972, in the above-captioned matter is set aside and it is hereby ordered that the matter is remanded to the Board for reconsideration; the parties are to be permitted an opportunity for oral argument and/or the submission of briefs; if the Board deems it necessary, rehearing is to be granted.

Source: Legal > /... / > PA State Cases, Combined [i] Terms: name(kentucky fried chicken and board or review) (Suggest Terms for My Search)

Date/Time: Wednesday, December 17, 2014 - 2:26 PM EST

- * Signal Legend:
 - Warning: Negative treatment is indicated
 - Questioned: Validity questioned by citing refs
 - Caution: Possible negative treatment
 - Positive treatment is indicated
 - Citing Refs. With Analysis Available
 - Citation information available
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interests or the employee's duties and obligations. This question is ultimately one of law and is twofold: (1) do those facts constitute willful misconduct, and (2) are the facts supported by the evidence?

COUNSEL: Benjamin I. Levine, Jr., with him Nelson, Campbell & Levine, for appellant. Sydney Rauber, Assistant Attorney General, with him Israel Packel, Attorney General, for appellee.

JUDGES: Judges Kramer, Mencer and Blatt, sitting as a panel of three. Opinion by Judge Kramer.

OPINION BY: KRAMER

OPINION

[*92] [*166] This is an appeal filed by Kentucky Fried Chicken of Altona, Inc. (Kentucky) from an order of the Unemployment Compensation Board of Review (Board) awarding compensation to Ronald Richard Crist (Crist).

Crist began working for Kentucky in December of 1963. Save for the time he served in the military, his employment was continuous until the date of his termination, September 25, 1971. He had been manager of one of Kentucky's restaurants from June, 1970. For approximately one and one-half months before his termination, Crist had been working seven days a week, nine hours a day. Kentucky stated that Crist's employment was terminated because he was not always present during the supper rush, [*167] and he failed to keep a schedule of the amount of chicken to be kept on hand at any given period. Kentucky asserts that the latter reason precipitated a lack of sufficient chicken on Labor Day, 1971. Crist proffers that business was slow just prior to the holiday, and that therefore he underestimated the amount necessary.

Crist applied for unemployment compensation benefits, which application was denied by the Bureau of Employment Security. The Bureau determined that Crist was not entitled to benefits because his behavior [*93] constituted willful misconduct. Crist appealed, and a hearing was held; after which, the referee concluded that Crist was ineligible for benefits for the same reason, i.e., willful misconduct. Crist appealed to the Board, and on January 17, 1972, the Board affirmed the referee. On January 21, 1972, the Board, on its own motion, vacated its prior order. On March 22, 1972, the Board issued a new order (reversing its prior order) in which it concluded that Crist was not guilty of willful misconduct and that he was entitled to benefits. Kentucky has appealed from the second order to this Court.

¶ In unemployment compensation cases, our scope of [*168] review, absent fraud, is limited to (1) a determination as to whether the Board's findings are supported by the evidence, and (2) questions of law. See James v. Unemployment Compensation Board of Review, 6 Pa. Commonwealth Ct. 489, 295 A. 2d 288 (1972).

In this appeal, two issues are before this Court. The first evolves from the procedural format followed by the Board. The question presented is whether the Board on its own motion, absent a petition for rehearing or reconsideration, and without further opportunity to be heard having been granted the parties, could vacate its first order and issue a second order which in essence reverses the initial order. The second issue before the Court queries [*169] whether Crist's behavior constituted willful misconduct under Section 402(e) of the Unemployment Compensation Act, Act of December 5, 1935, P.L. (1937) 2897, as amended, 43 P.S. § 802(e), and whether such behavior barred the awarding of unemployment compensation benefits.

We shall address ourselves to the first issue at this time. Section 509 of the Act, 43 P.S. § 829 provides that Board orders become final ten days after issuance. The Board apparently relies on this [***4] section to support its position that any time within the ten days after the [***4] issuance of an order, it may, with impunity, change or vacate said order. Our research has unearthed two unemployment compensation cases which would support that proposition. The first, *Sable Unemployment Compensation Case*, 197 Pa. Superior Ct. 177, 177 A. 2d 115 (1962), presents a fact situation wherein one of the parties petitioned for reconsideration within the ten-day period. The *Sable* court then refers to a Board regulation which provides for such action. We are of the opinion that *Sable*, *supra*, is distinguishable from the case at bar, because in the case before us neither party sought reconsideration; the Board vacated its order on its own motion.

There are, however, two legal principles which the *Sable* court relied upon in reaching its decision which must be discussed here. The court in *Sable*, *supra*, cited *Marcus Hook Borough School District v. Board for the Assessment and Revision of Taxes*, 359 Pa. 60, 58 A. 2d 26 (1948), for the proposition that an administrative body is permitted to correct errors on its own motion, absent the intervention of a party. While [***5] we agree with the principle as espoused, we cannot abide by the proposition that the administrative body's power to do so is unlimited and unqualified. *Marcus Hook, supra*, does not stand for such an open-ended proposition.

In *Marcus Hook*, the Board in question and at least one of the parties was laboring under the misconception that the assessment figure in issue represented the evaluation of two properties. When it became clear that the second property was separately valued, the Board corrected its valuation to reflect its valuation of the separate properties. While this action made a substantial change in the final outcome, it did not constitute a complete reversal of the substantive legal issues, rather it corrected an obvious mechanical error.

We firmly believe that *HN2* an administrative agency, on its own motion, having provided the proper notice and [***5] explanation, may correct typographical, clerical and mechanical errors omitted and supported by the record. It may likewise correct factual errors which are not in dispute, and indeed even factual misconceptions, such as presented in *Marcus Hook, supra*. It may not, however, absent a petition for reconsideration [***6] or the granting of the opportunity to be heard by way of oral argument or brief, reverse itself on the substantive issues previously decided. On reconsideration, the party seeking the same bears the burden of proving his position or that circumstances have changed. See *Milk Control Commission of Pennsylvania v. United Retail Grocers Association*, 361 Pa. 221, 64 A. 2d 818 (1949). When an agency changes its position on its own motion, the parties must at least be given an opportunity to be heard by way of oral argument or brief. If the circumstances justify, and the Board deems it necessary, it could allow the introduction of additional evidence or a rehearing. See *West Penn Power Company v. Pennsylvania Public Utility Commission*, 174 Pa. Superior Ct. 123, 100 A. 2d 110 (1953).

This brings us to the second legal principle in *Sable, supra*, which mandates our attention. The *Sable* court cites *Frankie Unemployment Compensation Case*, 166 Pa. Superior Ct. 251, 70 A. 2d 461 (1950), for the proposition that *HN3* procedural due process does not require more than one hearing, so long as the requisite hearing is held before the final order becomes effective. Once [***168] [***7] again we agree with the general principle of law espoused. We believe, however, that two other general principles of law are of equal weight and must be considered. First, *HN4* an administrative agency is a creature of the State and has only those powers and authority as have been granted to it by the Legislature. See *Pa. Human Relations Commission v. Brucker*, 93 Dauph. 8, 51 Pa. D. & C. 2d 369 (1970). We interpret *HN5* Section 509 of the Act, 43 P.S. § 829, which provides that an [***96] order of the Board becomes final after ten days, to allow for modification and reconsideration under circumstances such as we have previously delineated above.

The second legal maxim which bears on the matter before us, is perhaps the only absolute

general statement with regard to due process, i.e., that which constitutes procedural due process, or for that matter the denial thereof, depends on the nature and circumstances of the matter at hand. Our search of Pennsylvania law leads us to conclude that the circumstances at hand necessitate the use of procedural safeguards delineated above. We find persuasive support in *West Penn Power, supra*, wherein the court stated: "Again, under rudimentary [***8] principles of due process and fair play the Commission cannot subsequently reverse a previous order without giving notice to a utility and an opportunity to be heard. While the Commission has power to rescind or amend any order made by it . . . , the exercise of such function cannot violate fundamental principles of fairness or constitutional guarantees. . . . *HN5* The requirement of due process of law in procedural matters applies equally to proceedings before administrative tribunals as well as judicial bodies." (Citations omitted.) 174 Pa. Superior Ct. at 131, 100 A. 2d at 114. We find the principle espoused in *West Penn Power Company, supra*, to be applicable here. See also, *Lang v. Pennsylvania Public Utility Commission*, 207 Pa. Superior Ct. 312, 217 A. 2d 750 (1965); *Department of Highways v. Pennsylvania Public Utility Commission*, 185 Pa. Superior Ct. 418, 138 A. 2d 143 (1958). We therefore conclude that the Board was in error when it vacated its order on its own motion, absent a petition for reconsideration, or the granting of an opportunity to the parties to be heard.

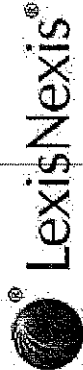
Before turning to the second issue in this case (i.e., the question of willful misconduct), we feel [***9] constrained [***7] to address ourselves to the second supportive unemployment case alluded to earlier. In *Johnson Unemployment Compensation Case*, 201 Pa. Superior Ct. 488, 193 A. 2d 615 (1963), the court relying solely on *Sable, supra*, extended its pronouncements concerning the authority of the Board to correct its own errors. In *Johnson, supra*, the Board on its own motion, absent a petition for reconsideration and well beyond the ten-day period after issuance of its order, vacated its initial order and reversed itself. We note that unlike *Sable, supra*, there was no request for reconsideration, nor did the action take place in the questionable ten-day period. In light of our protracted discussion above, we believe that we are compelled to express our *HN7* disapproval of the *Johnson Unemployment Case, supra*, and therefore do so.

Addressing the second issue, Section 402(e) of *HN6* the Act, 43 P.S. § 802(e) provides that if a claimant is discharged for willful misconduct, he is not entitled to unemployment benefits. Section 402(e) does not define willful misconduct; therefore, the courts have. For behavior to constitute willful misconduct, it must evidence (1) the [***10] wanton and willful disregard of the employer's interest, (2) the deliberate violation of rules, (3) the disregard of standards of behavior which an employer can rightfully expect from his 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 [***169] obligations. See *Woodson v. Unemployment Compensation Board of Review*, 7 Pa. Commonwealth Ct. 526, 300 A. 2d 299 (1973).

We recognize that this question is ultimately one of law, which this Court is capable of properly deciding. The legal conclusion, however, depends on our review of the facts as found by the Board. The question presented is twofold: (1) do those facts constitute willful [***98] misconduct, and (2) are the facts supported by the evidence? In light of our ruling in this case that the Board cannot vacate its order on its own motion without giving the parties an opportunity to be heard, we believe it would be inappropriate for us to rule on this question at this time and the matter must be remanded to the Board.

In passing, however, we note that the burden is on the employer to [***11] establish willful misconduct, and as the record presently stands, our careful review indicates that it does not support a conclusion of willful misconduct.

In summary, we conclude that the Board cannot, on its own motion, vacate one of its orders without giving the parties an opportunity to be heard by way of oral argument or the submission of a supplemental brief. It is also clear that if the Board deems it necessary, additional evidence may be taken and a rehearing granted.



7 of 50 DOCUMENTS

McKEESPORT HOSPITAL, Petitioner, v. UNEMPLOYMENT COMPENSATION BOARD OF REVIEW, Respondent

No. 257 C.D. 1992

COMMONWEALTH COURT OF PENNSYLVANIA

155 Pa. Commw. 267; 625 A.2d 112; 1993 Pa. Commw. LEXIS 263

June 5, 1992, Submitted on Briefs April 28, 1993, Decided April 28, 1993, Filed

PRIOR HISTORY: [***1] APPEALED From No. B-295625, State Agency, Unemployment Compensation Board of Review

DISPOSITION: Accordingly, the order of the Board is vacated and this matter is remanded to the Board for a determination of whether Claimant met her burden of showing good cause for her excessive absences.

CASE SUMMARY:

PROCEDURAL POSTURE: Petitioner employer appealed an order of respondent, the Unemployment Compensation Board of Review (Pennsylvania), which affirmed the decision of the referee granting benefits to claimant under the Unemployment Compensation Law, 43 P.S. §§ 751-914.

OVERVIEW: Claimant worked for petitioner employer as a nurse. She was fired for excessive absences. Claimant filed a claim for benefits, which was denied on the basis of willful misconduct. Claimant appealed to the referee, which concluded that claimant was not ineligible for benefits because of willful misconduct under the Unemployment Compensation Law, 43 P.S. § 802(e). Petitioner employer appealed to respondent, the unemployment compensation board of review, and contended that claimant was ineligible for benefits by

LexisNexis(R) Headnotes

Administrative Law > Judicial Review > Standards of

155 Pa. Commw. 267, *271; 625 A.2d 112, **; 1993 Pa. Commw. LEXIS 263, ***6

NOW, April 28, 1993, [***7] the order of the Unemployment Compensation Board of Review in the above-captioned matter is hereby vacated and the case is remanded to the Board for further proceedings consistent with this opinion.

Jurisdiction relinquished.

DISSENT BY: FRIEDMAN

DISSENT

[**115] FRIEDMAN, Judge, dissenting.

The referee in this case correctly stated that the burden of proving willful misconduct is on the Employer, and the Employer [**272] attempted to meet that burden by proving that the Claimant was absent from work on a number of occasions. As the majority correctly notes, once the Employer establishes a prima facie case of willful misconduct, the Claimant, in order to prevail, must prove the existence of good cause; in this case, the Claimant testified that all of her absences were due to illness, a valid defense to a charge of willful misconduct due to excessive absences from work. While the referee's choice of language in his decision is somewhat less than precise, I believe it is clear that the referee chose to believe the Claimant's testimony.

I must note that the Employer here never argued that the referee misapplied the burden of proof in this case. With regard to the question of willful misconduct, the [***8] Employer argued (1) absences even due to illness should constitute willful misconduct where the Employer

is a hospital, (2) that the Claimant should have taken a leave of absence and (3) that the record contained no substantial evidence to support the referee's finding that the Claimant was ill on the days she missed work. Because the Employer has not argued to us that the referee misapplied the burden of proof, I believe it is error for the majority to vacate the Board's order on a matter not presented to us.

As to the arguments actually presented, I believe that all are unavailing. With regard to the question that hospitals should be treated differently from other employers, I must note that the Employer offers no authority for such a novel position. The Employer's argument that the Claimant should have sought a leave of absence is based upon our decision in *Reiston v. Unemployment Compensation Board of Review*, 18 Pa. Commonwealth Ct. 378, 335 A.2d 654 (1975). In that case, we held that an employee was guilty of willful misconduct when he failed to follow a work rule which required the employee to seek medical attention whenever he [***9] was required to leave the barge while on duty. The Employer failed to prove the existence of such a work rule in the present case. Finally, the Claimant's own testimony constituted substantial [**273] evidence for the referee's finding that the Claimant was actually ill on the days she missed work.

I agree with the majority's disposition of the Employer's argument concerning Section 401(d). As the Employer's arguments presented do not require a reversal, I would affirm.

Review > Substantial Evidence
[HN1] The court's scope of review is limited to a determination of whether errors of law have been committed, constitutional violations have occurred or whether the necessary findings of fact are supported by substantial evidence. 2 Pa. Cons. Stat. § 704.

Labor & Employment Law > Disability & Unemployment Insurance > Unemployment Compensation > Eligibility > Involuntary Unemployment
Workers' Compensation & SSDI > Compensability > Injuries > Willful Misconduct
[HN2] An employer has the burden of demonstrating willful misconduct for which a claimant has been terminated.

Labor & Employment Law > Disability & Unemployment Insurance > Unemployment Compensation > Eligibility > Good Cause
Workers' Compensation & SSDI > Compensability > Injuries > Willful Misconduct
[HN3] Once an employer has met its burden to establish willful misconduct, the burden then shifts to the claimant to show good cause as justification for the conduct considered willful. Thus, while illness is a good cause defense to a charge of willful misconduct due to excessive absenteeism, it is incumbent upon the claimant to establish that illness was indeed the cause of her absenteeism, which is an affirmative fact.

COUNSEL: Ronald J. Andrykovich, for petitioner.

Lisa J. Faneli, Asst. Counsel, and Clifford F. Biaz, Deputy Chief Counsel, for respondent.

Linda I. Nelson, for intervenor Patricia Jenkins.

JUDGES: Doyle, Palladino and Friedman, JJ. Friedman, Judge, dissenting.

OPINION BY: DOYLE

OPINION

[*268] [**113] McKeesport Hospital (Employer) appeals an order of the Unemployment Compensation Board of Review (Board) which affirmed the decision of the referee granting benefits under the Unemployment

Compensation Law (Law), Act of December 5, 1935, Second Ex.Sess., P.L. (1937) 2887, as amended, 43 P.S. § 751-914.1

1 This matter was previously considered by a panel of this Court and an opinion, authored by Senior Judge Barry, and order was filed on August 19, 1992. The opinion concluded that a remand was necessary in order to allow the Board to consider Employer's argument concerning Section 401(d) of the Law, 43 P.S. § 801(d). The Board filed a petition for reconsideration which we granted by order of October 27, 1992. For the reasons discussed in the opinion that follows, we again conclude that a remand is necessary, although on a different basis.

[**2] [*269] Patricia Jenkins (Claimant) worked for Employer as a nurse when she was fired in June of 1991 for excessive absences. Claimant filed a claim for benefits with the Office of Employment Security denied on the basis of willful misconduct. Claimant appealed to the referee and a hearing was held. At the hearing, Claimant testified that she had injured her back while at work in 1989 and as a result was unable to work for six or seven months, during which time she collected workmen's compensation benefits. Claimant also testified that while she did indeed miss work on numerous occasions, she was ill on each and every day she was absent from work. The referee concluded that Claimant was not therefore ineligible for benefits because of willful misconduct under Section 402(d) of the Law, 43 P.S. § 802(d), and stated as follows:

The claimant testified that the only reason she ever reported off work was due to her personal illness. There was no proof presented by employer that the claimant's absenteeism was due to any reason other than her personal illness The employer has the burden of proof in any case of alleged willful misconduct and in this appeal case, that burden [**3] has not been met.

Decision of Referee at 3.

Employer appealed this determination to the Board, arguing that Claimant had been guilty of willful misconduct and also contending that Claimant was

ineligible for benefits by virtue of Section 401(d) of the Law, 43 P.S. § 801(d), because Claimant was not able and available for suitable work. Section 401(d) provides in pertinent part:

Compensation shall be payable to any employee who is or becomes unemployed, and who -

(d)(1) Is able to work and available for suitable work

The Board affirmed on the basis of the referee's decision but failed to address Employer's argument based on Section 401(d). [**14] Appeal to this Court followed.

2 [HN1] Our scope of review is limited to a determination of whether errors of law have been committed, constitutional violations have occurred or whether the necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa.C.S. § 704.

[*270] Because we conclude [**4] that the referee misapplied the burden of proof, a remand is necessary.

It is undisputed that [HN2] an employer has the burden of demonstrating willful misconduct for which a claimant has been terminated. *Bailey v. Unemployment Compensation Board*, 142 Pa. Commonwealth Ct. 294, 597 A.2d 241 (1991), and, generally speaking, excessive absences may constitute willful misconduct. See, e.g., *Petrey v. Unemployment Compensation Board of Review*, 15 Pa. Commonwealth Ct. 157, 325 A.2d 642 (1974). In the instant case, it is clear that Employer established that Claimant had been guilty of excessive absences, and thus, Employer established a prima facie case of willful misconduct.

[HN3] Once an employer has met its burden, however, the burden then shifts to the claimant to show good cause as justification for the conduct considered willful. *Mulqueen v. Unemployment Compensation Board of Review*, 117 Pa. Commonwealth Ct. 517, 543 A.2d 1286 (1988). Thus, while illness is a good cause defense to a charge of willful misconduct, due to

excessive absenteeism, see e.g., [**5] *Green v. Pa. Commonwealth Ct.* 231, 413 A.2d 587 (1981). It is incumbent upon the claimant to establish that illness was indeed the cause of her absenteeism, which is an affirmative fact. See *Berrett v. Ols Elevator Co.*, 431 Pa. 446, 246 A.2d 688 (1968) (burden of proof may be placed on party who must prove existence of fact rather than on party who must prove its nonexistence).

In the instant case, however, the referee, as noted above, stated that "there was no proof presented by the employer that claimant's absenteeism was due to any reason other than her personal illness." This statement makes it apparent that, rather than assigning the burden of proving good cause to Claimant, the referee assigned the burden of disproving the good cause defense raised by Claimant to [**21] Employer. This constitutes an error of law and necessitates a remand to the Board for a determination in accordance with the proper burdens of proof.

Prior to relinquishing jurisdiction over this matter, however, we will, in the interest of judicial economy, address [**6] Employer's contention concerning Section 401(d) of the Law, 43 P.S. § 801(d). Employer argues that, if Claimant's absences were caused by illness, she was not able and available for suitable work and was not therefore eligible for compensation.

This assertion is based upon a misunderstanding of Section 401(d) which concerns availability for work following termination. In other words, "absences" (meaning a claimant's unavailability for work because of illness) during weeks for which benefits are claimed. *Frey v. Unemployment Compensation Board of Review*, 69 Pa. Commonwealth Ct. 405, 451 A.2d 563 (1982). All of the evidence of Claimant's illness presented before the referee related to the illness of Claimant prior to her termination. There was no showing that Claimant was unavailable for work due to illness following her termination, and therefore Section 401(d)(1) is completely inapplicable to the present case.

Accordingly, the order of the Board is vacated and this matter is remanded to the Board for a determination of whether Claimant met her burden of showing good cause for her excessive absences.

ORDER



1 of 50 DOCUMENTS

Henry Powell, Petitioner v. Commonwealth of Pennsylvania, Unemployment Compensation Board of Review, Respondent

No. 1500 C.D. 1976

Commonwealth Court of Pennsylvania

31 Pa. Commw. 512, 377 A.2d 206; 1977 Pa. Commw. LEXIS 1013

June 10, 1977, Argued
September 7, 1977, Decided

PRIOR HISTORY: [***1] Appeal from the Order of the Unemployment Compensation Board of Review in case of In Re: Claim of Henry Powell, No. B-133182.

DISPOSITION: Affirmed.

CASE SUMMARY:

PROCEDURAL POSTURE: Petitioner employee challenged the order of respondent Unemployment Compensation Board of Review (Pennsylvania), which affirmed a referee's determination that appellant had been properly discharged for willful misconduct and was, therefore, ineligible for benefits under section 802(e) of the Unemployment Compensation Law, 43 P.S. § 802(e).

OVERVIEW: Petitioner employee was discharged when he failed to report to his employer that he would be unable to work because of illness. The uncontroverted testimony of the employer indicated that petitioner's security job was an essential one to the movement of passengers boarding airplanes under Federal regulations. The referee denied unemployment compensation benefits, finding that petitioner had been discharged for willful misconduct within the meaning of 43 P.S. § 802(e), and respondent Unemployment Compensation Board of Review affirmed. On appeal, the court affirmed. The court noted that petitioner served a critical security function, and that petitioner had been able to reach his employer in the past by telephone to ask about leaving his post. The court held that the failure to notify his employer of his impending absence was a material breach of petitioner's responsibilities -- a negligent act of omission which ex-

hibited petitioner's intentional disregard of his employer's interests and of petitioner's duties and obligations to his employer -- and as such was intentional misconduct sufficient to disqualify petitioner for compensation benefits under section 802(e).

OUTCOME: The court affirmed respondent Unemployment Compensation Board of Review's finding that petitioner employee's failure to notify his employer of his intention not to report to work was willful misconduct within the contemplation of 43 P.S. § 802(e), rendering petitioner ineligible for unemployment compensation benefits. Petitioner's critical security function made a single instance of unreported absence sufficient to establish willful misconduct.

LexisNexis(R) Headnotes

Labor & Employment Law > Disability & Unemployment Insurance > Unemployment Compensation > General Overview
[HN1] The courts define "willful misconduct" as the willful disregard of the employer's interests, a deliberate violation of the employer's rules, a disregard of the standards of behavior which the employer has the right to expect of his employees, or negligence which manifests culpability, wrongful intent, or evil design which shows an intentional and substantial disregard of the employer's interests or the employee's duties and obligations to the employer.

labor & Employment Law > Disability & Unemployment Insurance > Unemployment Compensation > Coverage & Definitions
Labor & Employment Law > Disability & Unemployment Insurance > Unemployment Compensation > Review
[HN2] A single act of misconduct, including absenteeism, if sufficiently serious, will justify a denial of benefits.

COUNSEL: *Bernard A. Podary*, with him *James D. Morris*, for petitioners.

Susan Shikman, Assistant Attorney General, with her *Sydney Reuben*, Assistant Attorney General, and *Kobey P. Kane*, Attorney General, for respondent.

JUDGES: Judges *Crumlish, Jr.*, *Kramer* and *Blatt*, sitting as a panel of three. Judge *Kramer* did not participate in the decision. Opinion by Judge *Blatt*. Judge *Kramer* did not participate in the decision in this case. See Pa. R.A.P. 3102(d).

OPINION BY: BLATT

[*313] [*206] This is an appeal by *Henry Powell* (Powell) from an order of the Unemployment Compensation Board [*514] of Review (Board) dated August 5, 1976, which affirmed a referee's determination that Powell had been properly discharged for willful misconduct and was, therefore, ineligible for benefits under Section 402(e) of the Unemployment Compensation Law, Act of December 3, 1936, Second Ex. Sess., P.L. 2897 (1937), as amended, 43 P.S. § 802(d).

Prior to his discharge on December 26, 1976, Powell was employed by *Milkamin* [***2]. Security and had been employed by them for a continuous period of seven months. Powell was paid at the rate of \$ 2.10 per hour. He was discharged because he failed to report to his employer that he would be unable to work on the 26th of December because of illness. Powell testified before [*207] the referee that he had attempted to contact fellow employees on duty approximately one half hour before he was to begin work, but that the employees were not present on the job. Powell indicated that one of his fellow employees did reach him at approximately 7:15 on the morning of December 26, and that his wife informed the employee that Powell was ill and would not report for work on that particular day.

We believe that it is essential to discuss the nature of the job which Powell performed for his employer for we feel this is significant to the determination of this particular appeal.

Mr. Powell worked with *Milkamin Security* at the local airport. His job was to screen the boarding passengers. The uncontroverted testimony of the employer indicated that Powell's job was an essential one to the movement of the passengers boarding the airplanes under F.A.A. rulings and regulations. [***3] In addition to discussing the importance of Powell's job, the employer indicated that Powell knew that he had to contact his employer at the employer's place of business or at his home if he wanted to leave the job [515] site for any reason. The employer indicated that Powell, on previous occasions, had contacted him either at work or at home by telephone and that Powell had then received permission to leave his post for a short period of time.

The record clearly shows that Powell's job was crucial for the orderly transition of passengers onto waiting airplanes. Further, Powell had reached his employer on various occasions by telephone to ask about leaving his post. The record also reveals that this was the first occasion on which Powell was absent from work without prior notification to the employer.

The Board's adjudication concluded that Powell was guilty of willful misconduct by reason of his unexcused absence of December 26, 1976. [HN1] On numerous occasions this Court has defined "willful misconduct" as the willful disregard of the employer's interests, a deliberate violation of the employer's rules, a disregard of the standards of behavior which the employer has the [***4] right to expect of his employees, or negligence which manifests culpability, wrongful intent, or evil design which shows an intentional and substantial disregard of the employer's interests or the employee's duties and obligations to the employer. *Thompson v. Unemployment Compensation Board of Review*, 28 Pa. Commonwealth Ct. 591, 368 A.2d 1386 (1977).

We are cognizant of Powell's fine work record during his seven month period of employment with *Milkamin Security*. [HN2] However, a single act of misconduct, including absenteeism, if sufficiently serious, will justify a denial of benefits. *Beville v. Unemployment Compensation Board of Review*, 15 Pa. Commonwealth Ct. 371, 373, 327 A.2d 197, 198 (1974). In the instant case, Powell was well aware of the necessity to contact his employer to receive permission to leave his place of employment. Powell's prior course of conduct [*516] in contacting his employer is an indication that he was well aware of the sensitivity of his job, and he knew that without his presence the passengers could not legally board their aircraft. It was definitely his responsibility to assist in the screening of these passengers.

While the testimony [***5] does not establish a specific rate regarding the reporting of absences, the controlling course of conduct of the parties clearly re-

veals the practice that was to be followed. Here, Powell failed to notify his employer, and we find that the failure to notify his employer of his impending absence was a material breach of his responsibilities. It was a negligent act of omission which exhibited an intentional disregard of the employer's interests and of the employee's duties and obligations to the employer.

We are in accord with the Board's finding that Powell's failure to notify the employer of his intention not to report to work was willful misconduct as envisioned un-

der the Act and, therefore, renders Powell ineligible for unemployment compensation benefits.
Judge *Kramer* did not participate in the decision in this case. See Pa. R.A.P. 3102(d).

[**208] Order

And Now, this 7th day of September, 1977, the order of the Unemployment Compensation Board of Review denying benefits to *Henry Powell* is hereby affirmed.



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RICHARD A. SPRAGUE, Petitioner v. UNEMPLOYMENT COMPENSATION BOARD OF REVIEW, Respondent

No. 2820 C.D. 1993

COMMONWEALTH COURT OF PENNSYLVANIA

167 Pa. Commw. 184; 647 A.2d 675; 1994 Pa. Commw. LEXIS 486

July 8, 1994, Submitted on Briefs
August 29, 1994, Decided
August 29, 1994, FILED

SUBSEQUENT HISTORY: The Name of this Case has been Corrected September 6, 1994.
PRIOR HISTORY: [***] Appealed From No. B-317595-B. State Agency; Unemployment Compensation Board of Review.

DISPOSITION: Affirmed.
CASE SUMMARY: The court affirmed the reversal of the denial of claimant's benefits. The court held that petitioner employer failed to warn claimant that her job was in jeopardy due to her absenteeism. The court ruled that there was substantial evidence to support claimant's absences were due to her illness and did not constitute willful misconduct.

PROCEDURAL POSTURE: Petitioner employer challenged an order of respondent Unemployment Compensation Board of Review (Pennsylvania) which reversed the referee's denial of claimant's unemployment benefits.

OVERVIEW: Claimant filed for and was granted unemployment benefits for and was terminated for excessive absenteeism. Petitioner employer appealed to a referee, who reversed the grant of benefits. Claimant then appealed to respondent Unemployment Compensation Board of Review, which reversed the decision. Upon petitioner's request, respondent vacated its decision and held another hearing. Respondent again reversed the referee's decision, ruling that claimant's absences were due to her illness, petitioner failed to warn claimant that her job was in jeopardy due to her absenteeism, and that

LexisNexis(R) Headnotes
Labor & Employment Law > Disability & Unemployment Insurance > Unemployment Compensation > Eligibility > General Overview
[HN1] 43 P.S. § 802(e), provides that an employee shall be ineligible for compensation in any week in which his unemployment is due to his discharge or temporary suspension from work for willful misconduct connected with his work.

Administrative Law > Judicial Review > Standards of Review > Substantial Evidence

[HN2] The courts scope of review is to determine whether there is a violation of constitutional rights, an error of law is committed, or whether substantial evidence supports the necessary findings of fact. 2 P.S. § 704.

Administrative Law > Agency Rulemaking > Formal Rulemaking

[HN3] The Administrative Agency Law, 43 P.S. § 203(a) provides for the appointment of only three members to the board, and no action of the board is valid without the concurrence of at least two members. 43 P.S. § 763(a).

Administrative Law > Judicial Review > Standards of Review > Substantial Evidence

[HN4] Substantial evidence is such relevant evidence, which a reasonable mind will accept as adequate to support a conclusion.

Administrative Law > Agency Adjudication > Review of Initial Decisions

[HN5] The board is the ultimate fact finder in unemployment compensation cases. It is within the board's power to assess the credibility of the testimony presented and to resolve evidentiary conflicts.

Torts > Negligence > Duty > Affirmative Duty to Act > Failure to Act

[HN6] Willful misconduct includes conduct that represents a wanton and willful disregard of an employer's interest, a deliberate violation of rules, a disregard of standards of behavior which the employer can rightfully expect from its employees, or negligence which manifests culpability, wrongful intent, evil design or intentional and substantial disregard for the employer's interests or the employer's duties and obligations. Whether a claimant's conduct rises to the level of willful misconduct is a question of law subject to the courts review.

Labor & Employment Law > Disability & Unemployment Insurance > Unemployment Compensation > Eligibility > General Overview
[HN7] Justifiable and properly reported excessive absenteeism does not disqualify a claimant from

receiving compensation, despite repeated warnings.

Labor & Employment Law > Disability & Unemployment Insurance > Unemployment Compensation > Eligibility > Good Cause

[HN8] Illness is a good cause defense to a charge of willful misconduct due to excessive absenteeism.

COUNSEL: Vincent F. Presto for petitioner.

Christina M. Tarantelli, Assistant Counsel, and Clifford F. Blaze, Deputy Chief Counsel, for respondent.

JUDGES: BEFORE: HONORABLE BERNARD L. MCGINLEY, Judge, HONORABLE SANDRA SCHULTZ NEWMAN, Judge, HONORABLE CHARLES A. LORD, Senior Judge

OPINION BY: SANDRA SCHULTZ NEWMAN

OPINION

*186] [*676] OPINION

BY JUDGE NEWMAN

Richard A. Sprague (Employer) appeals from an order of the Unemployment Compensation Board of Review (Board) which reversed a referee's denial of benefits to Norma G. Alba (Claimant). We affirm.

Claimant was employed as a laundry worker for approximately ten months when Employer terminated her employment due to excessive absenteeism. After her discharge, Claimant filed a claim for benefits that the Bureau of Unemployment Compensation Benefits and Allowances (Bureau) granted. The Bureau determined that Claimant was not ineligible for benefits under Section 402(e) of the Unemployment Compensation Law (Law)¹ because Claimant's actions [*187] did not rise to the level of willful misconduct. Employer appealed to a referee who reversed. Claimant then appealed to the Board.

¹ [HN1] Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. § 802(a), which provides that an employee shall be ineligible for compensation in any week in which his unemployment is due to his discharge or temporary suspension from work for willful misconduct connected with his work.

Review, 146 Pa. Commonwealth Ct. 648, 606 A.2d 865 (1992). Whether a claimant's conduct rises to the level of willful misconduct is a question of law subject to our review. *Lee Hospital v. Unemployment Compensation Board of Review, 139 Pa. Commonwealth Ct. 28, 589 A.2d 297 (1991)*.

[**680] In the present appeal, Employer asserts that the Board erroneously based its decision on his failure to prove a progressive discipline policy, a rule regarding absenteeism or the issuance of a warning to Claimant that she was subject to discharge if she failed to report to work. It is Employer's position that there is no such requirement in the law.

Contrary to Employer's assertions, however, the Board did not base its decision solely on Employer's failure to warn Claimant that her continued absenteeism would result in dismissal. The Board, in reaching its decision, explained, "In light of the uncontradicted testimony of claimant relating to her absences due to illness, and the employer's failure to warn claimant that her job was in jeopardy [***14] due to her absenteeism, the Board finds that claimant has established good cause for her absences . . ." Board's Decision at 3 (emphasis added). It is, therefore, clear that the Board based its decision, at least in part, on the fact that Claimant's absences were the result of illness.

[HN7] In this regard, this court has held that excessive absenteeism, when justified and properly reported, does not disqualify a claimant from receiving

compensation, despite repeated warnings. *Wade v. Unemployment Compensation Board of Review, 124 Pa. Commonwealth Ct. 75, 555 A.2d 289 (1989)*. [HN8] Moreover, illness is a good cause defense to a charge of willful misconduct due to excessive absenteeism. *McKeasport Hospital v. Unemployment Compensation Board of Review, 155 Pa. Commonwealth Ct. 267, 625 A.2d 112 (1993)*.

[**194] In the case *sub judice*, the Board found that Claimant was absent from work six times, March 3, March 19, April 19, April 28, May 10 and May 24, 1993. The Board further found that each time that Claimant was absent, she properly reported her inability to work to her supervisor, and each time, the reason [***15] given by Claimant was illness. Because substantial evidence supports these findings and because illness constitutes good cause when properly reported, we conclude that the Board did not err in holding that Claimant's absenteeism did not constitute willful misconduct.

Accordingly, we affirm the order of the Board.

SANDRA SCHULTZ NEWMAN, JUDGE

ORDER

AND NOW, August 29, 1994, we affirm the order of the Unemployment Compensation Board of Review.

SANDRA SCHULTZ NEWMAN, JUDGE

[**22] On August 11, 1993, Employer requested oral argument before the Board. The Board notified Employer by letter, dated August 20, 1993, that "if oral argument is granted, you will be notified and it will be subsequently scheduled. If the request is not granted, you will, in due course, receive a copy of the Board's decision based on the established record." Original Record, Item No. 10. Claimant requested, and was granted, the opportunity to file a brief. Claimant filed her brief on September 16, 1993. Employer did not seek permission to file, nor did he file, a brief with the Board.

[**677] On October 8, 1993, the Board rendered a decision reversing the referee's denial of benefits to Claimant. Thereafter, Employer requested reconsideration on the basis that the Board rendered its decision without affording Employer an opportunity for oral argument and without considering Employer's brief. On October 21, 1993, the Board granted Employer's request, vacated its prior decision and order, and reopened the record.

After reconsideration of the entire record, including both parties' briefs, the Board rendered its second decision in the matter. That decision included the following pertinent findings [***3] of fact:

2. During the course of [her] employment, claimant performed her services in the private home of Mr. Sprague.

3. Claimant was hired to work Monday [sic], Wednesdays, and Fridays during the course of the week.

4. On Wednesday, March 3, 1993, Friday, March 19, 1993, Monday, April 19, 1993, Wednesday, April 28, 1993, and Monday, May 10, 1993, claimant called off from work due to illness.

5. Claimant called off from work on these five days because of dental problems and recurring back problems.

6. Employer at no time requested documentation of medical treatment or evaluation of claimant.

[*188] 7. On several occasions,

claimant offered to work the day after her absence to make up time lost.

8. Employer permitted claimant to make up time in at least two occasions.

9. Although Claimant was allowed to work other days during the course of the week to make up for the aforesaid absences, claimant was aware that the employer historically preferred that the laundry worker work the regularly scheduled days.

10. Employer did not warn claimant that continued absenteeism would result in termination.

11. Claimant intended to work the regularly scheduled hours on Monday, May [***4] 24, 1993, but was unable to work because of back pain.

12. On May 24, 1993, claimant did not report to work as scheduled, and claimant called off due to illness.

13. As a result, on May 24, 1993, claimant was discharged from this employment due to excessive absenteeism.

Board's Decision and Order of November 2, 1993.

Based on these findings, the Board held that Claimant was not disqualified from receiving benefits under Section 402(e) of the Law. The Board, finding Claimant's testimony to be credible and resolving evidentiary conflicts in her favor, held that absenteeism alone does not constitute willful misconduct rendering an employee ineligible for benefits. The Board explained that only absences that are unjustified or not properly reported will be considered to be a disregard of the standards of behavior that an employer has a right to expect of an employee. In light of Claimant's uncontradicted testimony that her absences were due to illness, and Employer's failure to warn Claimant that her job was in jeopardy due to her absenteeism, the Board concluded that Claimant's absenteeism did not rise to the level of willful misconduct. Employer filed the instant appeal. 2

2 On December 17, 1993, Claimant intervened in this matter.

[**5] On appeal to this court, the issues presented are: (1) whether the Board denied Employer due process of the law [*189] when it rendered its initial decision before he submitted his brief; (2) whether substantial evidence exists in the record to support the Board's finding that Employer did not warn Claimant that her continued absenteeism would result in termination, and the Board's finding that Claimant called off work on May 24, 1993 due to illness; and (3) whether the Board erred in concluding that Claimant's actions did not constitute willful misconduct as a matter of law. ³

3 [HN2] Our scope of review is limited to determining whether constitutional rights were violated, 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.

[**6/78] With respect to the first issue, Employer asserts that the Board violated his due process rights when it first considered and decided this case after Claimant filed her brief, but before [**6] the Board advised Employer of the disposition of his request for oral argument and before he filed a brief. In this regard, we note that Employer is correct that our court previously addressed this issue in *Sacks v. Unemployment Compensation Board of Review*, 59 Pa. Commonwealth Ct. 208, 429 A.2d 136 (1981).

In *Sacks*, we concluded that a claimant had been denied due process of the law when the Board issued its adjudication without notifying him that his request for oral argument had been denied and without allowing him time to file a written brief. As such, this court remanded the matter to the Board to permit the claimant to file a brief and to enable the Board to reconsider its decision in light of the claimant's written argument.

In the present appeal, we conclude that had the Board issued its initial decision without granting reconsideration, Employer's right to due process would have been violated. However, we note that after the Board reached its first decision without the benefit of Employer's brief, the Board vacated that decision, reopened the case and allowed Employer to submit a brief. Therefore, upon consideration of [**7] both parties' briefs, the Board rendered its second decision in

the matter.

[*190] It is Employer's position, however, that the Board, in reconsidering this case after Employer filed his brief, did not cure the due process violation. Specifically, Employer takes issue with the fact the case was reconsidered by the same Board members who previously considered the matter. ⁴ Employer also asserts that because the Board on reconsideration reached the same result as it did in its prior decision, the Board's ultimate conclusions are suspect.

4 Chairman Thomas Simon and Member Francis Bonner rendered both decisions.

Contrary to Employer's assertions, we do not believe that once the Board improperly considered and decided this case on Claimant's brief alone, it thus and predisposition were created in Claimant's favor. Moreover, the fact that the decision after reconsideration was made by the same Board members does not render that decision incurably defective.

We have reviewed the entire record in this case and have found nothing [**8] to indicate that the Board acted improperly in its reconsideration of this matter. Also, as noted by the Board's counsel, practical problems existed which prevented reconsideration by a panel comprised of different members. [HN3] Section 203(b) of the Law provides for the appointment of only three members to the Board, and no action of the Board is valid without the concurrence of at least two members. 43 P.S. § 703(b). Since the death of Dale Orman during the summer of 1993, Chairman Simon and Member Bonner have comprised the entire panel of the Board. ⁵ As such, there were no other members from which an alternative panel could have been selected. Accordingly, we conclude that the Board did not violate Employer's due process rights.

5 Although the Governor has nominated Anthony J. Moy to fill the vacancy, the Senate has not yet confirmed the nomination.

With respect to the second issue, Employer challenges two of the Board's findings of fact. Specifically, Employer challenges whether substantial evidence exists in the [**9] record to support the Board's finding that Employer did not warn Claimant that her continued absenteeism would result in termination (finding of fact no. 10), and the Board's finding [*191]

that Claimant called off work on May 24, 1993 due to illness (finding of fact no. 12). [HN4] This court has defined substantial evidence as such relevant evidence which a reasonable mind would accept as adequate to support a conclusion. *Merkatz v. Unemployment Compensation Board of Review*, 135 Pa. Commonwealth Ct. 222, 579 A.2d 1383 (1990).

In support of this argument that the record does not contain substantial evidence to support the Board's finding that Employer did not warn Claimant, Employer cites the testimony of his house manager that he cautioned Claimant on May 10, 1993, that "[**6/9] can't have this [referring to her continued absences]." Notes of Testimony of July 7, 1993 at 11. [HN5] The law is well settled, however, that the Board is the ultimate fact finder in unemployment compensation cases. *Ratze v. Unemployment Compensation Board of Review*, 134 Pa. Commonwealth Ct. 360, 578 A.2d 624 (1990). As such, it is within the [**10] Board's power to assess the credibility of the testimony presented and to resolve evidentiary conflicts. *Hercules, Inc. v. Unemployment Compensation Board of Review*, 140 Pa. Commonwealth Ct. 77, 604 A.2d 1159 (1992).

In the instant case, the Board found Claimant's testimony to be credible and resolved evidentiary conflicts in her favor. In resolving conflicts in testimony in Claimant's favor, the Board rejected the testimony of Employer's witness. As such, the testimony of Employer's house manager that he warned Claimant that her continued absenteeism would result in dismissal is of no moment. Moreover, our review of the record reveals that Claimant testified that she was not warned that her job was in jeopardy. N.T. at 16-17, 26. Accordingly, we conclude that substantial evidence exists to support the Board's finding.

Next, in urging this court to conclude that the record does not contain substantial evidence to support the Board's finding that Claimant called off work because of illness, Employer asserts that the Board erred in reversing the credibility determinations of the referee. Employer correctly acknowledges that the Board is [**11] the ultimate fact finder in unemployment [**12] compensation cases. However, relying upon *Treon v. Unemployment Compensation Board of Review*, 469 Pa. 455, 453 A.2d 960 (1982), Employer maintains that the Board erred in failing to provide an explanation for making credibility determinations contrary to those of the

referee.

In response to Employer's argument, we note that this court expressly rejected the applicability of the *Treon* holding to cases, such as the one before us, where both sides presented evidence. *Carter v. Unemployment Compensation Board of Review*, 157 Pa. Commonwealth Ct. 133, 629 A.2d 212 (1993). Moreover, contrary to Employer's assertion, our review of the Board's decision reveals that the Board adequately explained why it made credibility determinations in Claimant's favor. Specifically, the Board noted:

The Referee dismissed claimant's testimony regarding her illness as 'self-serving' and not credible. The referee's decision as to claimant's credibility appears to be based on the theory that any person with a medical problem must inform his/her employer of the problem and [**12] of the possibility that an absence could occur at some unknown date in the future. Claimant worked for eight months prior to the first incidence of calling out sick. Through March 1993, claimant had established a perfect attendance record. To suggest that a claimant be required to give the employer notice of some future illness is unreasonable and unwelcome, and cannot be required under the law. The Board cannot attribute a 'negative light' on claimant's credibility for this reason.

Board's Decision at 3-4. Accordingly, we conclude that Employer's argument lacks merit.

Last, Employer asserts that the Board erred in concluding that Claimant's absenteeism did not constitute willful misconduct. [HN6] Although the Law does not expressly define the term, this court has interpreted willful misconduct to include conduct that represents a wanton and willful disregard of an employer's interests, a deliberate violation of rules, a disregard of standards of behavior which the employer can rightfully expect from its employees, or negligence which [**13] manifests culpability, wrongful intent, evil design or intentional and substantial disregard for the employer's interests or the employee's duties and [**13] obligations. *Metropolitan Edison Co. v. Unemployment Compensation Board of*



1 of 50 DOCUMENTS

Welded Tube Company of America, Petitioner v. Commonwealth of Pennsylvania,
Unemployment Compensation Board of Review, Respondent; Lawrence Jeter,
Intervenor

No. 859 C.D. 1978

Commonwealth Court of Pennsylvania

43 Pa. Commw. 231, 401 A.2d 1383, 1979 Pa. Commw. LEXIS 1643

March 8, 1979, Argued
June 6, 1979, Decided

PRIOR HISTORY: [***] Appeal from the Order of the Unemployment Compensation Board of Review in case of In Re: Claim of Lawrence Jeter, No. B-155664.

DISPOSITION: Affirmed.

CASE SUMMARY:

PROCEDURAL POSTURE: Claimant applied for unemployment benefits after he was discharged. The Bureau of Employment Security denied claimant's application on the basis that his absenteeism without proper notice constituted willful misconduct pursuant 43 P.S. § 802(e). The referee, finding that claimant had given proper notice of his absence to petitioner employer, reversed, and was affirmed by the Unemployment Compensation Board of Review. Petitioner sought review.

OVERVIEW: Claimant injured his back while in the shower. The next day, he sought medical attention rather than reporting to work, and did not call petitioner employer until two days later. When he returned to work a month later, he was refused advance. Claimant sought unemployment compensation. His application was initially denied on the basis that his absenteeism without proper notice constituted willful misconduct pursuant 43 P.S. § 802(e). The referee, finding that claimant had

given proper notice of his absence, reversed, and was affirmed by the review board. Petitioner sought review. The court affirmed the review board's finding for claimant. His excessive absenteeism alone did not constitute willful misconduct, unless the absences were unjustified or not properly reported in accordance with the employer's rules. Although the evidence regarding claimant's absenteeism was conflicting, the court was required to sustain the findings of the board that the absences were justified and were properly reported, absent the board's capricious disregard of the evidence.

OUTCOME: The court affirmed the unemployment compensation review board's grant of benefits to claimant, holding that absenteeism alone did not constitute willful misconduct for purposes of refusing benefits unless the absences were unjustified or not properly reported in accordance with the employer's rules. Although the evidence regarding claimant's absenteeism was conflicting, the court was required to sustain the findings of the board.

LexisNexis(R) Headnotes

Labor & Employment Law > Disability & Unemployment Insurance > Unemployment

*Compensation > Eligibility > Involuntary
Unemployment* [HN1] Absentism by itself does not constitute willful misconduct for purposes of refusing unemployment compensation benefits. An employer may be justified in discharging an employee for excessive absenteeism, however, unless the absences are unjustified or not properly reported according to the employer's rules, the employer's absenteeism does not amount to a disregard of the standards of behavior an employer has the right to expect of an employee.

Administrative Law > Judicial Review > Standards of Review > Arbitrary & Capricious Review
Labor & Employment Law > Disability & Unemployment Insurance > Unemployment Compensation > Review
Workers' Compensation & SSDI > Compensability > Injuries > Normal Exertion [HN2] The Unemployment Compensation Review Board is the ultimate factfinder and, absent a capricious disregard of the evidence, the court must sustain the findings of the board.

COUNSEL: *Jeffrey Jean Pasak*, with him *Colan Shapiro, Publisher, Shleiman & Cohen*, for appellant.
Charles G. Hasson, Assistant Attorney General,
Garrett Conish, Attorney General, for appellee.
Andrew F. Erida for Intervenor.

JUDGES: Judges Wilkinson, Jr., Menacer and Disalle, sitting as a panel of three. Opinion by Judge Menacer.

OPINION BY: MENACER

OPINION
[**32] [**1384] Welded Tube Company of America (Welded Tube) has appealed an order of the Unemployment Compensation Board of Review (Board) granting benefits to Lawrence Jeter (claimant). We affirm.

On the evening of March 9, 1977, claimant injured his back while taking a shower. [**1385] The next day, claimant, instead of reporting to work as scheduled, sought and received medical attention for his injury. It is undisputed that, on March 10, 1977, because of the pain

and medication, claimant failed to notify Welded Tube [**233] of his absence. Claimant, however, testified that, on March 11, 1977, his wife called Welded Tube, informed them [**232] of her husband's accident, and requested that Welded Tube forward the appropriate insurance forms to her husband. Because of the severity of claimant's injury, he did not report to work until April 19, 1977. Although claimant had a doctor's excuse for his extended absence, claimant was refused admission to the plant.

The Bureau of Employment Security denied claimant's application for benefits on the basis that claimant's absenteeism without proper notice constituted willful misconduct pursuant to Section 402(e) of the Unemployment Compensation Law (Act), Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. § 802(e). Upon claimant's appeal, the referee, finding that claimant had given proper notice of his absence to Welded Tube, reversed the Bureau and was affirmed by the Board. Welded Tube's appeal to this Court followed.

Welded Tube argues that an employer's requirement of a reliable work force dictates that, when an employee with a record of excessive but excused absences has been warned concerning such absences and yet continues to be absent from work, even for good cause, his actions amount to willful misconduct under Section 402(e) of [**33] the Act. It has long been settled, [**334] however, that [HN1] absenteeism by itself does not constitute willful misconduct. See *Williams v. Unemployment Compensation Board of Review*, 33 Pa. Commonwealth Ct. 641, 380 A.2d 932 (1977); *Unemployment Compensation Board of Review v. Blouse*, 23 Pa. Commonwealth Ct. 66, 350 A.2d 220 (1976). An employer may be justified in discharging an employee for excessive absenteeism, however, unless the absences are unjustified or not properly reported according to the employer's rules, the employee's absenteeism does not amount to a disregard of the standards of behavior an employer has the right to expect of an employee. See *Beaverson v. Unemployment Compensation Board of Review*, 34 Pa. Commonwealth Ct. 125, 382 A.2d 1277 (1978); *Blouse*, *supra*; *Plym Unemployment Compensation Case 174 Pa. Superior Ct. 71, 98 A.2d 490 (1953)*.

I Welded Tube presented documentary evidence in support of its contentions that claimant had

been excessively absent, in some instances without good cause, including a copy of a warning given to claimant. Claimant's counsel objected to these documents as hearsay. Since there was no showing that the documents qualified as business records, under our holding in *Mather v. Unemployment Compensation Board of Review*, 27 Pa. Commonwealth Ct. 523, 367 A.2d 366 (1976), they are not competent evidence which would support a finding of the Board. Claimant's own testimony, however, does indicate that he had an unusually high number of absences, albeit due to sickness or injury.

[**44] Welded Tube next contends that the Board erred in finding that claimant had given notice according to its rules and asserts that any notice given was insufficient. Both Edward Levin, the employer's representative, and claimant testified that Welded Tube required notice of an employee's absence only if he was to be absent more than three days. Thus, an employee could be absent up to three days without giving notice to Welded Tube and not violate his employer's rule.

Conflicting testimony was presented on claimant's compliance with this rule. Claimant and his wife testified that she called Welded Tube on March 11, 1977, two days after the accident and gave notice of claimant's injury. Levin testified that claimant's wife called on March 14, 1977 and simply requested company insurance forms, without indicating that claimant had been injured. Since claimant had been recently absent from work with a work-related back injury, Levin interpreted this request as relating to the past injury. He further testified that it was not until March 16, 1977 [**235] that claimant's wife called [**1386] Welded Tube and reported claimant's accident. [HN2] The Board, as the ultimate factfinder, [**35] *Gardner v. Unemployment Compensation Board of Review*, 29 Pa. Commonwealth Ct. 548, 372 A.2d 38 (1977), resolved this conflict in favor of claimant. 2 and, absent a capricious disregard of the evidence, which we do not find, we must sustain the findings of the Board. See *Blouse*, *supra*.

2 In making its finding, the Board, apparently as the result of a typographical error, erroneously found that claimant's wife called Welded Tube on March 6, 1977, three days before claimant was injured. It is apparent, however, that the Board intended March 11, 1977 as the date of notice, for

the essence of its finding was that claimant had complied with Welded Tube's notice requirement and March 11, 1977 was the only date testified to that would support such a finding.

With regard to the sufficiency of claimant's notice, Welded Tube argues that, if the Board was correct concerning the date claimant's wife called, the notice given was insufficient because she failed to provide adequate information as to the nature [**46] of claimant's injury or the expected duration of his absence. Welded Tube, however, presented no evidence that such information was required under its absenteeism policy and therefore the Board did not err in finding claimant's notice to Welded Tube was sufficient. See *Blouse*, *supra*. *CE Balaschak v. Unemployment Compensation Board of Review*, 39 Pa. Commonwealth Ct. 313, 395 A.2d 638 (1978) (for a finding of willful misconduct, it is incumbent upon the employer, as the party with the burden of proof, to produce evidence to establish an infraction of his rules).

Welded Tube also argues that, even if claimant's notice on March 11, 1977 was in all respects proper, claimant's alleged history of unexcused absences, compounded with several warnings, justifies a finding of willful misconduct. Claimant testified, however, that [**236] his past absences were excused, and the Board specifically found that claimant had properly reported all his past absences. Although Welded Tube presented conflicting evidence, see note 1, *supra*, we cannot find, particularly in light of the hearsay nature of the majority of Welded Tube's evidence, that the Board capriciously disregarded competent [**47] evidence in reaching its conclusion.

Finally, Welded Tube contends the Board erred in finding claimant had not received notice of his discharge while he was absent due to the accident. Since claimant himself acknowledged that he had been notified by at least March 30, 1977, the Board's finding to the contrary was clearly in error. We fail to see, however, how this affects the Board's decision. Thus we enter the following

Order

And Now, this 6th day of June, 1979, the order of the Unemployment Compensation Board of Review, dated March 30, 1978, granting Lawrence Jeter unemployment compensation benefits, is hereby affirmed.

**IMPORTANT! — READ THE INFORMATION ON THE REVERSE OF THIS FORM BEFORE FILING AN APPEAL.
EXPRESS APPEAL FILING INFORMATION IS INCLUDED.**

If you want to appeal a notice of determination, you must file by the last date to appeal as indicated on the determination. To ensure prompt filing, use the express link www.uc.pa.gov/appeals, complete the UC-46B, Petition for Appeal, and file directly to the electronic resource account of the UC Service Center listed on your determination. You may also file the appeal by fax or mail by completing Section I below and returning this form in accordance with the appeal instructions on the notice of determination.

FOLLOW THE APPEAL INSTRUCTIONS CAREFULLY.

SECTION I: TO BE COMPLETED BY PERSON FILING APPEAL

CLAIMANT'S NAME AND ADDRESS: _____
 DATE OF DETERMINATION BEING APPEALED _____
 CLAIMANT'S SOCIAL SECURITY NO. _____
 CLAIMANT'S TELEPHONE NO. (_____) - _____
 EMPLOYER'S NAME AND ADDRESS WHERE THE CLAIMANT LAST WORKED: _____
 EMPLOYER'S TELEPHONE NO. (_____) - _____

REASON(S) FOR DISAGREEING WITH THE DETERMINATION AND FILING THIS APPEAL ARE:

I certify that all information I have provided in this document is correct and complete. I acknowledge that false statements in this document are punishable pursuant to 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

NAME OF PERSON FILING APPEAL

SECTION II: TO BE COMPLETED ONLY BY THE UC SERVICE CENTER

APPEAL FILED ON _____ REFEREE OFFICE _____ APPEAL NO. _____
 APPEAL FILED BY: CLAIMANT EMPLOYER EMPLOYMENT SECURITY
 APPEAL RECEIVED BY: UCSC PA CAREERLINK® PERSONALLY DELIVERED POSTMARKED FAXED OTHER
 TYPE CLAIM: UC UCFE UCX EB DUA TRA TRADE ACT PETITION NO. _____ OTHER _____ NAFTA PETITION NO. _____
 APPELLANT REQUIRES ASSISTANCE BECAUSE OF DISABILITY WITH: HEARING SPEECH VISION
 FOR THE FOLLOWING SPOKEN LANGUAGE _____ OTHER _____
 ELIGIBLE SECTION(S) _____ INELIGIBLE SECTION(S) _____
 APPLICATION FOR BENEFITS DATE _____ CLAIM WEEK(S) RULED ON _____
 _____ UC SERVICE CENTER _____
SIGNATURE OF APPEAL CLERK

NAME AND ADDRESS OF EMPLOYER(S) AND ANY OTHER PARTY INVOLVED IN THE CLAIMANT'S ELIGIBILITY
 EMPLOYER'S ADDRESS _____ EMPLOYER'S REPRESENTATIVE (IF ANY) _____

INFORMATION ABOUT THIS FORM AND THE APPEAL PROCESS

What is the purpose of this form?

This is an appeal form. **If you decide to appeal, please read your UC Service Center determination for information on where to file your appeal.** You may complete this form online at www.uc.pa.gov/appeals. Follow the instructions to file the appeal by clicking the UC Service Center noted on your determination to complete an online UC-46B, Petition for Appeal. If you wish to file by fax or mail, you may use this form to appeal the enclosed notice of determination. If you file an appeal, a copy of the completed form will be sent to all parties.

Do I qualify to file an appeal?

If you are the claimant, you may appeal if the determination denies UC benefits and you think you should be eligible for benefits. If you are the employer, you may appeal if the determination grants benefits and you think the claimant should be ineligible or eligible for fewer benefits. You must indicate your reason for filing an appeal.

What do I do if I have questions?

Do not use this form to ask questions about the enclosed determination or UC benefits. This form should be used only to file an appeal. If you have any questions about UC, call the UC Service Center listed on the determination. If you would like to ask a question before you decide whether to appeal, call promptly because an appeal must be filed within 15 days after the determination is issued.

What happens if I file an appeal?

After your appeal is received and processed, the front of this form will be completed and returned to you as notification that it has been processed. You may also receive a copy of this appeal if the aggrieved party has filed an appeal.

If an appeal is filed, a UC referee will conduct a hearing where the parties and their witnesses can give testimony under oath. The parties may arrange for witnesses with firsthand knowledge of the facts to participate in the hearing. Firsthand knowledge refers to something which the witness actually saw or heard, as distinguished from something learned from some other person or source. Information learned secondhand might not, depending on the circumstances, be considered at the hearing.

If the hearing concerns the claimant's separation from employment, and the claimant quit his or her job, the claimant will be ineligible for benefits unless the claimant proves that there was a necessitous and compelling reason to voluntarily leave work. If the employer discharged the claimant, the claimant's separation will not be disqualifying unless the employer proves that the claimant was dismissed for willful misconduct or the claimant's unemployment is his or her fault.

At the hearing, the referee will try to obtain testimony about all of the facts relevant to the appeal. The referee will issue a decision after the hearing and mail a copy to the parties.

May I have legal representation?

Whether you are the claimant or the employer, you may file your own appeal and represent yourself throughout the appeal process, or you may have an attorney or any other advocate represent you. If you are the claimant and you qualify, free legal assistance may be available from the legal services organization serving your area, your local bar association, or a law school clinic.

Should I file claims while an appeal is pending?

Yes. If the employer appeals a determination granting you benefits, you can receive benefits while the appeal is pending. If you appeal a determination denying benefits and the appeal is decided in your favor, only benefits for weeks that you claimed while the appeal was pending can be paid. Therefore, if you remain partially or fully unemployed while an appeal concerning your eligibility is pending, **continue to file claims for benefits**. UC Claims can be filed by calling Pennsylvania Teleclaims System (PAT) or by Internet at www.uc.pa.gov. Your UC Service Center can assist you if you are unable to file.

*Auxiliary aids and services are available upon request to individuals with disabilities.
Equal Opportunity Employer/Program*



UNEMPLOYMENT COMPENSATION APPEALS INFORMATION

This pamphlet was prepared to help you understand the appeal process. It is designed for informational purposes only and should not be considered a statement of the Law.

GENERAL INFORMATION

This pamphlet gives claimants and employers important information about filing an unemployment compensation appeal. The pamphlet also contains important information for claimants concerning the need to continue to file biweekly claims while awaiting a decision. If you are a claimant, knowing the correct claims filing procedures will enable you to protect your right to benefits pending the outcome of the appeal.

Under Article V of the Pennsylvania Unemployment Compensation Law, the Department of Labor & Industry must examine promptly each application for benefits and determine whether the application is valid. In order to ensure that every individual is given an opportunity for a fair hearing, the law also provides for an appeal process to allow interested parties to object to an unemployment compensation determination or decision.

REPRESENTATION

Whether you are the claimant or the employer, you may file your own appeal to a UC referee or the UC Board of Review and represent yourself before the referee or the board, or you may have an attorney or any other advocate represent you. If you are a claimant and you qualify, free legal assistance may be available from the legal services organization serving your area, your local bar association or a law school clinic.

APPEALS TO THE UNEMPLOYMENT COMPENSATION REFEREE

When the UC Service Center (UCSC) has decided whether an employee who has filed a disputed claim will receive Unemployment Compensation (UC) benefits, it notifies both parties in the case, the employee (claimant) and the employer, of its determination.

If you disagree with the determination of the UCSC, you may appeal within 15 days from the date the ruling is mailed to you. Instructions for filing an appeal are included with the determination. If the 15th day of an appeal period falls on a day on which the UCSC is closed, the appeal period is extended to the next working day. Following a hearing, the UC referee will issue a new decision.

CLAIMS INVOLVED IN APPEAL

Claimant Appeals

If you are a claimant appealing an ineligible determination, the benefit weeks involved will be paid only if the decision is reversed. If you are eligible for benefits but appealing for a higher weekly benefit rate, the benefit weeks will be paid at the current rate. If the appeal is decided in your favor, you will be issued supplemental benefits for the difference between the two rates.

Continued Filing of Claims - *IMPORTANT*

If you are a claimant who is still totally or partially unemployed, *continue to file your claims for benefits*. If you have an application for benefits (AB) date that is effective on or after January 1, 2012, you must also be registered for employment search services with Pennsylvania CareerLink[®] system within 30 days after you have filed your application for UC benefits and continue to conduct your active work searches as required. If you appeal a determination or a decision denying benefits and the appeal is decided in your favor, only benefits for weeks that you claimed while the appeal was pending can be paid. However, failure to register with a CareerLink[®] timely or seek work as instructed may result in your being determined ineligible for benefits for that week(s). You must continue to file your biweekly claims as instructed by the UCSC.

The fact that your case is under appeal does not change your responsibility to continue to file your biweekly claims for benefits.

Employer Appeals

If you are a claimant and your employer is appealing a determination that made you eligible for benefits, you will continue to be paid your benefits while the appeal is in progress. If the eligible determination is reversed, you will be expected to repay the money you received if it is determined that you were overpaid benefits through your own fault. Interest is assessed on the overpayment principal until it is repaid.

If the overpayment is determined to be a non-fault recoupable, the total of the overpaid benefits will be deducted from any future benefits you receive.

Periodic letters are sent to claimants having non-fault overpayments to remind them of the offset from future benefits and to provide them with the opportunity to make voluntary repayment. If it is determined to be a non-fault, nonrecoupable overpayment, the overpayment will not be deducted from your future benefits.

THE UC REFEREE

Your appeal will be assigned a number and forwarded to a UC referee (referee). The referee is a person knowledgeable in UC matters who will take sworn testimony regarding the issue(s) pertinent to your claim for benefits.

The referee will send you a Notice of Hearing (Notice). This Notice will give you, and the other interested parties involved, the time and place of the hearing and the issues and parties involved. A list and explanation of UC eligibility issues will be included with the Notice.

When referring to the claim appeal, use the assigned appeal number and the claimant's name and social security number.

Withdrawal of Appeal

You may ask to have your appeal withdrawn any time before a decision is issued by the referee. If you wish to withdraw your appeal, you must submit a written request for withdrawal to the referee's office responsible for the hearing.

THE HEARING BEFORE A UC REFEREE

Purpose of the Hearing

The purpose of the hearing, and the duty of the referee, is to gather all facts relating to the case. After getting all the facts on the record, the referee must then apply the appropriate laws, rules, procedures, and precedents in order to make a proper decision. The referee has no special or personal interest in the outcome of the appeal. The referee's decision will be based on the evidence and testimony provided at the hearing.

The hearing is not a "round table" discussion. You must limit your testimony and evidence to the issues before the referee. You have the right to present your testimony and evidence. Please refer to "REPRESENTATION" on page 1 of this pamphlet for further information on representation at hearings.

If you feel that a conflict of interest would be created if the hearing were to be conducted by the assigned referee, you may advise the Appeals System Administrator, UC Board of Review, 651 Boas St., Room 1116, Harrisburg, PA 17121-0750, in writing, giving your reasons and requesting that another referee be assigned.

Preparing for the Hearing

Organize the facts and circumstances relating to your appeal. Gather any documents you have which concern the case, since these should be taken to the hearing.

If you need assistance because of a disability with hearing, speech, and/or vision, or for a language other than English, please contact the referee's office responsible for the hearing.

Although the hearings are informal, they do involve testifying under oath, cross-examination, rebuttals and witnesses. The testimony will be recorded.

If there are any witnesses who have firsthand knowledge of the matter, and you wish to have them testify or bring documents to the hearing, you must notify them of the date, time, and place of the hearing and arrange for them to be present. If a witness can testify only as to what he/she was told by someone else, such testimony alone cannot be used in making the decision.

If your witness refuses to appear or provide documentary evidence, you may request that the referee issue subpoenas to ensure the requested presence at the hearing. The referee will issue subpoenas if determined necessary.

Attendance at the Hearing

You should attend the hearing to protect your rights.

Request for Continuance of Hearing

If for any reason you cannot attend the hearing, a request for a continuance (postponement and rescheduling) of the hearing should be directed IMMEDIATELY to the referee named on the front of the Notice of Hearing. This will be granted only for "proper cause" and upon terms deemed proper by the referee. If a continuance of the hearing is granted, the hearing will be rescheduled.

Request for Reopening After Scheduled Hearing

Either party may request a reopening of an appeal hearing, by contacting the referee's office. A request received before the referee's decision has been issued will be reviewed by the referee. A reopening may be granted for good cause. A request received after the referee's decision has been issued will be treated as a request for further appeal to the UC Board of Review (board) from the referee's decision. Request for reopening must be made in writing and directed to the referee's office responsible for the hearing.

THE UC REFEREE'S DECISION

Following the hearing, the referee will consider the facts presented at the hearing and issue a decision based on these facts. Copies of the decision will be mailed to the interested parties.

APPEALS TO THE UC BOARD OF REVIEW

If you feel that the referee's decision is incorrect, you may file an appeal to the UC Board of Review. Instructions for filing an appeal are included with the referee's decision.

Appeals must be filed within 15 days from the date the decision was mailed. If the fifteenth day of an appeal period falls on a day on which the UCSC is closed, the appeal period is extended to the next working day.

The board members review the previously established record in connection with each request for a further appeal from the referee's decision, and will determine whether or not there is any need for an additional hearing.

If the board determines that the record established by the referee meets the board's fact-finding responsibilities, and that the parties were given ample opportunity to present their testimony and evidence at the referee hearing, then it may proceed to decide the case on the basis of that record.

If you feel that a conflict of interest would be created by any particular board member's review of the further appeal, you may advise the board, in writing, of the reasons, and request that the specified member not participate in the decision.

Copies of Referee Hearing Testimony

The record of the referee's hearing is transcribed only when a referee decision is appealed to the UC Board of Review. Copies of such testimony are available to you (to be used for UC purposes only) at no charge, upon a written request to the Appeals System Administrator, UC Board of Review, 651 Boas St., Room 1116, Harrisburg, PA 17121-0750.

Remanding a Case

The board's review of a further appeal does not include a hearing like the referee's hearing. However, if the board feels that the record is not adequate, then it will remand (return) the case to a referee for another hearing.

If you feel that existing testimony is insufficient and that new evidence should be introduced, you should submit a written request for a remand to the Appeals System Administrator, stating why you think the testimony is incomplete.

A Remand Hearing

At a remand hearing, the referee will serve as a hearing officer for the board, to gather from the parties any additional information needed in order for the board to arrive at a proper conclusion of the case. This testimony will be recorded. Then the entire file and record of

evidence will be returned to the board members for their consideration and appropriate further action.

If a remand hearing is scheduled, you may request a continuance (postponement and rescheduling) of the hearing by contacting the referee's office. This may be granted for proper cause.

If you feel that the attendance of certain witnesses and/or the producing of certain documents at the remand hearing are essential to provide the board with complete information concerning the claim, you may submit a written request to the hearing officer that subpoenas be issued to produce these. The board will issue subpoenas, if necessary.

Filing a Brief - Requesting Oral Argument

If you wish to clarify or expand testimony already recorded, you should request, in writing, of the Appeals System Administrator, UC Board of Review, 651 Boas St., Room 1116, Harrisburg, PA 17121-0750, the board's permission to file a brief (a written statement) or to be scheduled for oral argument (personal appearance) before the board in Harrisburg. The board has sole discretion to grant or deny requests for oral argument, and will grant such a request only when the board deems it necessary to enable the board to render an appropriate decision.

If an oral argument is scheduled, you may request a continuance (postponement and rescheduling) by contacting the UC Board of Review. This may be granted for proper cause.

Withdrawal of Appeal

You may ask to have your appeal withdrawn any time before a decision is issued by the UC Board of Review. If you wish to withdraw, you must send a written request to Appeals System Administrator, UC Board of Review, 651 Boas St., Room 1116, Harrisburg, PA 17121-0750. By withdrawing the appeal, you now accept the decision from which the last appeal was taken.

THE BOARD'S DECISION

After reviewing the facts, the board will issue a decision, usually within 30 to 75 days from the filing of the further appeal. Copies of the decision will be mailed to the interested parties.

REQUESTING THE BOARD OF REVIEW TO RECONSIDER ITS DECISION

A party aggrieved by a Board decision may submit a request to the Board to reconsider the decision. The request must be submitted no later than 15 days after the decision mailing date. Reconsideration will be granted only under very limited circumstances, for "good cause." The Board, in most cases, cannot revisit its previous credibility determinations. Also, the Board will not accept additional evidence, unless the party could not have presented the evidence at an earlier stage.

The submission of a request for reconsideration to the Board does not extend the time limit for filing a petition for review with Commonwealth Court.

APPEALS TO THE COMMONWEALTH COURT

If you disagree with the UC Board of Review's decision, you have the right of appeal to the Commonwealth Court of Pennsylvania. Instructions for filing an appeal are included with the board's decision. An appeal to the Commonwealth Court must be filed within 30 days of the mailing date of the board's decision. The UC Board of Review has nothing to do with the filing or processing of further appeals to the Court. Commonwealth Court appeals may be filed in person or by mail with the Prothonotary of the Commonwealth Court of Pennsylvania, Pennsylvania Judicial Center, 601 Commonwealth Ave., Suite 2100, P.O. Box 69185, Harrisburg, PA 17106-9185.

Spouse following spouse - To be eligible, the claimant must show that the reason for the spouse's relocation was beyond the spouse's control, and that such relocation created economic circumstances which could not be overcome or that it was economically impossible to maintain two residences.

Leaving work due to personal reasons - To be eligible, the claimant must show that he/she quit due to personal circumstances that left him/her no reasonable alternative. The claimant must show that, prior to quitting, he/she made a reasonable attempt to maintain the employer-employee relationship. The claimant must also be able and available for suitable work.

To attend school - Quitting a job to attend school is not considered a cause of a necessitous and compelling nature, unless it is to attend school or training provided under the Trade Adjustment Assistance Act (TAA). If the claimant quits to attend TAA-approved training, he/she must show that the job he/she quit was not suitable work to be eligible for UC. Suitable work for the purposes of this exception to Section 402(b) means work of a substantially equal or higher skill level than the claimant's past "adversely affected employment," and wages of such work are not less than 80% of the worker's "average weekly wage."

Due to unsuitable work - When an employee accepts a position, he/she admits to the initial suitability of the position with respect to its wages and the conditions of employment. When a claimant quits because he/she feels the job was unsuitable, the claimant must show there were changes in the conditions of employment, to which he/she did not agree upon, that made the job unsuitable, or there was deception on the part of the employer with regard to the conditions of employment at the time of hire, or he/she shall be considered ineligible. The suitability of the work will be determined by considering factors such as the degree of risk involved to the claimant's health, safety and morals; the claimant's physical fitness; the claimant's prior training and experience; the distance of the available work from the claimant's residence; the prevailing condition of the labor market; and the prevailing wage rates in the trade or occupation.

Job not the same as what was anticipated - To be eligible, the claimant must show that the monetary expectations of employment were not fulfilled through no fault of the claimant. For example, a claimant takes a job selling vacuum cleaners because he/she has been told he/she could make \$50,000 per year through commission sales. After three weeks, the claimant quits the job because he/she was unable to make any sales and the personal expenses exceeded the income, thereby warranting the allowance of benefits.

Discharge

Section 402(e) provides that an individual who is discharged from employment for reasons that are considered to be willful misconduct connected with his/her work, is not eligible to receive benefits. The employer must show that the employee's actions rose to the level of willful misconduct.

"Willful misconduct" is considered an act of wanton or willful disregard of the employer's interests, the deliberate violation of rules, the disregard of standards of behavior which an employer can rightfully expect from an employee, or negligence which manifests culpability, wrongful intent, evil design, or intentional and substantial disregard of the employer's interests or of the employee's duties and obligations. While it is the employer's prerogative to discharge an employee, an employee is not ineligible for UC benefits unless the discharge is due to willful misconduct.

Pennsylvania's courts have provided guidance in determining an individual's eligibility in specific situations involving a discharge for willful misconduct. Following are examples of some common discharge situations.

Absenteeism/Tardiness - Prior to being discharged for absenteeism or tardiness, the claimant must have been warned about such conduct. In addition, there have been cases where one absence was sufficient to show willful misconduct. The reason for the last occurrence will be taken into consideration in determining if the claimant had a good reason for being tardy or absent. Absenteeism alone may justify a discharge, but without a showing of wanton and willful disregard of the employer's interests, benefits cannot be denied. Generally, if an individual has good cause for missing work, such as being ill or having an ill child, and reports off according to the employer's policy, that individual's conduct does not rise to the level of willful misconduct. However, there can be factors that may affect the eligibility determination, such as the employer's rule for calling off, the method which the individual used in calling off, the reason for the last incident, the nature of the work, past attendance record, and previous warnings for absenteeism or tardiness. When the employer has a progressive discipline point system and an individual is discharged due to accumulating points as a result of absenteeism/tardiness, all absences/tardiness will be reviewed to determine if any of the absences were justified. Willful misconduct is not established if the claimant had good cause for any of the absences.

Rule violation - Deliberate violation of an employer's rule which is known to the employee constitutes willful misconduct if the employer's rule is reasonable and the employee's conduct, in violating the rule, was not motivated by good cause. The employer must show the existence of the rule and that the rule was violated. The employer must also show that the claimant was aware, or should have been aware, of the

rule. If this is established, the claimant must show that the rule was not reasonable, or that he/she had good cause for violating the rule.

Attitude toward employer or disruptive influence - Disregard of standards of behavior which an employer can rightfully expect from his/her employee constitutes willful misconduct. However, where a claimant is discharged due to his/her attitude toward the employer or due to being a disruptive influence, the employer must show specific conduct adverse to the employer's interests.

Damage to equipment or property - Negligence which manifests culpability, wrongful intent, evil design, or intentional and substantial disregard of the employer's interests or of the employee's duties and obligations constitutes willful misconduct. Where the negligence results in damage to equipment, damage caused by the worker to equipment or materials is not usually misconduct. The employer must show that the action which caused the damage was willful or due to willful carelessness; or, to show that the claimant would not have damaged the equipment if he/she had used reasonable care of which he/she was capable in order for the action to be willful misconduct.

Unsatisfactory work performance - Unsatisfactory work performance is not considered willful misconduct where the claimant is working to the best of his/her ability. However, it is willful misconduct where the employer shows that the claimant was capable of doing the work, but was not performing up to standards despite warnings and admonitions. This is conduct showing an intentional and substantial disregard of the employer's interests.

Drug and alcohol testing - The UC Law provides for the denial of benefits for failure to submit (to) and/or pass a drug or alcohol test, provided the test is lawful and not in disagreement with an existing labor agreement. In order to be eligible for UC, the claimant must show that the test was unlawful, violated an existing labor agreement, or was inaccurate.

Other Eligibility Issues

Following are examples of eligibility issues that are not related to the claimant's separation from employment.

Able and Available

Compensation shall be payable to any employee who is or becomes unemployed, and is able to work and available for suitable work.

The claimant must prove a realistic attachment to the local labor market as a whole, as indicated by the claimant's

readiness, willingness, and ability to accept some substantial and suitable work. The claimant must certify that he/she is able to accept and is available for suitable work during each week for which he/she files a claim for benefits.

Active Search for Work

Effective with applications for benefits dated Jan. 1, 2012, and after with some exceptions, the claimant is required to register for employment search services offered by the Pennsylvania CareerLink®, apply for positions that offer employment and wages similar to those the individual had prior to becoming unemployed, participate in work search activities, and keep a weekly record of the efforts made to find work.

This is a week-to-week test. The claimant must meet the requirements for each week in order to qualify for benefits.

Self-Employment During the Base Year

Services performed in self-employment do not qualify as base-year employment and will not be used to establish financial eligibility for benefits. Independent contractors are self-employed. The following two factors must exist for a claimant to be considered self-employed.

1. The individual has been and will continue to be free from the control or direction over the performance of his/her services, both under his/her contract of hire and in fact.
2. As to such services, the individual is customarily engaged in an independently established trade, occupation, profession or business.

If the claimant alleges an employer-employee relationship, but the employer states that the claimant is self-employed, the employer must prove that the claimant is free from control over the performance of the service and customarily engaged in an independently established trade, occupation, profession or business.

Self-Employment While Claiming Benefits

Section 402(h) provides that a claimant is ineligible for any week in which he/she is engaged in self-employment. When a claimant is starting a new business, the claimant becomes self-employed with the first positive step toward starting the business. For example, the claimant would become self-employed when he/she began advertising for business, rented an office, purchased equipment/property, etc.

Self-Employment/Sideline Business

There is an exception in Section 402(h) for the operation of a sideline business. The courts have provided a four-pronged test for eligibility for an individual engaged in a sideline business. An employee who has a proprietary interest in a sideline business may still receive benefits if it is proven that all four of the following conditions are met:

- 1) Concurrency—the self-employment activities must have been conducted while engaged in employment.
- 2) Primary source of income—the earnings from employment must exceed the net profit from the self-employment activities.
- 3) There cannot be a substantial increase in involvement in self-employment.
- 4) The claimant must be able and available for full-time suitable work.

The burden of proof in a situation involving a sideline business rests with the claimant. The claimant must provide information and documents showing that the self-employment venture is a sideline business and that the claimant is separated from employment that constituted the individual's major source of income.

Corporate Officers

The UC Law was never intended to provide benefits to those individuals who become "unemployed" by reason of the failure of their own business ventures. An individual, who, through ownership of stock and his/her position in the corporation, exercises a "substantial degree of control" over its operation, must be considered a self-employed businessperson. The claimant must provide information showing that he/she is not a self-employed businessperson to be eligible.

The only exception with respect to ineligibility of corporate officers is provided in Section 402.4 of the law. If the corporation has been forced into involuntary bankruptcy under the provisions of Chapter 7, Title 11, of the United States Code, the officers of the corporation would not be ineligible for benefits.

Refusal of Suitable Work

Section 402(a) provides, in part, that an employee shall be ineligible for compensation for any week in which his/her unemployment is due to failure, without good cause, either to apply for suitable work at such time and in such manner as the department may prescribe, or to accept suitable work when offered to him/her by the employment office or by any

employer. The employer must notify the department within 7 days of the offer of work.

Section 402(a.1) provides a claimant is ineligible for compensation for any week in which the unemployment is due to failure to accept an offer of suitable full-time work in order to pursue seasonal or part-time employment.

The responsibility rests with the department to determine whether the work that was offered was suitable. If the work is determined to be suitable, the claimant must show that he/she had good cause to refuse the referral or to refuse the offer of suitable work to be eligible.

Incarcerated Employees

Section 402.6 provides, in part, that an employee shall not be eligible for any weeks of unemployment during which the employee is incarcerated after a conviction.

The party who carries the burden of proof is dependent on who alleges that the claimant is both convicted and incarcerated.

- 1) If an employer alleges that the claimant is convicted and incarcerated, the employer must show that the claimant meets both requirements for ineligibility under Section 402.6, in that he/she is **both** convicted **and** incarcerated.
- 2) Where the bureau investigates potential ineligibility under Section 402.6 without information from an employer or claimant, the bureau must show that the claimant is both convicted and incarcerated.

If the claimant provides information, which indicates there is a potential issue under Section 402.6, the claimant must show that he/she is not both convicted and incarcerated.

Severance Payments

Section 404(d)(1) of the PA UC Law provides, in part, that benefits shall be paid to an otherwise eligible employee, compensation in an amount equal to his/her weekly benefit rate less the total amount of severance pay that is attributed to the week.

Severance pay in an amount greater than 40% of the average annual wage will be attributed to the weeks immediately after the claimant's separation from employment. The claimant's weekly benefit rate will be reduced for a certain number of weeks, but not to an amount less than zero. The number of weeks will depend on the amount of the severance payment and the claimant's regular full-time wage.

Pensions

Pensions and retirement payments are deducted from UC if a base-year employer maintained or contributed to the pension plan and base-year employment affected the claimant's eligibility for, or increase the amount of, the pension. 50% of the pro-rated, weekly pension amount is deducted if the claimant contributed in any amount to the pension plan. If the pension is entirely employer funded, 100% of the pro-rated, weekly pension amount is deducted from the claimants' weekly UC payment.

Social Security and Railroad Retirement pensions are not deducted from UC benefit payments.

A lump-sum pension payment is not deducted from UC, unless the claimant had the option of taking a monthly pension. In addition, a lump-sum pension is not deductible if the claimant "rolls over" the lump sum into an eligible retirement plan such as an Individual Retirement Account (IRA) within 60 days of receipt.

Predetermination of Claims

Please note that eligibility for UC benefits is not predetermined. Eligibility determinations are made only after an application for benefits has been filed, and are based on the individual circumstances of each case. If you have a question regarding your claim or the claim of a former employee, please contact a UC Service Center at 888-313-7284.

Understanding the Determination

If you have any questions or do not understand any part of a UC determination, please feel free to contact the UC Service Center to request an explanation. For example, if you do not understand the provision of the Law, or if there are findings of fact that you question, the UC Service Center will provide you with information so that you may have a better understanding of the determination.

Appeal Rights

If you are the claimant, you may appeal if the determination denies benefits and you think you should be eligible for benefits, or the determination grants benefits and you think you should be eligible for more benefits.

If you are the employer, you may appeal if the determination grants benefits and you think the claimant should be ineligible for benefits or eligible for fewer benefits.

*Auxiliary aids and services are available upon request to individuals with disabilities.
Equal Opportunity Employer/Program*

Unemployment Compensation Eligibility Issues

This pamphlet provides information about issues that affect eligibility for unemployment compensation (UC). It also contains information about facts that each party—employer and claimant—is responsible to establish when an issue arises.

This pamphlet was prepared to provide general information only. It is not an official statement of the law.

Voluntary Quit

Section 402(b) of the Pennsylvania UC Law provides, in part that a claimant shall be ineligible for benefits for any week in which his/her unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature. A claimant who voluntarily quits continuing work has the burden of proof in establishing good cause for quitting; and, that such cause was real and substantial, leaving the claimant no other alternative. The burden is on the claimant to show that, prior to quitting continuing employment, he/she made every reasonable effort to maintain the employer-employee relationship. Following are examples of some common voluntary quit situations.

Health reasons - To be eligible, the claimant must inform the employer of his/her health limitations prior to quitting so that the employer has an opportunity to offer suitable work within the claimant's limitations. The claimant must also be able and available for suggested accommodations. If the employer fails to offer suitable work, the claimant may be eligible for UC.

Transportation problems - To be eligible, the claimant must show that the loss of the transportation was through no fault of his/her own and rendered his/her problem virtually insurmountable. He/she must attempt to secure alternate transportation prior to quitting. The claimant must also be able and available for suitable work in the local labor market consistent with his/her limitations.



pennsylvania

DEPARTMENT OF LABOR & INDUSTRY
OFFICE OF UNEMPLOYMENT COMPENSATION BENEFITS