IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Noah Galanos,	:	
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Petitioner	:	
	:	
v.	:	No. 1681 C.D. 2024
	:	Submitted: March 3, 2026
Unemployment Compensation Board of Review,	:	
	:	
Respondent	:	

BEFORE: HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE CHRISTINE FIZZANO CANNON, Judge
HONORABLE MATTHEW S. WOLF, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE WOJCIK FILED: November 18, 2026

Noah Galanos (Claimant) petitions for review of the November 15, 2024 order of the Unemployment Compensation Board of Review (Board). The Board therein affirmed the Referee's order denying Claimant benefits under Section 402(e) of the Unemployment Compensation Law (Law).[1] Before this Court, Claimant argues he had good cause for violation of Mongiovi & Son Fire Protection Services' (Employer) policy against workplace violence. Upon careful review, we affirm.

Claimant began working for Employer as a full-time hood cleaner on November 27, 2023. His employment only lasted until approximately January 9, 2024, however. *See* Referee's Decision, 3/17/24, at Findings of Fact (F.F) Nos. 2,

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

13. On that date, Claimant began texting one of his managers to discuss the purported harassment he was suffering at the hands of one of his coworkers, David Nolf. *Id*. at F.F. No. 6. The complaints alleged that David Nolf struck Claimant in the groin with a towel, threw chemically laced towels in Claimant's face, and purposefully exposed Claimant's face to flatulence. *Id*.; *see also* Certified Record (C.R.) at 140-54. In those text messages, Claimant expressed an unwillingness to come in for his scheduled shift and his exasperation with his supervising manager for failing to rectify the alleged harassment. Claimant's exasperation ultimately – and critically – culminated in a series of texts wherein Claimant asked his manager: "How funny is it going to be when I beat his ass?" And: "I don't give a fuck. How funny is it going to be when I beat his fucking face into the ground?" *See* C.R. at 142, 147. Following these exchanges, Employer terminated Claimant for threatening behavior in the workplace. Referee's Decision at F.F. Nos. 13-14.

Claimant subsequently filed an application for unemployment compensation benefits which was denied in a Disqualifying Separation Determination dated March 17, 2024, citing Section 402(e) of the Law as the reason for his ineligibility. C.R. at 23. Claimant filed an appeal therefrom asserting that he was subject to harassment while on the job and did not commit the requisite willful misconduct under Section 402(e) to be determined ineligible for benefits. *Id*. at 23, 50. Thus, the Referee conducted a hearing on September 4, 2024, to determine whether Employer discharged claimant for willful misconduct in connection with his employment. *Id*. at 68.

At the hearing, Employer introduced the text messages between Claimant and his manager as well as the testimony of the manager. The manager testified, in pertinent part, that Claimant was fired for insubordination including the

threats of violence to coworkers communicated in those text messages. Referee's Hearing, 9/4/24, Notes of Testimony (N.T.) at 8-11. In fact, the manager believed there was no way to move forward with Claimant's employment after receiving those text messages. *Id.*, N.T. at 16. Employer also offered portions of Employer's company handbook, including the work rules prohibiting threats of violence in the workplace and the possibility of termination for a violation thereof. *Id.*, N.T. at 12-14. Claimant's manager testified that, in his view, Claimant's text messages constituted such a violation. *Id.* He likewise testified that the particular handbook offered into evidence bore Claimant's signature acknowledging Employer's policies. *Id.*, N.T. at 14-15.

Claimant testified that he sent those text messages to his manager prior to the start of one of his shifts because he intended to quit. Referee's Hearing, N.T. at 33.

> I went to quit because I didn't want -- I was tired of him putting his hands on me every day. So I wanted to quit. I wasn't going to do it anymore. I didn't like it. Why should I have to go to work and have someone put their hands on me day after day, causing me physical harm and nobody is there to stop them?

Id. According to Claimant, Claimant had expressed his frustration about David Nolf's conduct to a supervisor on multiple occasions, but David Nolf's behavior never changed as a result of those discussions.[2] *Id.*

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[2] For his part, David Nolf conceded that there was some "joking around" in the workplace but denied causing any physical harm to Claimant as alleged. *See, e.g.*, Referee's Hearing, N.T. at 41-42. Paulette Nolf, who is David Nolf's sister and Claimant's girlfriend, testified as Claimant's witness. She offered that on December 24, 2023, her brother, David Nolf, admitted to committing some of the alleged conduct, like striking Claimant in the groin with a towel. *Id.*, N.T. at 43-44. Employer initially objected to the introduction of this testimony as hearsay. *Id.*, N.T. at 44. Although the Referee sustained the objection, she permitted Claimant's counsel to continue

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Ultimately, in a decision mailed on September 9, 2024, the Referee determined that Claimant was ineligible for benefits. *See* C.R. at 206-09. Relevant here, the Referee concluded that Employer had proved the existence of a work rule prohibiting threatening comments in the workplace and Claimant's violation of that rule by virtue of the text messages he shared with his manager. Further, and notwithstanding some sympathy for Claimant, the Referee concluded that Claimant did not provide a justifiable cause for his willful misconduct, thus rendering him ineligible for benefits under Section 402(e) of the Law.[3] *Id.* at 208.

Claimant appealed to the Board which affirmed the Referee's decision in an order mailed on November 15, 2024. *See* C.R. at 251-52. The Board adopted the Referee's findings and conclusions as their own, but noted: "Regardless of the prior circumstances, [C]laimant's actions here were clearly inappropriate. Sending threatening text messages to a manager about an employee is obviously unacceptable and against the employer's best interests. Discharge was the natural result." *Id*. at 251. Claimant's timely Petition for Review followed.[4]

Before this Court, Claimant does not contest that he related threats of violence towards a coworker to his manager. Claimant instead asserts that he

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questioning Paulette Nolf. *Id.* To rebut this testimony, Employer asked David Nolf whether he ever made such an admission. He denied ever doing so. *Id.*, N.T. at 45-46.

[3] In her decision, the Referee referenced the applicable standards for excluding hearsay statements. *See* C.R. at 208. The Referee did not conduct an analysis on this point, however, or specify which statements she was excluding in her decision. *Id*. Claimant presumes that this was in reference to Paulette Nolf's testimony. *See* Claimant's Brief at 5-8.

[4] This Court's review is limited to determining whether constitutional rights were violated, an error of law was committed, or the necessary factual findings are supported by substantial evidence. *First Federal Savings Bank v. Unemployment Compensation Board of Review*, 957 A.2d 811, 814 n.2 (Pa. Cmwlth. 2008).

possessed good cause for violating Employer's workplace harassment policy because of the harassment he was subject to.[5] We disagree.

Under Section 402(e) of the Law, "[a]n employee shall be ineligible for compensation for any week . . . [i]n which his unemployment is due to his discharge . . . from work for willful misconduct connected with his work." 43 P.S. §802(e). Willful misconduct is defined as: "(1) wanton and willful disregard of an employer's interests; (2) deliberate violation of rules; (3) disregard of the standards of behavior which an employer can rightfully expect from an employee; or (4) negligence showing an intentional disregard of the employer's interest or the employee's duties and obligations." *Johns v. Unemployment Compensation Board of Review*, 87 A.3d 1006, 1009 (Pa. Cmwlth. 2014) (citing *Grieb v. Unemployment Compensation Board of Review*, 827 A.2d 422 (Pa. 2003)). The employer bears the initial burden of proof, which, once satisfied, shifts to the claimant to demonstrate "he had good cause, *i.e.*, his actions were justified and reasonable under the circumstances." *Cummins v. Unemployment Compensation Board of Review*, 207 A.3d 990, 996 (Pa. Cmwlth. 2019) (citing *Kelly v. Unemployment Compensation Board of Review*, 747 A.2d 436, 438-39 (Pa. Cmwlth. 2000)). Whether an employee's conduct amounts

[5] Claimant's arguments nominally challenge the Referee's finding of willful misconduct as lacking substantial evidence. These arguments are more appropriately characterized as challenging the Referee's finding that Claimant lacked good cause for his willful misconduct, however, as they seize upon Employer's conduct which Claimant believes justified his threats. For example, Claimant raises a retaliation defense under the guise of the Referee's decision lacking substantial evidence relating to her finding of willful misconduct. Claimant's Brief at 9. However, we have previously treated retaliation as an affirmative defense which provides good cause for an employee's willful misconduct in this context. *See, e.g.*, *Bat Conservation and Management, Inc. v. Unemployment Compensation Board of Review*, 302 A.3d 259, 262 (Pa. Cmwlth. 2023). We will consequently address Claimant's arguments as attacking the Referee's rejection of Claimant's good cause defense. These arguments also track more closely with those Claimant raised in his appeal to the Board. *See* C.R. at 224-25.

to willful misconduct, and, further, whether an employee had good cause for such a violation are questions of law fully reviewable by this Court. *Id*.

Here, Employer presented a copy of its company handbook bearing Claimant's signature acknowledging the policies set forth therein. *See* C.R. at 156-57, 174. Among other things, Employer's policy against workplace violence prohibits "threat[s] . . . to inflict injury upon an employee . . . ." *Id*. at 156. The Referee determined that Claimant was terminated for violating this work rule, which he was aware of or should have been aware of, because he related threats of violence towards David Nolf to his manager. *Id*. at 208. Having established that the violation amounted to willful misconduct,[6] the burden thus shifted to Claimant to demonstrate that he had good cause for his willful misconduct. *Cummins*, 207 A.3d at 996.

On that point, Claimant focuses on Employer's conduct, namely, whether Employer's true reason for terminating Claimant was Claimant's willful misconduct or retaliation for reporting his harassment by David Nolf. *See, e.g.*, Claimant's Brief at 9. In support, Claimant directs our attention to both his and Paulette Nolf's testimonies as well as his manager's tenuous claim that he investigated Claimant's complaint *before* terminating him. *Id*. at 10. He likewise believes the manager implicitly admitted that the complained of harassment did in fact occur. *Id*. at 10. On these assertions alone, Claimant believes the Referee "ignored the fact that [Claimant] himself was the victim of harassment and was being terminated for bringing that fact to [E]mployer's attention." *Id*.

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[6] In the proceedings below, there was some question over the exact cause of Claimant's termination. *See* Referee's Hearing, N.T. at 11, 27-29, 31-32. Indeed, Claimant's notice of termination specified a number of terminable offenses, such as threatening behavior, tardiness, insubordination, as well as alcohol and marijuana abuse. C.R. at 204. Given our analysis here, however, we have no trouble concluding that Claimant was terminated for threatening behavior in the workplace and that the Referee's finding on this point was supported by substantial evidence. Thus, even if Claimant preserved a challenge as to this finding of fact, we would be unpersuaded.

We disagree. In the context of unemployment compensation, retaliation can serve as an affirmative defense to willful misconduct. *See, e.g.*, *Bat Conservation and Management, Inc. v. Unemployment Compensation Board of Review*, 302 A.3d 259, 262 (Pa. Cmwlth. 2023). But this affirmative defense charges the complainant with the burden of proof and involves its own comprehensive analysis. *Id*. (citing *Uber v. Slippery Rock University of Pennsylvania*, 887 A.2d 362, 367 (Pa. Cmwlth. 2005)). What's more, as an affirmative defense, it must have been raised before the Board in order for this Court to consider it on appeal. *See* Pa. R.A.P. 1551(a) ("Only questions raised before the [Board] shall be heard or considered.")[7]; 34 Pa. Code §101.107(a) ("[I]ssues not previously considered or raised will not be considered by the Board, either upon application for, or in the determination of an appeal . . . ."). Here, Claimant's appeal to the Board makes no mention of retaliation. He instead complained that the Referee lacked substantial evidence in concluding Claimant did not have good cause for his threats.[8] C.R. at 223-25. We must therefore deem the retaliation issue to have been waived for our review. *Gould v. Unemployment Compensation Board of Review*, 466 A.2d 750, 751 (Pa. Cmwlth. 1983).[9]

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[7] Rule 1551(a) allows for this Court to consider issues not raised below under exceptions which are inapplicable here, namely, where the question involves: (1) the validity of the statute; (2) the jurisdiction of the government unit; or (3) a matter which could not have been raised before the government unit below notwithstanding the petitioner's due diligence. Pa. R.A.P. 1551(a)(1)-(3).

[8] Claimant likewise complained of the Referee's exclusion of Paulette Nolf's testimony as hearsay. C.R. at 223-25.

[9] We also note, given the underlying background and the substance of Claimant's arguments now, that Claimant could have raised colorable issues concerning whether the language he used constituted a true threat, *see Cummins*, 207 A.3d at 995-96; whether David Nolf provoked

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Separate from that of his retaliation defense, Claimant summarily asserts "the record contains sufficient evidence to establish that [Claimant] had good cause for failing to abide by [E]mployer's workplace harassment policy because he himself was a victim of harassment and was merely placing [E]mployer on notice that he would defend himself against further such assaults." Claimant's Brief at 13. We are not so persuaded.

In *Allen v. Unemployment Compensation Board of Review*, 189 A.3d 1128, 1131-32 (Pa. Cmwlth. 2018), an employee was discharged for threatening a coworker and argued, in this Court, that he had good cause for this willful misconduct because the coworker created a hostile work environment by, *inter alia*, using threatening language of his own and spreading rumors about the discharged employee. *Id*. at 1134. We rejected that argument, writing: "Even if [the other employee] had contributed to a hostile work environment, it did not give [the c]laimant good cause to initiate a confrontation with [him] . . . and threaten physical violence." *Id*. So too here. Whatever the veracity of Claimant's allegations concerning David Nolf, it did not confer good cause upon Claimant to threaten him with physical violence in text messages to their manager. Indeed, we cannot conceive of any reason why Claimant could not have reported these instances of workplace harassment to their manager while also complying with Employer's

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Claimant, *Reed v. Unemployment Compensation Board of Review*, 522 A.2d 121 (Pa. Cmwlth. 1987); or whether Employer's termination of Claimant but not David Nolf constituted disparate treatment, *Geisinger Health Plan v. Unemployment Compensation Board of Review*, 964 A.2d 970, 974 (Pa. Cmwlth. 2009). However, Claimant did not raise those issues before the Board or this Court. Thus, where Claimant's arguments now implicate those issues, we must likewise deem those issues waived for appellate review.

policy against threats of workplace violence. We thus discern no error in the decisions below.[10,11]

Accordingly, the Board's order is **AFFIRMED**.

MICHAEL H. WOJCIK, Judge

[10] Once an employer bears its burden of proving that a claimant threatened a coworker, claimants often have difficulty bearing their burden of proof in response. *See, e.g.*, *Cummins*, 207 A.3d at 996; *Johns*, 87 A.3d at 1012-13; *Sheets v. Unemployment Compensation Board of Review*, 708 A.2d 884, 885-86 (Pa. Cmwlth. 1998).

[11] Finally, Claimant takes issue with the Referee's exclusion of Paulette Nolf's testimony as hearsay. *See* Claimant's Brief at 5-8. We agree with the Board, however, that the exclusion is immaterial regardless of its propriety. Here, despite sustaining Employer's objection to Paulette Nolf's testimony as hearsay, the Referee nevertheless permitted Claimant to continue that line of questioning. We are thus well suited to determine its materiality to the matter *sub judice*. *See Hussey Copper Ltd. v. Unemployment Compensation Board of Review*, 718 A.2d 894, 898-99 (Pa. Cmwlth. 1998) (whether the improper exclusion of testimony constitutes harmless error depends on whether the testimony is material to the outcome of the case). For the reasons discussed above, even if we accept Claimant's allegations concerning David Nolf's conduct as true, the allegations would not confer good cause upon Claimant to violate Employer's policy against workplace violence. Paulette Nolf's testimony, then, does not alter the outcome of this case and the importer exclusion of her testimony would constitute harmless error.

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O R D E R

AND NOW, this 18th day of November, 2026, the November 15, 2024 order of the Unemployment Compensation Board of Review is **AFFIRMED**.

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MICHAEL H. WOJCIK, Judge