IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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| Marple Newtown School District, | : | |
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| Petitioner | : | |
| | : | |
| v. | : | No. 475 C.D. 2025 |
| | : | Submitted: June 16, 2026 |
| Unemployment Compensation | : | |
| Board of Review, | : | |
| | : | |
| Respondent | : | |

BEFORE: HONORABLE RENÉE COHN JUBELIRER, President Judge
HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE CHRISTINE FIZZANO CANNON, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE WOJCIK FILED: November 18, 2026

Marple Newtown School District (Employer) petitions for review of the order of the Unemployment Compensation Board of Review (Board) affirming the decision of a referee that Zaren Holbrook (Claimant) is not ineligible for Unemployment Compensation (UC) benefits under Section 402(e) of the Unemployment Compensation Law (Law).[1] Upon careful review, we affirm because the Board's findings are supported by substantial evidence, its credibility

[1] Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §802(e). Section 402(e) of the Law, provides in relevant part: "[A]n employe shall be ineligible for compensation for any week . . . [i]n which his unemployment is due to his discharge or temporary suspension from work for willful misconduct connected with his work . . . ." *Id.*

determinations are binding on this Court, and Employer failed to establish willful misconduct as a matter of law.[2]

Claimant worked for Employer as a custodian for approximately 18 years, most recently as a Lead Custodian. Reproduced Record (R.R.) at 9a. In January 2023, Employer placed Claimant on a Performance Improvement Plan (PIP), with follow-up meetings in February, April, and June 2023. *See id.* at 95a-114a. On September 13, 2023, Employer suspended Claimant without pay pending his termination. *Id.* at 73a-76a. Claimant was officially terminated on November 28, 2023, for alleged poor work performance. *Id.* at 35a-36a.

As a result, Claimant filed an application for UC benefits. On November 20, 2023, the UC Service Center determined that he is not eligible for benefits under Section 402(e) of the Law. *See* R.R. at 2a. Claimant appealed the Service Center's determination to a Referee.

A Referee conducted a hearing on January 29, 2024. Claimant, Employer's counsel, and Employer witnesses Janeen Partridge and Mike Facciolo testified. Based on the testimony and evidence presented, the Referee found that Employer failed to establish willful misconduct. Notably, the Referee concluded that Employer's witnesses did not witness firsthand several of the incidents forming the basis of the termination, rendering the evidence uncorroborated hearsay. R.R. 126a-29a. The Referee further found Claimant's testimony credible, particularly his explanations regarding workload, confusion about directives, and performance to the best of his ability. *Id.* at 41a-42a.

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[2] "The issue of whether Claimant's conduct constituted willful misconduct under Section 402(e) of the Law is a question of law fully reviewable by this Court. *Ductmate Indus*[*tries*]*, Inc. v. Unemployment Comp*[*ensation*] *B*[*oard*] *of Review*, 949 A.2d 338 (Pa. Cmwlth. 2008)." J*ohns v. Unemployment Compensation Board of Review*, 87 A.3d 1006, 1010 (Pa. Cmwlth. 2014).

Employer then appealed the Referee's decision to the Board. On March 13, 2025, the Board issued the instant order specifically adopting the Referee's findings and conclusions and affirmed the Referee's decision.[3] Employer now petitions this Court for review.

On appeal,[4] Employer contends that the Board erred in affirming the Referee's award of benefits because it is not supported by substantial evidence, and improperly disregarded Employer's corroborating evidence demonstrating that Claimant engaged in willful misconduct. We do not agree.

As stated, Section 402(e) renders a claimant ineligible where the discharge is due to willful misconduct. 43 P.S. §802(e). Although not defined in the Law, precedent establishes that the term includes: (1) wanton or willful disregard of the employer's interests; (2) deliberate violation of rules; (3) disregard of

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[3] As the Board explained:

> In this matter, [E]mployer terminated [C]laimant for his unsatisfactory work performance. [E]mployer's decision to terminate [C]laimant was partially based on complaints they received; however, the individuals who made these complaints did not appear at the hearing to corroborate their statements, supporting the finding that the [E]mployer's evidence lacks firsthand knowledge in some regards to the allegations of misconduct. At the hearing, [C]laimant credibly testified that his job responsibilities were overwhelming, and the workload exceeded his capacity; he subsequently reported his concerns to the assistant director of [Human Resources]. Additionally, [C]laimant presented credible testimony and evidence demonstrating that he performed the responsibilities assigned to him to the best of his ability. [C]laimant acted in good faith to fulfill his job responsibilities.

Certified Record (C.R.) at 273.

[4] Our 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. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

standards the employer may rightfully expect; or (4) negligence manifesting intentional disregard. *Grieb v. Unemployment Compensation Board of Review*, 827 A.2d 422, 426 (Pa. 2003). Employer bears the burden of proving that the misconduct was intentional or deliberate. *Kelly v. Unemployment Compensation Board of Review*, 747 A.2d 436, 438 (Pa. Cmwlth. 2000). "Mere incompetence, inexperience, or inability to perform a job" does not suffice. *Myers v. Unemployment Compensation Board of Review*, 625 A.2d 622, 625 (Pa. 1993); *see also Coleman v. Unemployment Compensation Board of Review*, 407 A.2d 130, 131-32 (Pa. Cmwlth. 1979) ("It is settled that an employee's negligence does not constitute willful misconduct unless it is of 'such degree or recurrence as to manifest culpability, wrongful intent, or evil design, or show an intentional and substantial disregard of the employer's interest or of the employee's duties and obligations to the employer.'") (citation omitted).

The record herein demonstrates that the Board credited Claimant's testimony that: his workload was overwhelming and duties were repeatedly changed, contributing to confusion; Employer did not inform him at the time that specific actions were incorrect, causing misunderstanding about expectations; he performed his duties to the best of his ability and sought help when needed; and he reported concerns to the assistant director of HR. *See* R.R. at 37a-40a. In addition, he also provided detailed, plausible explanations for instances Employer characterized as misconduct: the "fortress" of cafeteria tables was necessary for him to scrape gum from underside surfaces; the trash bags on his feet were related to power-washing the bathroom floors; the furniture that was moved into hallways had been stored in bathrooms during floor stripping and needed removal for cleaning. *See id.* Moreover, Claimant disputed the floor-scrubber allegations, explaining that the

machine cannot run by itself while plugged in. *See id.* at 40a-41a. The Board expressly adopted these credibility determinations, which we are bound to accept on our review.[5]

In making that determination, the Board agreed with the Referee that Employer's evidence consisted largely of uncorroborated hearsay. R.R. at 126a-29a. Key allegations relied on documented complaints in Exhibit ER1, including assertions that Claimant laughed about creating messes, dared supervisors to fire him, or behaved erratically. *See* R.R. at 73a-76a. However, none of the individuals who made these statements appeared at the hearing.

Furthermore, Facciolo admitted he did not personally witness Claimant leaving the floor scrubber running; other people had access to the kitchen; and he found the scrubber during a period in which Claimant was not scheduled to be at work. R.R. at 33a. Other allegations likewise relied on reports from individuals who did not testify, including kitchen staff, secretaries, and other custodians. *See id.* at 24a-25a.

Employer's own witnesses testified that Claimant had been a satisfactory employee for nearly two decades, with the alleged decline beginning in August 2022. R.R. at 23a-25a; 31a. This history strongly supports the Board's determination that Claimant lacked the requisite intent to commit willful

[5] As this Court has explained, "[i]n UC cases, the Board is the ultimate fact[]finder and is empowered to resolve all issues of witness credibility, conflicting evidence, and evidentiary weight." *Pierce-Boyce v. Unemployment Compensation Board of Review*, 289 A.3d 130, 135 (Pa. Cmwlth. 2022) (citation omitted). "It is irrelevant whether the record contains evidence that would support findings other than those made by the Board; the proper inquiry is whether the evidence supports the findings actually made." *Id.* at 135-36. Moreover, we must examine the evidence in a light most favorable to . . . the party who prevailed before the Board, and to give [them] the benefit of all inferences that can be logically and reasonably drawn from the testimony. *Taylor v. Unemployment Compensation Board of Review*, 378 A.2d 829, 831 (Pa. 1977).

misconduct. Where an employee has previously performed satisfactorily, and later struggles due to confusion, workload, or misunderstanding, Pennsylvania precedent holds that willful misconduct cannot be inferred. *Myers*; *Coleman*; *see also Rieder v. Unemployment Compensation Board of Review*, 325 A.2d 347, 348 (Pa. Cmwlth. 1974) ("[M]erely being discharged for unsatisfactory work resulting from inability, inexperience, or lack of coordination does not disqualify the discharged employe as being guilty of willful misconduct.").

In sum, accepting that Claimant failed to meet certain Employer expectations, the Board reasonably found no substantial evidence of deliberate or intentional disregard of Employer's interests. The credited substantial evidence in this case may have established confusion, workload pressures, and lack of contemporaneous guidance, but not willful misconduct.[6] Because Employer bore the burden to show intentional wrongdoing and did not meet it, the Board properly affirmed the award of benefits. The fact that Employer presented evidence supporting the opposite conclusion does not compel this Court to disturb the Board's determination in this regard. *Pierce-Boyce*.

Accordingly, the Board's order is affirmed.

MICHAEL H. WOJCIK, Judge

[6] Thus, any purported error with respect to the Board's treatment of the hearsay evidence is harmless. *See, e.g.*, *Wallace v. Pennsylvania Board of Probation and Parole*, 548 A.2d 1291, 1294 (Pa. Cmwlth. 1988) ("While [the witness's] testimony of what [the victim] said is hearsay, it was harmless error inasmuch as [the victim's] own testimony constituted substantial evidence of the assault and possession of a weapon.").

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**O R D E R**

AND NOW, this 18th day of November, 2026, the order of the Unemployment Compensation Board of Review dated March 13, 2025, is AFFIRMED.

MICHAEL H. WOJCIK, Judge