

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Vincent N. Costello,	:	
Petitioner	:	
	:	
v.	:	No. 789 C.D. 2025
	:	Submitted: July 24, 2026
Unemployment Compensation	:	
Board of Review,	:	
Respondent	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, President Judge
HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE STELLA M. TSAI, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
PRESIDENT JUDGE COHN JUBELIRER

FILED: October 15, 2026

Vincent Costello (Claimant), who is self-represented, petitions for review of an Order of the Unemployment Compensation (UC) Board of Review (Board), which affirmed the Referee's decision denying Claimant benefits pursuant to Section 402(e) of the UC Law, 43 P.S. § 802(e).¹ On appeal, Claimant argues that the Board erred in finding he engaged in willful misconduct, rendering Claimant ineligible for UC benefits. Because the credited evidence supports the Board's findings, we are constrained to affirm the Board's Order.

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

I. BACKGROUND

Claimant began working as a transportation equipment operator for the Commonwealth of Pennsylvania, Department of Transportation (Employer) in February 2024. (Referee's Decision, Finding of Fact (FOF) ¶ 1.) He was terminated in June 2024 for violating Employer's attendance policy by not properly reporting his absences. (*Id.* ¶ 9.) Claimant was initially denied UC benefits, (Certified Record (C.R.) at 31), so he appealed, and a hearing was scheduled before a Referee. (*Id.* at 46-48.)

At the hearing, Employer's Human Resource Analyst (HR Analyst) and the County Maintenance Manager (Maintenance Manager) testified on behalf of Employer. HR Analyst testified as follows. Claimant was provided a copy of Employer's policy on his first day of work, which he signed. (*Id.* at 92-93.) The policy provides a list of supervisors and phone numbers to call if an employee is unable to work. (*Id.* at 92.) A copy of the policy, which was admitted into evidence without objection, provides:

[f]or any unanticipated absences, due to personal illness, family illness, or personal emergencies; employees are to contact their manager's cell phone at the number below no later than 30 minutes before their established start time and receive an approval response[.]

. . . .

If you do not get a response from the stockpile or manager, then call the Norristown office Failure to comply with [the policy] will subject employees to disciplinary actions.

(*Id.* at 124.) Before his termination, Claimant was warned about not following the policy. (*Id.* at 92.) Claimant first did not call off in accordance with the policy on

February 28 and 29, 2024.² (*Id.* at 92, 95.) A pre-disciplinary conference related to those absences was held on March 11, 2024. (*Id.* at 93.) According to HR Analyst, while Claimant called his supervisor, the call came “later in the day,” and he did not speak with anyone; instead, he left a message for a supervisor on vacation. (*Id.* at 95, 97.) Claimant again did not call off in accordance with the policy on March 25, 2024, which resulted in another pre-disciplinary conference. (*Id.* at 94.)

Maintenance Manager testified as follows. Maintenance Manager signed the written reprimand issued to Claimant for violating Employer’s policy on February 28 and 29, 2024. (*Id.* at 100.) He also attended the pre-disciplinary meetings with Claimant. (*Id.* at 99-100.) Maintenance Manager testified to Employer’s process for investigating violations of Employer’s policies. (*Id.* at 99.)

Claimant testified on his own behalf as follows. Claimant was absent from work on February 28 due to his vehicle breaking down the afternoon prior. (*Id.* at 103.) According to Claimant, he tried calling an “Olivia,” whom he does not further identify, and his direct supervisor “[a]s soon as [he] broke down.” (*Id.* at 104.) He further testified he called his direct supervisor again at 4:45 a.m. on February 28, before the start of his shift, and left a message for his supervisor. (*Id.* at 103-04.) Claimant explained those were the only phone numbers he had available as the list with other phone numbers was in his car, which was kept in a shop overnight for repair.³ (*Id.*) Claimant stated around 11:30 a.m. to noon on February 28, another manager called him and left a message stating, “we don’t know what’s going on with you.” (*Id.*) Claimant subsequently called him back and told him that he may not be

² There was also testimony that Claimant was absent on March 1, 4, and 5, which Claimant denied. (C.R. at 103, 110.) The Board did not find that Claimant was absent those days, so we do not discuss those further.

³ Claimant submitted into evidence a receipt from Pep Boys for service. (C.R. at 115-20.)

in on time the next day due to having to go to the bank and pick up his car. (*Id.* at 104-05) Claimant picked up his car on the morning of February 29 after going to the bank to get money and then reported to a job site at 1:00 p.m. (*Id.* at 105.) He was absent on March 25 for a Monday doctor appointment, which he had told a “Matt” and a “Frank,” neither of whom he identified, about the Friday before. (*Id.* at 106.) He did not complete a leave slip as he was confused on how he would be paid for this absence, since he did not have enough hours. (*Id.*) Claimant acknowledged receiving a written warning regarding the manner in which he reported his absences and having pre-disciplinary conferences. (*Id.*) Claimant admitted that he did not assert at those conferences that he had called someone to report he would be absent from work on the above dates. (*Id.* at 107.)

Following Claimant’s testimony, HR Analyst testified to two written statements. HR Analyst testified that a statement from Claimant’s direct supervisor stated that he neither approved leave for Claimant nor received a leave slip from him. (*Id.* at 108.) HR Analyst also testified to a statement from Employer’s clerical assistant stating that Claimant was given a slip for leave without pay for an appointment Claimant had scheduled before he was hired, but she never received a leave slip for dates other than February 28 and 29.⁴ (*Id.* at 108-09.) No objection was lodged as to any alleged hearsay.

Based on the evidence presented, the Referee made the following relevant findings of fact:

2. [] Employer maintains an attendance policy that if an employee is going to be absent, they must call [] Employer 30 minutes prior to the beginning of their shift and speak with their direct Supervisor. If the Supervisor is not available, the employee is required to speak to the next Manager identified on the list.

⁴ The statements themselves were not admitted into evidence.

3. [] Claimant was aware or should have been aware of [] Employer's reporting policy.

4. On February 28[] and 29, 2024, [] Claimant did not properly report his absence by speaking with the Supervisor or Manager.

5. On March 11, 2024, [] Employer conducted a pre-disciplinary conference and warned [] Claimant about failing to properly report his absences.

6. On March 25, 2024, [] Claimant again failed to speak with the Supervisor or Manager to report the absence.

7. On March 25, 2024, [] Claimant again failed to properly report his absence.

8. Effective April 10, 2024, [] Employer suspended [] Claimant without pay pending an investigation.

9. On June 3, 2024, Employer discharged [] Claimant for violating [] Employer's attendance policy by failing to properly report his absence.

(FOF ¶¶ 2-9.)

The Referee determined Claimant was discharged for willful misconduct and thus ineligible for benefits. Specifically, the Referee explained

Employer discharged [] Claimant for violating the attendance policy by failing to properly report his absence by speaking directly with a Supervisor or Manager. [The] Commonwealth Court has consistently held the violation of a known company policy without reasonable justification constitutes willful misconduct. In the present case, [] Claimant's testimony did not constitute reasonable justification for failing to properly report his absence. Accordingly, [] Claimant's actions constitute willful misconduct, and as a result, he is ineligible to receive benefits under Section 402(e) of the Pennsylvania [UC] Law.

(Referee's Decision at 2-3.) Claimant appealed to the Board. (C.R. at 160-62.)

In its decision, the Board adopted and incorporated the Referee's findings and conclusions. It found that Employer met its burden of demonstrating that it had

terminated Claimant for willful misconduct by “violating [] [E]mployer’s attendance policy by having several no-call/no-show absences despite knowing the policy and being warned about further no-call/no-show absences.” (Board Order at 2.) Specifically, the Board stated:

These absences occurred on February 28 and 29, 2024, after which [] [C]laimant was warned against accruing more no-call/no-show absences on March 11, 2024. On March 25, 2024, [] [C]laimant was again absent without first informing [] [E]mployer at least 30 minutes ahead of his scheduled shift. [] [C]laimant was suspended on April 10, 2024, and terminated after an investigation on June 3, 2024. [] [E]mployer established that it had an attendance policy that required employees [who] were going to be absent to notify [] [E]mployer in advance. The policy stated that termination may be a result of such absences. [] [E]mployer credibly testified that it went over this policy with [] [C]laimant prior to his termination, both during his orientation and when it formally warned him against further absences without prior notification. Therefore, [] [E]mployer met its burden under Section 402(e) of the [UC] Law.

(*Id.*) Accordingly, the Board affirmed the Referee’s Decision and denied benefits.

(*Id.*)⁵ Claimant filed a timely petition for review.

⁵ The Board also stated in its Order that Claimant, for the first time on appeal, “requested a new hearing because his legal representative could not work outside of Philadelphia County.” (Board Order at 2.) However, the Board found Claimant was made aware of his right to representation at the beginning of his Referee Hearing and did not object to moving forward with the hearing. (*Id.*) The Board, therefore, declined to remand the case for further proceedings. (*Id.*) Claimant does not challenge that determination before this Court.

II. PARTIES' ARGUMENTS⁶

Before this Court, Claimant argues he reported his absences to his supervisor, but the supervisor did not report either Claimant's phone calls or text messages to anyone. (Claimant's Brief (Br.) at 6.) Claimant also asserts on February 26, 2024, he told "the clerk at stockpile #1" that he had an appointment on March 25, 2024 but was unable to submit a time off slip since he lacked the number of hours needed to do so. (*Id.*) Claimant asserts he told another person, Matt, a foreman, about the appointment a few days before. (*Id.*) In addition, Claimant takes issue with his supervisor not attending the hearing and claims "[t]he evidence presented could be explained as hearsay and not direct evidence." (*Id.* at 8.)

The Board asserts that the testimony of Claimant and Employer's witnesses and documentary evidence submitted at the hearing provides substantial evidence to support its findings, especially where it credited the testimony of Employer's witnesses over Claimant's. (Board's Br. at 5.) According to the Board, the record established Claimant was made aware of the policy, both at the time of hire and when he was warned following the first unexcused absences, yet Claimant did not follow the policy on more than one occasion. (*Id.* at 6-7.) For the February dates, the Board argues Claimant never spoke to his supervisor or indicated he tried calling the

⁶ This Court shall affirm the Board unless it finds that the Board's order violated constitutional rights, committed an error of law, or failed to support facts with substantial evidence. 2 Pa.C.S. § 704. "The Board's findings are conclusive on appeal so long as the record, when viewed in its entirety, contains substantial evidence to support the findings." *Western & Southern Life Ins. Co. v. Unemployment Comp. Bd. of Rev.*, 913 A.2d 331, 335 n.2 (Pa. Cmwlth. 2006) (internal citation omitted). Evidence is substantial if "a reasonable mind would accept [it] as adequate to support a conclusion." *Cambria Cnty. Transit Auth. v. Unemployment Comp. Bd. of Rev.*, 201 A.3d 941, 947 (Pa. Cmwlth. 2019) (internal quotation marks and citation omitted). Moreover, "[i]t is irrelevant whether the record contains evidence to support findings other than those made by the fact [] finder." *Ductmate Indus. v. Unemployment Comp. Bd. of Rev.*, 949 A.2d 338, 342 (Pa. Cmwlth. 2008) (citation omitted). We may only determine "whether there is evidence to support the findings actually made." *Id.*

Norristown office. (*Id.* at 8-9.) Even accepting Claimant’s assertion that he called and left a message for his supervisor, the Board points out this is not consistent with the policy, which requires an employee to actually speak with either a listed supervisor or contact the Norristown office and obtain approval. (*Id.*) Although Claimant testified another supervisor called him back, the Board points out Claimant did not tell that supervisor he would definitively not be in the next day, just that he “may not make it on time.” (*Id.* at 8 (quoting C.R. at 105).) For the March date, the Board argues that Claimant never notified one of the **listed** supervisors. (*Id.* at 9.) The Board asserts this conduct constituted willful misconduct and Claimant has not established good cause for not following Employer’s policy. (*Id.* at 10-15.) To the extent Claimant is attempting to assert a hearsay argument, the Board contends Claimant waived that argument by neither developing the argument in his brief nor asserting an objection on that basis at the hearing. (*Id.* at 7.)

III. DISCUSSION

A. Evidentiary challenges

We begin with Claimant’s evidentiary challenges. Claimant argues he did report his absences to his supervisor, who should have been required to testify at the Referee hearing. For an individual to be required to appear as a witness at a hearing before a Referee, an application for a subpoena for the witness must be submitted. 34 Pa. Code § 101.31. As we have explained, “[i]f a party believes a particular witness’s testimony is germane, then that party bears responsibility for ensuring the witness’s attendance via subpoena.” *Phila. Parking Auth. v. Unemployment Comp. Bd. of Rev.*, 309 A.3d 1092, 1101 (Pa. Cmwlth. 2024) (citing *Schneider v. Unemployment Comp. Bd. of Rev.*, 12 A.3d 754, 758 (Pa. Cmwlth. 2010)). If

Claimant wanted his supervisor to appear and testify, he could have sought a subpoena, which Claimant did not do. The supervisor was, therefore, not required to appear to testify at the Referee hearing.

Next, Claimant argues hearsay was impermissibly introduced. Hearsay is a statement made outside of court that someone introduces into the record to prove the truth of the fact they wish to substantiate. *Pierce-Boyce v. Unemployment Comp. Bd. of Rev.*, 289 A.3d 130, 137 (Pa. Cmwlth. 2022). The Board argues Claimant neither preserved this issue by timely objecting at the hearing nor by adequately developing the argument in his brief. We agree.

We have previously explained that by not developing or arguing issues in a brief beyond “simply raising these questions or repeating them in [a] brief to this Court,” a claimant waives those issues. *Tewell v. Unemployment Comp. Bd. of Rev.*, 279 A.3d 644, 654-55 (Pa. Cmwlth. 2022) (finding arguments to be undeveloped when a claimant only asserts he “was denied due process” without expanding on these questions posed to the court). As our Supreme Court has made clear,

we are “neither obliged, nor even particularly equipped, to develop an argument for a party. To do so places the Court in the conflicting roles of advocate and neutral arbiter. The Court is left to guess at the actual complaint that is intended by the party.” *Commonwealth v. Williams*, . . . 782 A.2d 517, 532 ([Pa.] 2001) (Castille, J., concurring).

Commonwealth v. Armolt, 294 A.3d 364, 377 (Pa. 2023).

In this case, Claimant alleges the Referee improperly admitted hearsay as evidence, yet he does not refer to the specific evidence he claims is hearsay and which findings of fact the alleged hearsay supports. As in *Tewell*, Claimant merely raises the issue and does not develop it in his brief. Moreover, as in *Armolt*, we decline to guess what evidence Claimant contends constitutes hearsay. *See*

Commonwealth v. Chandler, 721 A.2d 1040, 1044 (Pa. 1998) (holding an appellant who did not identify any specific statement as hearsay waives that claim). Claimant, therefore, waived this issue in his appeal.⁷

B. Willful Misconduct

Pursuant to Section 402(e) of the UC Law, “[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” 43 P.S. § 802(e). In UC law, willful misconduct constitutes

(1) an act of wanton or willful disregard of the employer’s interest, (2) a deliberate violation of the employer’s rules, (3) a disregard for standards of behavior which the employer has a right to expect of an employee, or (4) negligence indicating an intentional disregard of the employer’s interest or of the employee’s duties and obligations to the employer.

Woodring v. Unemployment Comp. Bd. of Rev., 284 A.3d 960, 964 (Pa. Cmwlth. 2022) (internal quotations and citation omitted). When an employer discharges an employee for violating a work rule, “the employer must prove the existence of the work rule, the reasonableness of the rule, the claimant’s awareness of the rule, and the fact of its violation.” *Adams v. Unemployment Comp. Bd. of Rev.*, 56 A.3d 76, 79 (Pa. Cmwlth. 2012) (citation omitted).

⁷ To the extent Claimant is challenging the testimony by HR Analyst about the written statements Claimant’s supervisor and a clerical assistant provided as hearsay, the record reflects Claimant did not object on the basis of hearsay to such testimony. Moreover, it is not clear whether the Board relied upon such evidence in its findings. The Board found Claimant did not call off in accordance with the policy, which requires Claimant to actually speak with one of the identified supervisors or to call the Norristown office. Claimant’s own testimony established he did not speak with any of the supervisors identified, and he does not contend he tried calling the Norristown office. Furthermore, “a hearsay statement that is not objected to is still competent evidence and may form the basis for a finding of fact if it is corroborated by other competent evidence.” *Pierce-Boyce*, 289 A.3d at 137. Claimant’s own testimony supports that he did not submit a leave slip, like the clerical assistant said.

For example, an employee's lack of reporting "the reason for absence in a manner established by company policy is conduct which can constitute sufficient willful misconduct to preclude the benefits of Section 402(e) since that behavior is a deliberate disregard of the standards of behavior an employer can rightfully expect of an employee." *Donahue v. Unemployment Comp. Bd. of Rev.*, 400 A.2d 251, 252 (Pa. Cmwlth. 1979) (citation omitted); *see also Negron v. Unemployment Comp. Bd. of Rev.*, 481 A.2d 699, 701 (Pa. Cmwlth. 1984) (finding "an employee's failure to report absences in the manner prescribed by his employer can, as a matter of law, constitute willful misconduct even if not colored by past violations") (citation and internal quotations omitted).

Here, there is credited evidence Claimant was aware of the policy, having been trained on it when first hired and then a few months later when he was reprimanded for not following it. Employer submitted evidence of Claimant's absenteeism and violation of the policy, including the credited testimony of HR Analyst and Maintenance Manager, (C.R. at 90, 92-100, 103, 108), records of pre-disciplinary conferences with Claimant based on his first violation, (*id.* at 113-14, 128-35), records indicating Claimant was aware of the policy, (*id.* at 124-27), and records pertaining to Claimant's unreported absences, (*id.* at 113-15, 121, 128, 132-34, 136, 140-41, 143).

Additionally, Claimant's own testimony establishes he violated the policy. First, on February 28 and 29, Claimant testified he called his supervisor but was unable to get through to him and receive the necessary "approval" to take the absence. (*Id.* at 97, 103-05.) While Claimant admitted to receiving a call from another supervisor, who was on the approved list, Claimant also testified this was later in the morning, not 30 minutes before his shift, as the policy required. (*Id.* at

104.) As for his absence on March 25, Claimant’s testimony again shows he did not comply with the policy. Claimant testified he told a Matt and Frank he would be absent in advance, (*id.* at 106), but neither Matt nor Frank appear on the list of managers to whom an employee may report an absence and receive approval, (*id.* at 124). In short, the Board’s findings are supported by substantial evidence and establish that Employer met its burden of proving willful misconduct.

This matter is akin to *Ross v. Unemployment Compensation Board of Review* (Pa. Cmwlth., No. 436 C.D. 2018, filed December 6, 2018), in which we affirmed the Board’s denial of benefits based on a claimant’s failure to follow the employer’s policy of calling off work.⁸ In that case, the claimant was instructed to call a specific supervisor if she was going to be absent from work. *Id.*, slip op. at 9. Despite those instructions, Claimant did not do so. *Id.*, slip op. at 10. “By failing to follow this policy,” we held, Claimant “engaged in willful misconduct, making her ineligible for UC benefits under Section 402(e) of the [UC] Law.” *Id.*, slip op. at 11.

Thus, the burden shifts to Claimant to establish he had good cause for his conduct. Claimant argues he did not engage in willful misconduct because he called out sick and was also unable to come in because he did not have access to transportation while his car was being repaired. However, Employer did not discharge Claimant for absenteeism or tardiness but rather for failure to follow Employer’s policy regarding calling out of work. Good cause for violating a call-out policy has required circumstances such as a hospitalized claimant believing that their medical provider represented that she had been placed on an approved, unpaid leave of absence, *Caterpillar, Inc. v. Unemployment Compensation Board of*

⁸ Unreported panel decisions of this Court may be cited for their persuasive value pursuant to Rule 126(b) of the Pennsylvania Rules of Appellate Procedure, Pa.R.A.P 126(b), and Section 414(a) of this Court’s Internal Operating Procedures, 210 Pa. Code § 69.414(a).

Review, 654 A.2d 199, 201-02 (Pa. Cmwlth. 1995), or a Claimant fearing the loss of their legal rights, *Dunkle v. Unemployment Compensation Board of Review*, 496 A.2d 880, 883 (Pa. Cmwlth. 1985). Even an individual's incarceration does not constitute good cause for failing to call out from work, as an incarcerated individual can contact their attorney or have someone else call out for them. *Nunez v. Unemployment Comp. Bd. of Rev.*, 480 A.2d 379, 382 (Pa. Cmwlth. 1984); *Robinson v. Unemployment Comp. Bd. of Rev.*, 431 A.2d 378, 379 (Pa. Cmwlth. 1981).

Here, Claimant's only reasons for not following the policy were that he left the list of supervisors' phone numbers in his car, so he did not know who to call besides his immediate supervisor who was out of the office, and that he told people before his appointment that he would be taking the following Monday off. (C.R. at 98, 104, 106, 111; Petitioner's Br. at 15; Petition for Review at 1.) However, Claimant could have called the main office and asked to be transferred to the proper person to whom he was supposed to report absences and lateness, but he did not. After receiving a verbal warning from his first violation, Claimant had plenty of notice to avoid another violation. *See, e.g., Ross*, slip op. at 11-12 (rejecting the claimant's contention that she had good cause for not complying with her employer's call-out policy because the supervisor's phone number was posted yet the claimant did not write it down). Furthermore, "[e]ven if an absence is itself justified, the failure to comply with a reporting-off requirement, of which the employee is aware, can constitute willful misconduct." *Yerger v. Unemployment Comp. Bd. of Rev.*, 457 A.2d 1333, 1334 (Pa. Cmwlth. 1983). Claimant knew he was supposed to report absences with at least 30 minutes advance notice before his shift to specific individuals, yet he did not ensure compliance with Employer's policy before taking

off work. The Board therefore did not err in determining that Claimant lacked good cause for his willful misconduct.

IV. CONCLUSION

Based upon the foregoing, we affirm.

RENÉE COHN JUBELIRER, President Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Vincent N. Costello,	:	
Petitioner	:	
	:	
v.	:	No. 789 C.D. 2025
	:	
Unemployment Compensation	:	
Board of Review,	:	
Respondent	:	

ORDER

NOW, October 15, 2026, the Order of the Unemployment Compensation Board of Review, dated April 25, 2025, is **AFFIRMED**.

RENÉE COHN JUBELIRER, President Judge