

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Sharon Carolla,	:
	:
Petitioner	:
	:
v.	: No. 925 C.D. 2025
	: Argued: 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: August 20, 2026

Sharon Carolla (Claimant) petitions for review from an order of the Unemployment Compensation Board of Review (Board), dated June 27, 2025, which affirmed the referee's decision and determined Claimant was not eligible for unemployment compensation (UC) benefits under Section 402(e) of the Unemployment Compensation Law (Law)¹ (relating to willful misconduct). Claimant contends that the Board erred or abused its discretion in finding willful misconduct despite the lack of evidence, an undefined policy, and Claimant's assertion of First Amendment protection. Upon review, we affirm.

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

I. Background

Claimant worked for CCH Incorporated (Employer) as a full-time Senior Account Manager, beginning February 26, 2024, until her last day of work on August 27, 2024, when she was terminated from employment. Claimant filed for UC benefits. Employer responded that Claimant was terminated from employment because she violated its non-harassment/anti-retaliation policy and code of conduct (Policy) during a role-play exercise by telling a coworker to pull his eyes back slanted and pretend like he was Asian. Certified Record (C.R.) at 32. Employer also asserted that it had previously issued Claimant a final warning for behavior and inappropriate comments that violated the same Policy and “its commitment to a respectful and inclusive workplace.” *Id.* at 32, 67. The Department of Labor and Industry (Department) issued a Qualifying Separation Determination on November 20, 2024, upon finding Claimant eligible for benefits because Employer did not prove a rule violation. Employer appealed.

A referee hearing was held on April 14, 2025, at which Claimant appeared without representation² and testified; Employer did not participate. Claimant testified extensively, denying any wrongdoing, disputing that her statements were racist, and describing harassment and targeting by her manager. She testified that, during a role-playing exercise, she asked her coworker to “just pretend your eyes are . . . slanted, and you’re [the Asian client].” C.R. at 162. Claimant defended that she was friends with the Asian client for 20 years, that the comment was not loudly stated or directed to the room, and that no person of Asian descent was present or offended. *Id.* at 162-63, 167-68. Claimant also admitted that she had received a final warning for a prior comment made to her coworker that Juneteenth

² Claimant is represented by counsel on appeal.

was “a sh*t holiday” and that her “freedom holiday is the 4th of July.” *Id.* at 163-64. Claimant defended that she was not angry when she made the statement and did not offend anyone. *Id.* at 164. Claimant testified she was the target of a harassment campaign. *Id.*

Based on Claimant’s testimony, the referee found that, on July 1, 2024, Employer issued Claimant a final warning for an incident which occurred on, or about, June 20, 2024. Referee’s Opinion, 4/21/25, Finding of Fact (F.F.) No. 2. During the June 20, 2024 incident, Claimant was discussing work-related matters with a new employee via electronic message or instant messaging. F.F. No. 3. The new employee stated he was surprised that Employer did not celebrate the Juneteenth holiday. F.F. No. 4. Juneteenth is a federally recognized holiday which commemorates the official end of slavery in the United States.³ F.F. No. 5. Claimant replied that Juneteenth was a “sh*t holiday,” and that her freedom holiday was the Fourth of July. F.F. No. 6. The new employee apparently reported the incident to Employer, resulting in the issuance of the final warning. F.F. No. 7. The final warning stated that the incident was a violation of Employer’s Policy and that future incidents of a similar nature could result in discipline up to and including termination. F.F. No. 8.

On August 22, 2024, while Claimant was participating in a role-playing exercise during work with other employees, Claimant made reference to a client of Asian descent, with whom Claimant reportedly was on friendly terms, and directed

³ It appears that the referee took judicial notice of the Juneteenth holiday. *See Castello v. Unemployment Compensation Board of Review*, 86 A.3d 294, 299 (Pa. Cmwlth. 2013) (holding a referee may take judicial notice of such matters as might be judicially noticed by the Courts of the Commonwealth); *Penn Advertising, Inc. v. Kring*, 565 A.2d 1238, 1241 n.8 (Pa. Cmwlth. 1989) (taking “judicial notice of the fact that Monday, February 15, 1988, was the observance of Washington’s birthday and a legal holiday”).

an employee who was to represent the client to “pretend your eyes are slanted and you are Asian.” F.F. No. 9. On August 27, 2024, Employer discharged Claimant for this final incident. F.F. No. 10. The referee concluded that Claimant engaged in willful misconduct without good cause and denied UC benefits. Claimant appealed to the Board.

The Board adopted the referee’s findings and conclusions as its own and provided additional rationale. The Board concluded that Claimant was terminated for conduct constituting willful misconduct because she repeated behavior previously identified as a Policy violation, despite receiving a final warning expressly advising her that further incidents could result in termination. Regarding the final incident that led to the termination of her employment, the Board noted that Claimant explained she made the remarks because she had a friendly relationship with the Asian client towards whom the racial stereotype was directed. Although Claimant testified that her remark was not loudly addressed to the entire room, and there were no individuals in the room whom she perceived to be of Asian descent that heard the comment, the Board found that this was not good cause for her remarks. The Board opined: “Independent of . . . [C]laimant’s personal relationships with clients of Asian descent and the racial identities or affiliations of individuals within earshot when the remark was verbalized, . . . [E]mployer can reasonably expect employees to refrain from displays of racial stereotyping, especially at company meetings or events and in a professional, workplace setting.” Board Opinion, 6/27/25, at 2. As for Claimant’s allegations that she was not fired for her willful misconduct but rather because she was a target of a harassment campaign, the Board did not credit this portion of her testimony. *Id.* Ultimately, the Board found that Claimant was racially insensitive on two separate occasions, and

Employer terminated her due to those incidents. Although Employer did not attend the referee hearing, or present its Policy, Claimant's own testimony established the conduct supporting her discharge. The Board therefore determined that Claimant deliberately disregarded Employer's non-harassment expectations after receiving a final warning and engaged in willful misconduct. From this decision, Claimant petitions for review.⁴

II. Issues⁵

Claimant contends that the Board erred or abused its discretion in determining that Employer satisfied its burden of proof to show that Claimant committed willful misconduct where Employer did not attend hearing and provided no evidence of willful misconduct. She also contends that the Board erred in determining that her conduct constituted willful misconduct where the alleged Employer policy was not defined, codified, produced, or shown to be reasonable or known to Claimant. Finally, Claimant defends that her remarks are protected First Amendment speech and, as such, cannot be the basis for willful misconduct.

⁴ 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 were supported by substantial evidence. *Wise v. Unemployment Compensation Board of Review*, 111 A.3d 1256, 1261 n.5 (Pa. Cmwlth. 2015).

⁵ Claimant's brief does not contain a "Statement of the Question Involved" section, as required by Pennsylvania Rules of Appellate Procedure (Appellate Rule) 2111(a)(4) and 2116, Pa.R.A.P. 2111(a)(4) and 2116. As stated in Appellate Rule 2116(a), "[n]o question will be considered unless it is stated in the statement of questions involved or is fairly suggested thereby." Pa.R.A.P. 2116(a). Nevertheless, Claimant identified the issues in her petition for review (PFR), and the argument section of her brief tracks those same issues. The issues set forth herein are gleaned from Claimant's PFR and brief.

III. Discussion

A. Employer's Burden

Claimant contends that the Board erred in determining that Employer met its burden of proving willful misconduct. Employer did not appear at the referee hearing. All of Employer's documents that were admitted into evidence were unsworn hearsay, and no Employer witness appeared to authenticate or explain them. Employer offered no witness testimony to corroborate its allegations. Because the Board relied on Claimant's own testimony and Employer's unsworn documents, Claimant argues that the decision was legally defective. Claimant contends that her own testimony cannot be used to establish the elements of Employer's case. She further asserts that every allegation was "disputed," and that without Employer testimony or cross-examination, no competent evidence exists to support a finding of willful misconduct.

In UC cases, the Board is the ultimate factfinder, and its findings are conclusive on appeal, provided there is substantial evidence to support them. *Woodring v. Unemployment Compensation Board of Review*, 284 A.3d 960, 963 (Pa. Cmwlth. 2022). "Substantial evidence is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *Id.* at 964. "It is irrelevant whether the record contains evidence to support findings other than those made by the fact finder; the critical inquiry is whether there is substantial evidence in the record to support the findings actually made." *Wise v. Unemployment Compensation Board of Review*, 111 A.3d 1256, 1262 (Pa. Cmwlth. 2015). A reviewing court must examine "the evidence in the light most favorable to the prevailing party, and give that party the benefit of all inferences that can be logically and reasonably drawn from the testimony." *Id.*

In willful misconduct cases, the employer bears the initial burden of proving a claimant engaged in willful misconduct. *Johns v. Unemployment Compensation Board of Review*, 87 A.3d 1006, 1009 (Pa. Cmwlth. 2014). Contrary to Claimant’s assertions, an employer’s burden of proof may be satisfied, and UC benefits denied, “if the employee seeking benefits proves the employer’s case.” *See Moore v. Unemployment Compensation Board of Review*, 578 A.2d 606, 608-609 (Pa. Cmwlth. 1990). “[A]n employer’s burden of proof may be carried, in whole or in part, by the claimant’s own testimony.” *Woodring*, 284 A.3d at 964. Thus, Employer’s absence is not dispositive.

Here, although Employer did not attend the referee hearing, Claimant’s own admissions provided the factual basis to satisfy Employer’s burden. Claimant readily admitted that she made the comments that led to her discharge. Specifically, Claimant testified that, during a role-playing exercise, she asked her coworker to “just pretend your eyes are . . . slanted, and you’re [the Asian client]. C.R. at 162. Claimant also testified that she had received a final warning for a prior comment made to her coworker that Juneteenth was “a sh*t holiday.” *Id.* at 163, 164. These admissions constitute substantial evidence upon which the Board could rely in determining whether Claimant engaged in willful misconduct.

B. Willful Misconduct

Next, Claimant argues that the Board erred in determining that Claimant committed willful misconduct. Employer terminated Claimant for a rule violation but did not provide a copy of the Policy allegedly violated. Employer did not produce a written policy, a handbook, a code of conduct, training, signatures, or other proof that any rule existed, was communicated to Claimant, or was reasonable. She further claims that the “final warning” was fabricated, unreadable, unsigned,

and unsupported by any witness statement. Claimant argues that in the absence of a proven and communicated work rule, she cannot be disqualified for willful misconduct as a matter of law.

Section 402(e) of the Law provides, “[a]n employe[e] shall be ineligible for compensation for any week . . . [i]n which [her] unemployment is due to [her] discharge . . . from work for willful misconduct connected with [her] work” 43 P.S. §802(e). “[W]illful misconduct is defined by the courts 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 interests or the employee’s duties and obligations.” *Johns*, 87 A.3d at 1009 (citing *Grieb v. Unemployment Compensation Board of Review*, 827 A.2d 422 (Pa. 2002)).

An employer bears the initial burden of proving a claimant engaged in willful misconduct. *Johns*, 87 A.3d at 1009. An employer is required to prove the claimant committed an act constituting willful misconduct and that it actually discharged the claimant for the act in question. *Ductmate Industries, Inc. v. Unemployment Compensation Board of Review*, 949 A.2d 338, 344 n.5 (Pa. Cmwlth. 2008).

When asserting a discharge based on a violation of a work rule, an employer must establish the existence of the rule, the reasonableness of the rule, the claimant’s knowledge of the rule, and its violation. *Johns*, 87 A.3d at 1010. But where the conduct is so plainly inimical to the employer’s interests that discharge is the natural result, the employer need not prove a work rule violation. *Pierce-Boyce v. Unemployment Compensation Board of Review*, 289 A.3d 130, 136 (Pa. Cmwlth. 2022). “It is well-settled law that ‘a disregard of the standard of behavior which the

employer had a right to expect of [an employee], . . . [can be] willful misconduct, apart from whether or not . . . that [employee] violated work rules” *Id.* (quoting *Lee v. Temple University (Personnel)*, 363 A.2d 890, 892 (Pa. Cmwlth. 1976)). We have “recognized that words referencing nationality are offensive” and “that even a single incident of offensive language can constitute willful misconduct.” *Witkowski v. Unemployment Compensation Board of Review*, 633 A.2d 1259, 1260 (Pa. Cmwlth. 1993); see *Poplin v. Unemployment Compensation Board of Review*, 690 A.2d 781, 783 (Pa. Cmwlth. 1997) (*citing Witkowski*). “[A]n employer has a right to expect that its employees will not engage in racist conduct of *any type*.” *Witkowski*, 633 A.2d at 1260 (emphasis in original). However, “whether such comments are willful misconduct must be evaluated on a case[-]by[-]case basis and should be considered in the context in which they were made.” *Poplin*, 690 A.2d at 784. “[I]n order for [a] [c]laimant’s comments to be deemed willful misconduct, either they must be of such a character that any reasonable person would know that they were offensive or inappropriate under the circumstances in which they were made, or the credited facts must establish that claimant actually knew or intended them to be so.” *Id.*; see, e.g., *McCall v. Unemployment Compensation Board of Review*, 717 A.2d 623, 625-26 (Pa. Cmwlth. 1998) (holding that claimant committed willful misconduct by making an offensive remark about students dependent on welfare at a meeting related to the employer’s city-administered program serving those recipients); *Reitneyer v. Unemployment Compensation Board of Review*, 602 A.2d 505 (Pa. Cmwlth. 1992) (holding that a grammar school teacher committed willful misconduct by circulating a joke sheet containing racist jokes to a coworker because such behavior blatantly disregarded the standards of behavior the school district had a right to expect of its teachers); see also *Bixler v. Unemployment*

Compensation Board of Review (Pa. Cmwlth., No. 968 C.D. 2021, filed August 4, 2022) (holding that the claimant committed willful misconduct by swearing and calling his employer’s CEO a racial slur, as this behavior fell below reasonable standards of behavior that his employer had a right to expect of him in the workplace).⁶

Further, this Court has recognized that the Board may rely on an “alternate basis for finding willful misconduct” separate from the work rule violation theory. *Weingard v. Unemployment Compensation Board of Review*, 26 A.3d 571, 577 (Pa. Cmwlth. 2011). For example, in *Weingard*, the employer fired a claimant for violating its code of conduct after learning that he attempted to borrow money from his supervisor and five subordinates. *Id.* at 573. Although the evidence did not support a finding that the claimant had knowingly violated a work rule, we affirmed the Board’s determination that the claimant’s conduct still constituted willful misconduct because his conduct constituted a disregard of standards of behavior his employer has a right to expect. *Id.* at 577.

Once an employer meets its burden of proving willful misconduct, the burden shifts to the employee to prove good cause for her actions. *Johns*, 87 A.3d at 1010. An employee establishes good cause where her actions are justified or reasonable under the circumstances. *Frumento v. Unemployment Compensation Board of Review*, 351 A.2d 631, 634 (Pa. 1976); *Docherty v. Unemployment Compensation Board of Review*, 898 A.2d 1205, 1208-09 (Pa. Cmwlth. 2006).

⁶ Unreported memorandum opinions of this Court filed after January 15, 2008, 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 the Court’s Internal Operating Procedures, 210 Pa. Code §69.414(a).

Claimant relies on our decision in *Poplin* to argue that her comment does not rise to disqualifying willful misconduct. In *Poplin*, a licensed practical nurse, while preparing scheduling assignments, noticed two names beginning with the letter “K” and remarked that “one more K and we could have the Ku Klux Klan here.” 690 A.2d at 782-83. An African American coworker overheard the remark. The claimant immediately recognized that her comment had offended him, promptly apologized, and then engaged in further conversation during which she asked whether he ever wished he were white. *Id.* at 783. The coworker responded “no,” left early, and reported the incident. The employer terminated the claimant following an investigation. *Id.* The Board denied UC benefits and the claimant appealed.

On appeal, we expressly declined to adopt a *per se* rule that all racially related or racially insensitive remarks constitute willful misconduct. *Poplin*, 690 A.2d at 783-84. Rather, we emphasized that potentially offensive workplace language “must be weighed against an employee’s right not to be deprived of her employment for conduct *which she had no reasonable basis to believe violated appropriate standards of behavior, or her employer’s policies.*” *Id.* (emphasis added). Ultimately, we concluded that the claimant’s remarks in that case did not rise to willful misconduct, explaining:

[The c]laimant’s comments, while insensitive, were neither pejorative nor demeaning, nor were they hostile. In other words, they were not of such a character as to compel the conclusion that one who utters them intends to give offense. Moreover, [the c]laimant’s testimony that she did not intend to offend her co-worker was unrebutted, and was fully credited by the [r]eferee

Id. at 784. We cautioned, however, that our holding should not be misconstrued as permitting racial insensitivity in the workplace. *Id.* Rather, employers must “mak[e]

appropriate standards of expected conduct clear, and enforc[e] those standards firmly and fairly,” because “having left employees with no guidance” regarding prohibited conduct, an employer “may not equate ignorant thoughtlessness with willful misconduct.” *Id.* (emphasis added).

This case is readily distinguishable from *Poplin*. Unlike in *Poplin*, where a single insensitive remark occurred in the absence of any articulated expectations, the record here reflects two instances of racially insensitive conduct within a brief period. On July 1, 2024, Employer formally warned Claimant that her Juneteenth comment violated Employer’s Policy and “commitment to a respectful and inclusive workplace,” and expressly cautioned that further incidents could result in termination. C.R. at 67. Although Employer characterized her conduct as a violation of its Policy, and the 2024 final warning supports the existence of the Policy, Employer did not appear at the hearing and did not establish the Policy by documentary evidence or testimony. Claimant’s acknowledgment that she received a final warning is not sufficient, standing alone, to prove the Policy’s content, scope, or requirements. The Board properly recognized that the record contains no specific information regarding any Policy or rule that Claimant may have violated.

Notwithstanding, Employer had clearly communicated its behavioral expectations in the final warning. Claimant admitted that she received the final warning for the Juneteenth comment. C.R. at 163. This is a critical distinction from *Poplin*, where the employer had provided no guidance at all. Claimant further admitted that, within weeks of receiving that warning for the Juneteenth comment, she asked a colleague to mimic an Asian stereotype during a work-related role play exercise. C.R. at 162-63. Employer discharged Claimant for that remark. Further, unlike the claimant in *Poplin*, Claimant here offered no apology, expressed no

remorse, and did not contend that the remark was inadvertent or misunderstood, defending she was well-acquainted with the Asian client and that it was not willful misconduct. *See* C.R. at 167-68. While the Board in *Poplin* credited the claimant's testimony that she did not intend offense, the Board here made no such finding.

Despite the absence of a specific work rule, the Board reasonably concluded that Claimant's racially insensitive remark, which was made after a final warning for similar conduct, reflected a disregard for the standards of behavior Employer could rightfully expect of its employees. The pivotal factor supporting the Board's determination is not merely the content of the Asian remark itself, which, when viewed in isolation, might fall within the type of borderline or context-dependent language contemplated in *Poplin*. Rather, the fact that Claimant made the remark after receiving a formal final warning expressly advising her that racially insensitive comments violated Employer's expectations and could result in termination is what distinguishes this case from *Poplin*. That warning eliminated any ambiguity regarding the standards of behavior Employer had a right to expect, and put Claimant on clear notice that even ostensibly joking or offhand remarks implicating race or ethnicity were unacceptable. By engaging in similar conduct so soon after the final warning, Claimant demonstrated a deliberate disregard of those communicated expectations. It is this combination of Employer's communicated expectations followed by Claimant's renewed misconduct that elevates her behavior from potentially misguided or insensitive commentary to willful misconduct under Section 402(e) of the Law. Upon review, we conclude that the Board did not err by determining that Claimant's conduct constituted willful misconduct on this alternate basis.

C. Free Speech

Lastly, Claimant contends that her Juneteenth comment is constitutionally protected speech. She characterizes the statement (“4th of July is my freedom holiday”) as a personal opinion about preferred holidays, made in a private conversation with a coworker. According to Claimant, no one present was offended, the coworker did not complain, and the statement did not create a hostile environment. Thus, she argues the communication was neither harassment nor misconduct but mere conversational expression. Claimant maintains that her remark touched upon a matter of public concern -- national holidays, civic identity, and social commentary surrounding Juneteenth -- and that the First Amendment therefore precludes denial of UC benefits. She maintains that she did not intend to offend and was engaged in protected expression, not willful misconduct.

As this Court has explained:

[I]t has been established that denial of [UC] benefits cannot be based on an individual’s exercise of First Amendment rights absent a compelling state interest. Where, as here, a claimant was discharged by a private employer, the Court must balance the claimant’s interest in commenting upon a matter of public concern and the Commonwealth’s interest in protecting the [UC] fund by disqualifying those individuals whose unemployment is due to willful misconduct.

McCall, 717 A.2d at 625-26 (citations omitted). In *McCall*, the claimant was responsible for the acquisition and maintenance of the employer’s contract with the city to train students dependent on welfare. *Id.* at 624. During a meeting with the employer and the city to discuss the program, the claimant questioned whether the program taught students certain moral values about bearing children out of wedlock and that, “as a taxpayer, [she] strongly object[ed] to supporting whores on welfare.” *Id.* Based on these comments, the employer terminated claimant’s employment for

willful misconduct. On appeal, the claimant defended her statements were not willful misconduct, but constitutionally protected speech, “because they concerned the political subjects of welfare reform and social security and occurred in the context of an open discussion of those subjects.” *Id.* at 626. This Court rejected the argument holding that no First Amendment protection applied. *Id.* We explained that the claimant’s comments were not contributions to any public debate on welfare reform but “were essentially attacks on the moral character” of the students participating in the program without any “foundation or basis in fact.” *Id.* Thus, we concluded that, instead of expressing political views, the claimant’s statements undermined her employer’s interests and jeopardized its contract, and thus constituted willful misconduct not shielded by the First Amendment. *Id.*

Similarly, here, Claimant’s comments do not rise to the level of protected speech. As the Board recognized, Juneteenth is a federally recognized holiday directly tied to civil rights and the end of slavery. F.F. No. 5. Although the discussion of the meaning or legitimacy of federal holidays may, in some cases, constitute commentary on national identity, in the context presented here, Claimant did not intend political commentary. She was expressing her personal preference rather than commenting on any broader civic debate, and her remark was unconnected to any public discourse or policy discussion. Even if the Juneteenth comment was arguably protected, Claimant was ultimately discharged for the Asian-stereotype comment, which is categorically unprotected speech and plainly constitutes workplace misconduct that is not protected by the First Amendment.

IV. Conclusion

Accordingly, we affirm the Board's order.

MICHAEL H. WOJCIK, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Sharon Carolla,	:
	:
Petitioner	:
	:
v.	: No. 925 C.D. 2025
	:
Unemployment Compensation	:
Board of Review,	:
	:
Respondent	:

ORDER

AND NOW, this 20th day of August, 2026, the order of the Unemployment Compensation Board of Review, dated June 27, 2025, is AFFIRMED.

MICHAEL H. WOJCIK, Judge