

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Kevin O. Cokely,	:	
Petitioner	:	
	:	No. 962 C.D. 2025
v.	:	
	:	Submitted: September 14, 2026
Unemployment Compensation	:	
Board of Review,	:	
Respondent	:	

BEFORE: HONORABLE CHRISTINE FIZZANO CANNON, Judge
HONORABLE LORI A. DUMAS, Judge
HONORABLE BONNIE BRIGANCE LEADBETTER, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
JUDGE DUMAS**

FILED: October 21, 2026

Kevin O. Cokely (Claimant), proceeding *pro se*, has petitioned this Court to review the adjudication issued by the Unemployment Compensation Board of Review (Board) on June 27, 2025, which affirmed a Referee's decision that the Claimant was ineligible for unemployment compensation (UC) benefits under section 402(e) of the UC Law relating to willful misconduct.¹ Upon review, we affirm.

¹ Section 402(e) of the UC Law, Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. § 802(e) (stating that an employee is ineligible for compensation when his separation from employment is due to willful misconduct connected with his work).

I. BACKGROUND²

Claimant was employed full-time by Bayada Home Health Care, Inc. (Employer) as a home health aide from December 2023 until December 2024. On December 16, 2024, he was scheduled to care for his nonverbal, wheelchair bound client from 5:00 p.m. to 11:00 p.m. Claimant left his shift early to buy cigarettes, leaving the client alone. He was then detained for drunk driving. Claimant called Employer's answering service the next morning to tell them that he had not completed his shift the night before because he had been intoxicated. Employer terminated Claimant for abandonment and being intoxicated at work.

Claimant filed for UC benefits, which the UC Service Center denied. Claimant appealed to a Referee, who held a hearing where Claimant and Employer's office director testified. The Referee affirmed, finding that Claimant had committed willful misconduct. Claimant timely appealed to the Board, which affirmed the Referee. Claimant then timely petitioned this Court for further review.

II. ISSUES

Claimant has raised two issues for review, which we have reordered and rephrased as follows.³ First, Claimant challenges the Board's findings of credibility in favor of Employer. Second, although it is not entirely clear from

² Unless stated otherwise, we adopt this background from the Board's decision and order, which adopted the Referee's findings and conclusions. *See* Bd.'s Decision & Order, 6/27/2025; *see also* Referee's Decision, 05/07/2025.

³ Claimant's statement of questions imprecisely describes the issues he is presenting to this Court for review. *See* Claimant's Br. at 7 (unpaginated) (specifically asserting, *inter alia*, that he was "treated unfair[ly]" and that his manager "[l]ied" to the Referee). We infer the issues from the substance of Claimant's brief as well as the certified record.

Claimant’s brief, we infer Claimant’s contention that he did not commit willful misconduct or, in the alternative, that he had good cause for his actions.⁴

III. DISCUSSION

Our review of the Board’s decision is limited to “determining whether necessary findings of fact were supported by substantial evidence, whether errors of law were committed, or whether constitutional rights were violated.” *Pierce-Boyce v. Unemployment Comp. Bd. of Rev.*, 289 A.3d 130, 135 n.4 (Pa. Cmwlth. 2022). “In UC cases, the Board is the ultimate factfinder and is empowered to resolve all issues of witness credibility, conflicting evidence, and evidentiary weight.” *Id.* at 136. Because the Board is the ultimate factfinder, its findings and credibility determinations are conclusive on appeal so long as they are supported by substantial evidence of record. *Guthrie v. Unemployment Comp. Bd. of Rev.*, 738 A.2d 518, 521 (Pa. Cmwlth. 1999). Substantial evidence is relevant evidence that a reasonable person may accept as adequate to support a finding. *Pierce-Boyce*, 289 A.3d at 136.

Here, Claimant challenges several findings. First, he asserts that “[he] didn’t lie about calling out.” Claimant’s Br. at 9. Rather, according to Claimant, he called Employer the night of his shift to inform them that he was leaving early. *Id.* at 8. He further suggests that Employer approved his conduct. *Id.* (stating, “[I] d[id] talk to Miss Jennifer, and she said I was covered”) (unnecessary capitalization removed). He also claims that he left his shift because he was experiencing a mental health episode and needed to seek medical attention, not because he was intoxicated. *See id.* at 9.

⁴ Claimant also vaguely mentions Title VII of the Civil Rights Act of 1964 as an issue for review but does not include it as a separate issue in his brief. *See, e.g.*, Claimant’s Br. at 7. Title VII claims arise against one’s employer for unfair treatment based on race, color, religion, sex or national origin. 42 U.S.C. § 2000e-2. The focus of this appeal is reviewing the decision of the Board, not Claimant’s employer, so Title VII does not apply.

The Board acknowledged Claimant's assertions but credited testimony from Employer's witness that the only call they received was the morning after Claimant left his shift during which he admitted to leaving early due to intoxication. Bd.'s Decision & Order at 2; Hr'g Tr. at 14. The Board found Claimant's testimony to be disruptive and inconsistent and resolved all discrepancies against him. Bd.'s Decision & Order at 1-2; Ref. Decision at 2. Claimant's testimony on the sequence of events leading up to his termination was unclear. For example, Claimant asserts that he spoke to "Miss Jennifer" to call out, over a week before his scheduled shift, while in other accounts, his girlfriend called Employer on his behalf the night he left his shift early. *See* Claimant's Br. at 8; *see also* Hr'g Tr. at 14-15. He was unable to provide a sufficiently detailed and consistent explanation of his actions to justify his challenge to the Board's credibility determination. Claimant has asked this Court to reweigh the evidence presented to the Board in his favor. We decline to do so, as substantial evidence supports the Board's findings. *Pierce-Boyce*, 289 A.3d at 136; *Guthrie*, 738 A.2d at 521.

Next, Claimant contends that his behavior did not constitute willful misconduct. *See generally* Claimant's Br. (denying he abandoned his client); *see also* Hr'g Tr. at 11 ("[I]t wasn't no . . . abandonment or whatever, willful [misconduct], which I feel is different.").

The term "willful misconduct" is not defined by statute, but this Court has defined it as "(1) an act of wanton and willful disregard of an employer's interests; (2) a deliberate violation of rules; (3) a 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 of the employee's duties and obligations." *Waverly Heights, Ltd. v. Unemployment Comp.*

Bd. of Rev., 173 A.3d 1224, 1228. It is well established that whether conduct rises to the level of misconduct presents a question of law to be determined by this Court. *Id.*

The burden of proving willful misconduct rests with the employer. *Adams v. Unemployment Comp. Bd. of Rev.*, 56 A.3d 76, 78-79 (Pa. Cmwlth. 2012). To do so, an employer must prove the existence of a work policy, its reasonableness, and the fact of its violation. *Halloran v. Unemployment Comp. Bd. of Rev.*, 188 A.3d 592, 597 (Pa. Cmwlth. 2018). However, a specific rule or policy is unnecessary where an employer has “a right to expect a certain standard of behavior, that standard is obvious to the employee, and the employee’s conduct is so inimical to the employer’s interests that discharge is a natural result.” *Ellis v. Unemployment Comp. Bd. of Rev.*, 59 A.3d 1159, 1162 (Pa. Cmwlth. 2013). It is well settled that intoxication during working hours is a clear act of willful misconduct. *See Coryn v. Unemployment Comp. Bd. of Rev.*, 316 A.2d 158, 159 (Pa. Cmwlth. 1974). Additionally, leaving work early without permission has long been held as an example of willful misconduct. *Jackamonis v. Unemployment Comp. Bd. of Rev.*, 408 A.2d 581, 582 (Pa. Cmwlth. 1979).

Here, Claimant does not challenge the existence of a workplace rule against client abandonment or intoxication, nor does he suggest such rules or policies would be unreasonable. Claimant merely argues that his version of the facts demonstrates that he did not violate such rules and, therefore, did not commit willful misconduct. *See, e.g.*, H’rg Tr. at 12 (“I covered myself. That’s what I’m saying. That was not abandonment, so that can’t be a willful [mis-]conduct.”).

Claimant’s argument is without merit. Here, substantial evidence of record established that Claimant was intoxicated, abandoned his nonverbal,

wheelchair bound client, and was later detained for drunk driving. Employer's witness credibly testified that Claimant called the morning after his scheduled shift and admitted to these facts. Hr'g Tr. at 14.⁵ Additionally, Employer's witness testified that there was no scheduled break permitting Claimant to leave his client, and if he needed to do so, he was required to notify Employer. *Id.* at 19. Accordingly, the Board's finding of willful misconduct was appropriate. *Ellis*, 59 A.3d at 1162; *Coryn*, 316 A.2d at 159; *Jackamonis*, 408 A.2d at 582.

If an employer establishes an employee's willful misconduct, the burden shifts to the employee to establish good cause for his actions. *Woodring v. Unemployment Comp. Bd. of Rev.*, 284 A.3d 960, 964 (Pa. Cmwlth. 2022). "The employee can establish good cause where his actions are justified or reasonable under the circumstances." *Id.* (internal quotations omitted). Whether good cause existed for an employee's actions is evaluated considering all the attendant circumstances. *Halloran v. Unemployment Comp. Bd. of Rev.*, 188 A.3d 592, 597 (Pa. Cmwlth. 2018). This Court has held that illness can be a good cause defense to willful misconduct due to absenteeism, but the claimant must prove that illness was, in fact, the cause of his absence. *Mckeesport Hosp. v. Unemployment Comp. Bd. of Rev.*, 625 A.2d 112, 114 (Pa. Cmwlth. 1993). Additionally, while absence for medical reasons does not generally constitute willful misconduct, a failure to notify an employer in the manner required by company rules does. *Gelles v. Com.*,

⁵ The Board credited the following testimony from Employer's witness:

[Claimant] then explained to me that he would be honest and tell me that he was drunk. . . . He left the shift . . . was driving, was pulled over . . . and was placed into custody overnight for intoxication."

Hr'g Tr. at 14 (interjections by the Referee are omitted).

Unemployment Compensation Bd. of Rev., 452 A.2d 91, 92 (Pa. Cmwlth. 1982). The question of whether an employer received notice is one of fact. *Id.*

Claimant has admitted to leaving his shift early. *See* Claimant's Br. at 9; Hr'g Tr. at 15-16. In his brief to this Court, Claimant offered his purported medical issues as justification for his conduct. *See* Claimant's Br. at 9. While he testified to a mental health episode, which resulted in his admission into psychiatric care at a hospital, *see* Hr'g Tr. at 15, Claimant has offered varying explanations for his conduct. *See, e.g., id.* at 15 (suggesting he left because he was on break), 20 (testifying that he left to buy cigarettes but was unable to return because the police stopped him). Claimant has also acknowledged his responsibility to notify Employer. *See* Claimant's Br. at 9. However, Claimant's testimony regarding notification was also inconsistent. *See, e.g., id.* at 14 ("My girlfriend called that day"), *id.* at 17 ("I called that night.").⁶

Balanced against this inconsistent testimony, Employer's witness testified that no call was received from Claimant until the morning after his scheduled shift. *Id.* at 19. As discussed, *supra*, the Board credited Employer and resolved all credibility determinations against Claimant, which binds this Court on appeal. *See Guthrie*, 738 A.2d at 521. Thus, we defer to the Board's finding that Claimant failed to properly notify Employer. *See Gelles*, 452 A.2d at 92.

Nevertheless, even if we were inclined to credit Claimant's shifting explanations and accept some version of his testimony that he notified Employer that he needed to leave his client, Claimant has not provided any evidence documenting the medical care he purportedly received on the night he abandoned his client, nor has he offered any corroborative evidence of his underlying condition.

⁶ Claimant's girlfriend did not testify at the hearing.

Absent proof that Claimant left his client for medical reasons, he cannot establish good cause for his conduct. *Woodring*, 284 A.3d at 964; *Mckeesport Hosp.*, 625 A.2d at 114; *Gelles*, 452 A.2d at 92.

IV. CONCLUSION

For the reasons set forth above, we affirm.

LORI A. DUMAS, Judge

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ORDER

AND NOW, this 21st day of October, 2026, the order issued by the Unemployment Compensation Board of Review on June 27, 2025, is AFFIRMED.

LORI A. DUMAS, Judge