

UNEMPLOYMENT COMPENSATION
BOARD OF REVIEW

Department of Labor and Industry
Commonwealth of Pennsylvania

UC-59 REV 5-09



APPEAL NUMBER 12-09-B-7426
DATE MAILED 9/24/2012
FINAL DATE TO
APPEAL 10/9/2012
SSN ~~708-56-8570~~

REFEREE'S DECISION/ORDER

CLAIMANT

EMPLOYER

DONNA B ~~ROSSER~~
~~100400300~~
KUTZTOWN PA 19530-8931

PHOEBE BERKS
1925 TURNER ST
ALLENTOWN PA 18104

CLAIM:

FILED: 6/24/2012
DETERMINATION/S ISSUED: 8/9/2012 BY: ALLENTOWN UC SERVICE CENTER
CLAIMANT DETERMINED UNDER UC LAW: Ineligible 402(e)
FOR WAITING WEEK ENDING: 6/30/2012
FOR COMPENSABLE WEEK/S ENDING:

APPEAL:

FILED: 8/16/2012 BY: Claimant
HEARING HELD: 9/21/2012 IN: ALLENTOWN, PA
ATTENDED BY: Claimant

ENCLOSURE: A translation document UC-1627 is enclosed with this notice.

FINDINGS OF FACT:

1. The claimant was employed full time as a certified nursing assistant by Phoebe Berks from April 12, 2011 until June 26, 2012 with a final rate of pay of \$16.68 per hour.
2. The employer has issued the claimant warnings for attendance.
3. On June 26, 2012 through June 28, 2012 the claimant reported off from work due to illness.
4. The claimant did not knowingly violate any employer policy.
5. The claimant worked to the best of her ability.
6. On June 29, 2012 the employer discharged the claimant for attendance.

ISSUE: Did the claimant engage in willful misconduct in connection with her work?

REASONING: Although duly notified of the date, time and place of the hearing, the employer failed to appear at the hearing to present testimony and evidence on the issues under appeal. The above findings represent the competent evidence represented by the claimant, in addition to a careful review of the documentary evidence of record, under which the referee renders the following decision.

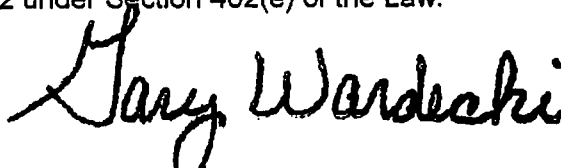
Section 402(e) of the Pennsylvania Unemployment Compensation Law provides that a Claimant shall be ineligible for compensation for any week in which the unemployment is due to a discharge or temporary suspension from work for willful misconduct connected with work. While the term "willful misconduct" is not defined in the Law, the Board of Review and the Appellate Courts in numerous decisions have defined willful misconduct as an act of wanton or willful disregard of the employer's interests, a deliberate violation of the employer's rules, a disregard of the standards of behavior which the employer has a right to expect of an employee, or negligence indicating an intentional disregard of the employer's interests or of the employee's duties and obligations to the employer.

Since the claimant was discharged, the employer has the burden of establishing that the discharge was for willful misconduct in connection with the work.

The Pennsylvania Courts have consistently held that mere tardiness and absenteeism alone does not constitute willful misconduct in connection with work. If there is good cause for the absences or late arrivals, and they are properly reported, the absence or tardy is not considered to be a disregard of the standards of behavior the employer has the right to expect of an employee. Even excessive absenteeism, which is justified and properly reported, does not disqualify a claimant.

The claimant testified to being discharged due to the attendance policy. The claimant competently testified to following the employer's call off policy for each of the final occurrences. The referee finds the claimant had good cause for the final absence. The claimant's burden has been met. Benefits must be granted.

ORDER: The determination of the Unemployment Compensation Service Center is **REVERSED**. Benefits are **GRANTED** for waiting week ending June 30, 2012 under Section 402(e) of the Law.



Gary Wardecki, Referee

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Pursuant to the provisions of the Law, the above decision shall become final on the date it was mailed to the parties, unless any aggrieved party files a further appeal to the Pennsylvania Unemployment Compensation Board of Review within the fifteen (15) day appeal period.

The last date to file an appeal to this decision is 10/9/2012.

IF YOU WISH TO FILE A FURTHER APPEAL

You have the right to file a further appeal to this decision within fifteen (15) days of the date of mailing. Your appeal must include the following information: ► your name; ► the claimant's name and social security number; ► the date of the decision being appealed; ► the reason for appeal; ► the appeal number; ► your address. Under the provisions of Act 5 of 2005, you may file your own appeal, or your appeal may be filed by an attorney or by any other advocate of your choice.

You may file your appeal by mail. If you file your appeal by mail, the appeal is filed as of the date of the U.S. Postal Service postmark or a U.S. Postal Service form 3817 (Certificate of Mailing) or a U.S. Postal Service certified mail receipt. If there is no U.S. Postal Service postmark, the date of filing will be the date of a postage meter mark on the envelope containing the appeal. If the appeal contains neither a postmark nor a postage meter mark, the date of filing will be the date recorded by the Department when the appeal is received. Your appeal should be mailed to the following address:

Department of Labor & Industry
UC Board of Review