

## COMMONWEALTH COURT OF PENNSYLVANIA

# Marysol Reices v. Unemployment Compensation Board of Review

Reices · No. 762 C.D. 2020 · Decided May 14, 2021

### SUMMARY

The Pennsylvania Commonwealth Court affirmed the Unemployment Compensation Board of Review's denial of benefits to Marysol Reices under Section 402(e) of the Pennsylvania Unemployment Compensation Law. The court held that substantial evidence supported the finding that Reices was discharged for willful misconduct after failing to immediately report a felony arrest in violation of her employer's policy. The court also rejected arguments based on capricious disregard of evidence, mental illness, remoteness, and the employer's failure to impose lesser discipline.

### CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                  |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Commonwealth Court of Pennsylvania                                                                                                                                                                                                                                                                                                                                                               |
| WRITING FOR THE COURT | Renée Cohn Jubelirer; Patricia A. McCullough; Anne E. Covey                                                                                                                                                                                                                                                                                                                                      |
| JURISDICTION          | Pennsylvania                                                                                                                                                                                                                                                                                                                                                                                     |
| DECIDED               | May 14, 2021                                                                                                                                                                                                                                                                                                                                                                                     |
| DOCKET                | 762 C.D. 2020                                                                                                                                                                                                                                                                                                                                                                                    |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                                         |
| PROCEDURAL POSTURE    | Claimant petitioned for review of the Unemployment Compensation Board of Review's order affirming a referee's determination that she was ineligible for unemployment compensation benefits because she was discharged for willful misconduct under Section 402(e) of the Pennsylvania Unemployment Compensation Law.                                                                             |
| STANDARD OF REVIEW    | The Court reviews whether necessary findings are supported by substantial evidence, whether errors of law were committed, and whether constitutional rights were violated. The Board's supported factual findings are binding, and the Court may not reweigh evidence or make credibility determinations. Whether conduct constitutes willful misconduct is a question of law subject to review. |
| PRECEDENTIAL VALUE    | Nonprecedential memorandum opinion; the opinion states that it is not reported.                                                                                                                                                                                                                                                                                                                  |
| PARTIES               | Marysol Reices v. Unemployment Compensation Board of Review                                                                                                                                                                                                                                                                                                                                      |

## TOPICS

unemployment benefits

administrative law

judicial review of agency action

employment law

## PRACTICE AREAS

administrative law

employment law

unemployment benefits

## QUESTIONS PRESENTED

1. Whether the Board capriciously disregarded evidence by finding that Reices was discharged for violating the employer's arrest-reporting policy rather than solely because of the employer's application of the Older Adults Protective Services Act.
2. Whether Reices deliberately violated the employer's arrest-reporting policy, constituting willful misconduct under Section 402(e) of the Unemployment Compensation Law.
3. Whether the remoteness doctrine barred denial of unemployment compensation benefits because the employer discharged Reices weeks after learning of her arrest.
4. Whether the employer was required to impose progressive discipline or a sanction less severe than termination.

## HOLDINGS

1. The Board did not capriciously disregard evidence by finding that Reices was discharged for violating the employer's policy requiring immediate reporting of arrests. The record contained substantial, competent evidence that the policy violation was one of the reasons for discharge, and the additional consideration of the OAPSA did not conflict with that finding.
2. Reices's failure to report her felony arrest for approximately 21 months constituted a deliberate violation of a known employer policy and supported denial of unemployment compensation benefits for willful misconduct.
3. The remoteness doctrine did not preclude denial of benefits because the employer's delay in terminating Reices was neither substantial nor unexplained.
4. The employer was not required to impose progressive discipline or a sanction less severe than termination for Reices's violation of the arrest-reporting policy.

## KEY QUOTATIONS

*“The remoteness doctrine provides that “[a]n incident of willful misconduct cannot be so temporally remote from the ultimate dismissal and still be the basis for a denial of benefits.”*” (18)

*“Contrary to Claimant’s assertion, this Court in Peake did not articulate a “roadmap of factors” for employers to follow when taking disciplinary action”* (22)

## FACTUAL BACKGROUND

Reices worked as a full-time direct care worker for Accessing Independence from October 2017 until her discharge on February 17, 2020. She was arrested for felony retail theft on March 18, 2018, but did not report the arrest to her employer until January 2020, when an FBI background check was forthcoming. The employer's policy required employees to report arrests immediately and permitted discipline up to and including termination. The employer discharged Reices for violating that policy and also considered her felony conviction under the Older Adults Protective Services Act.

## PROCEDURAL HISTORY

Marysol Reices was discharged by Accessing Independence after failing to report a felony arrest for approximately 21 months, contrary to the employer's policy. The Office of Unemployment Compensation Benefits denied benefits, and a referee affirmed that determination under Section 402(e). The Board adopted the referee's findings and affirmed. The Commonwealth Court affirmed the Board.

## DISPOSITION

affirmed

## CASES CITED

- Gordon Terminal Service Co. v. Unemployment Compensation Board of Review, 211 A.3d 893, 898 (Pa. Cmwlth. 2019)
- Nolan v. Unemployment Compensation Board of Review, 425 A.2d 1203, 1205 (Pa. Cmwlth. 1981)
- Walsh v. Unemployment Compensation Board of Review, 943 A.2d 363, 368-69 (Pa. Cmwlth. 2008)
- Caterpillar, Inc. v. Unemployment Compensation Board of Review, 703 A.2d 452, 456-57 (Pa. 1997)
- Johns v. Unemployment Compensation Board of Review, 87 A.3d 1006, 1009 n.2 (Pa. Cmwlth. 2014)
- Bertram v. Unemployment Compensation Board of Review, 206 A.3d 79, 83-85 (Pa. Cmwlth. 2019)
- Taliaferro v. Darby Township Zoning Hearing Board, 873 A.2d 807, 816 (Pa. Cmwlth. 2005)
- Wise v. Unemployment Compensation Board of Review, 111 A.3d 1256, 1263 (Pa. Cmwlth. 2015)
- Glenn v. Unemployment Compensation Board of Review, 928 A.2d 1169, 1172 (Pa. Cmwlth. 2007)
- Saunders v. Unemployment Compensation Board of Review, No. 1045 C.D. 2015, slip op. at 5 (Pa. Cmwlth. Feb. 24, 2016)
- W. & S. Life Insurance Co. v. Unemployment Compensation Board of Review, 913 A.2d 331, 334 n.2 (Pa. Cmwlth. 2006)
- Guthrie v. Unemployment Compensation Board of Review, 738 A.2d 518, 521 (Pa. Cmwlth. 1999)
- U.S. Banknote Co. v. Unemployment Compensation Board of Review, 575 A.2d 673, 674 (Pa. Cmwlth. 1990)
- Taylor v. Unemployment Compensation Board of Review, 378 A.2d 829, 831 (Pa. 1977)
- Borough of Coaldale v. Unemployment Compensation Board of Review, 745 A.2d 728, 731 (Pa. Cmwlth. 2000)
- Brady v. Unemployment Compensation Board of Review, 539 A.2d 936, 939 (Pa. Cmwlth. 1988)
- Peak v. Unemployment Compensation Board of Review, 501 A.2d 1383, 1388 (Pa. 1985)

- *Tundel v. Unemployment Compensation Board of Review*, 404 A.2d 434, 436 (Pa. Cmwlth. 1979)
- *Raimondi v. Unemployment Compensation Board of Review*, 863 A.2d 1242, 1247 (Pa. Cmwlth. 2004)
- *Weingard v. Unemployment Compensation Board of Review*, 26 A.3d 571, 576 (Pa. Cmwlth. 2011)
- *Peake v. Commonwealth*, 132 A.3d 506, 521-22 (Pa. Cmwlth. 2015)
- *Graham v. Unemployment Compensation Board of Review*, 840 A.2d 1054, 1058 (Pa. Cmwlth. 2004)

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