

COMMONWEALTH COURT OF PENNSYLVANIA

John S. Kirchner v. Unemployment Compensation Board of Review

No. 919 C.D. 2020 (Pa. Commw. Ct. May 17 2023) (Commonwealth Court of Pennsylvania 2023) · No. No. 919 C.D. 2020 · Decided May 17, 2023

SUMMARY

The Pennsylvania Commonwealth Court affirmed the Unemployment Compensation Board of Review’s determination that John S. Kirchner was ineligible for unemployment benefits under Section 402(e) of the Pennsylvania Unemployment Compensation Law due to willful misconduct. The court held that substantial evidence supported findings that Kirchner knew the employer’s alcohol policy and violated it by consuming alcohol while working. The court also rejected Kirchner’s argument that the policy was inconsistently enforced.

CASE DETAILS

COURT	Commonwealth Court of Pennsylvania
WRITING FOR THE COURT	Patricia A. McCullough; Michael H. Wojcik; Stacy Wallace
JURISDICTION	Pennsylvania
DECIDED	May 17, 2023
DOCKET	No. 919 C.D. 2020
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petition for review of the Unemployment Compensation Board of Review's order affirming a referee's determination that Kirchner was ineligible for unemployment compensation benefits because his discharge resulted from willful misconduct.
STANDARD OF REVIEW	The Court's review is limited to determining whether constitutional rights were violated, an error of law was committed, or the findings of fact are unsupported by substantial evidence. The Board is the ultimate fact finder, its credibility determinations are not reevaluated on judicial review, and the evidence is viewed in the light most favorable to the prevailing party.
PRECEDENTIAL VALUE	Unpublished memorandum opinion; nonprecedential
PARTIES	John S. Kirchner v. Unemployment Compensation Board of Review

TOPICS

unemployment benefits

administrative law

judicial review of agency action

standard of review

appellate procedure

PRACTICE AREAS

Unemployment compensation

Administrative law

Employment law

Appellate procedure

QUESTIONS PRESENTED

1. Whether substantial evidence supported the Board's finding that Kirchner was aware of the employer's Alcohol Policy and violated it by consuming alcohol during work hours.
2. Whether Kirchner's conduct constituted willful misconduct disqualifying him from unemployment compensation under Section 402(e) of the Pennsylvania Unemployment Compensation Law.
3. Whether alleged instances of undisciplined alcohol-related conduct established inconsistent enforcement of the employer's policy and supplied good cause for Kirchner's violation.

HOLDINGS

1. Substantial evidence supported the Board's finding that Kirchner was aware of the Alcohol Policy and violated it by consuming alcohol while working.
2. Kirchner's consumption of alcohol during work hours, in violation of a known workplace prohibition, constituted willful misconduct under Section 402(e), making him ineligible for unemployment compensation benefits.
3. Kirchner failed to prove that the employer inconsistently enforced its Alcohol Policy, and therefore failed to establish good cause for his willful misconduct.

KEY QUOTATIONS

"A claimant cannot be found to have willfully or intentionally violated a rule of which he was unaware." (5)

"It almost goes without saying that all employees at the 911 Call Center, regardless of their hierarchical role, must be clear of thought and free of the influence of any amount of intoxicants, even absent such a policy like Employer's Alcohol Policy." (8)

"Inconsistent enforcement of a work rule defeats the existence of the work rule." (8-9)

FACTUAL BACKGROUND

Kirchner worked as a communications center shift supervisor at Lehigh County's 911 Emergency Call Center for approximately 36 years. He was discharged after consuming alcohol with other employees during work hours, contrary to the employer's zero-tolerance Alcohol Policy, which prohibited possessing, dispensing, and consuming alcohol while working and made the violation subject to immediate dismissal. The employer presented evidence that Kirchner had received and acknowledged the applicable policies, while Kirchner admitted in his benefits questionnaire that he knew of the rule and had consumed alcohol but later testified that

he was unaware of the policy. Kirchner also claimed the policy was inconsistently enforced, but the Board credited the employer's evidence that it was consistently enforced.

PROCEDURAL HISTORY

After being discharged by Lehigh County's 911 Emergency Call Center for consuming alcohol during work hours, Kirchner applied for unemployment compensation. The service center denied benefits under Section 402(e) of the Pennsylvania Unemployment Compensation Law. A referee affirmed, and the Board affirmed the referee's decision and adopted its findings and conclusions. Kirchner petitioned the Commonwealth Court for review.

DISPOSITION

affirmed

CASES CITED

- Miller v. Unemployment Compensation Board of Review, 83 A.3d 484, 486 n.2 (Pa. Cmwlth. 2014)
- Department of Transportation v. Unemployment Compensation Board of Review, 755 A.2d 744, 747-48 n.4 (Pa. Cmwlth. 2000)
- Roberts v. Unemployment Compensation Board of Review, 977 A.2d 12, 16 (Pa. Cmwlth. 2009)
- Melomed v. Unemployment Compensation Board of Review, 972 A.2d 593, 594 (Pa. Cmwlth. 2009)
- Williams v. Unemployment Compensation Board of Review, 926 A.2d 568 (Pa. Cmwlth. 2007)
- Tongel v. Unemployment Compensation Board of Review, 501 A.2d 716, 717 (Pa. Cmwlth. 1985)
- Robinson v. Unemployment Compensation Board of Review, 414 A.2d 143 (Pa. Cmwlth. 1980)
- Walz v. Unemployment Compensation Board of Review, 402 A.2d 1146 (Pa. Cmwlth. 1979)
- Chambers v. Unemployment Compensation Board of Review, 318 A.2d 422 (Pa. Cmwlth. 1974)
- Peak v. Unemployment Compensation Board of Review, 501 A.2d 1383, 1388 (Pa. 1985)
- Chamoun v. Unemployment Compensation Board of Review, 542 A.2d 207 (Pa. Cmwlth. 1988)
- Taylor v. Unemployment Compensation Board of Review, 378 A.2d 829 (Pa. 1977)
- Walsh v. Unemployment Compensation Board of Review, 943 A.2d 363, 369 (Pa. Cmwlth. 2008)
- Allen v. Unemployment Compensation Board of Review, 189 A.3d 1128, 1136 (Pa. Cmwlth. 2018)
- Gordon Terminal Service Co. v. Unemployment Compensation Board of Review, 211 A.3d 898, 900 (Pa. Cmwlth. 2019)
- Serrano v. Unemployment Compensation Board of Review, 149 A.3d 435, 439 (Pa. Cmwlth. 2016)