

## [Employee Who is Repeatedly Found Sleeping on the Job Entitled to Unemployment Compensation](#)

December 17, 2010 by [Adam Santucci](#)

The Commonwealth Court of Pennsylvania recently concluded that an employee who was found sleeping on the job four (4) times was entitled to unemployment compensation benefits under the [Pennsylvania Unemployment Compensation Law \("Law"\)](#). [Phila. Parking Auth. v. Unemployment Comp. Bd. of Review, 1 A.3d 956 \(Pa. Commw. Ct. 2010\) \(pdf\)](#). Under the Law, an employee is not eligible for unemployment benefits if his or her unemployment is due to willful misconduct. Willful misconduct includes, among other things, a deliberate violation of the employer's work rules. In cases involving a work rule violation, the employer has the burden of establishing that: (1) a work rule existed, (2) the former employee was aware of the rule, and (3) the former employee deliberately or intentionally violated the rule. If the employer can establish these three things, then the burden shifts to the employee to show that there was good cause for the rule violation.

In *Phila. Parking Auth.*, the former employee, who worked the 3:30 p.m. to midnight shift in the employer's "money room," fell asleep during her shift on four (4) occasions in January 2009. Prior to these incidents, the former employee complained that there were long periods of time during her work day when she had no work to do. The former employee was diagnosed with sleep apnea and claimed that she needed additional work to keep her from falling asleep. Other than providing additional assignments on two (2) occasions, the employer did not provide her with any additional duties. After she was found sleeping four (4) times, the former employee was terminated under the employer's rule prohibiting sleeping on duty.

The court held that the employer adequately proved it had a work rule prohibiting sleeping on duty, and that the former employee was aware of the rule. However, the court further held that the employer failed to adequately address the former employee's requests for additional work assignments and, for this reason, she did not deliberately violate the rule – and did not commit willful misconduct. For this reason, the court awarded benefits to the terminated employee.

This decision is certainly unusual, and a warning that employers must take appropriate action when an employee complains that she does not have enough work to keep her awake!

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