

Decision Date: 6/12/2023

**Jad Sleiman**  
[REDACTED]

**Final Date to Appeal:**  
**7/3/2023**

Referee Office Docket:  
2023029028-RO

Claimant SSN:  
XXX-XX-3107

**CLAIMANT**

Jad Sleiman  
[REDACTED]

**EMPLOYER**

Why Inc  
150 North 6th Street  
Philadelphia, PA 19106

**CLAIM HISTORY:**

Claim number: 7439936  
Application date: 1/22/2023  
Determination number: 22911156  
Determination issued: 4/13/2023 By: ALTOONA UC SERVICE CENTER  
UCSC determined claimant under UC Law: Allowed 402(e)  
For Waiting Week Ending: N/A  
For Compensable Week(s) Ending: N/A  
Appeal Filed: 4/14/2023 By: WHY INC  
Hearing Held: 5/31/2023 In: Philadelphia Referee Office  
Attended By: Servodidio, Thomas  
Glover, Sarah  
Clauser, Ruth  
Mincer, Elizabeth  
Betti, Rosaire  
WHYY INC  
Sleiman, Jad

*Auxiliary aids and services are available upon request to individuals with disabilities.  
Equal Opportunity Employer/Program*



## FINDINGS OF FACT

1. Jad Sleiman ("claimant") was employed by WHYY ("employer") beginning in or around November 2018 and his last date of work was on or about January 23, 2023.
2. The claimant's position was that of reporter for the employer's nationally syndicated radio program known as "The Pulse".
3. The claimant's job involved producing reports about health and science topics, including using social media internet websites to promote and market the show.
4. The employer had a collective bargaining agreement ("the CBA") with a labor union of which the claimant was a member.
5. The CBA had a provision regarding use of social media providing, in part: "employees, when using digital and/or social media platforms for their personal use, including when expressing an opinion... will be clear that they are acting on their own behalf and not on behalf of WHYY...even with that disclaimer, an employee's statements or images on personal social media may be harmful to the interest of WHYY. The nature of an employee's position...will determine the character and content of what an employee can or should put on their personal social media accounts, even those unrelated to their work. Generally, employees must take care that their postings cannot be interpreted as inflammatory, unethical or illegal, since such posts may have an adverse effect on WHYY".
6. The CBA provided that employees had to agree to remove posts from their social media accounts if the employer believed they could "create legal or reputational risks" for it and "the discipline and discharge and grievance and arbitration provisions of this agreement shall apply in the case any employee who is subject to discipline or discharge in connection with this provisions...".
7. The employer had an employee handbook referencing the social media policy in the CBA and adding "...if you post a comment about an issue totally unrelatable to your work, but the comments are interpreted as inflammatory, unethical or even illegal, it may be uncovered that you are affiliated with WHYY...when posting information on a social media site not related to WHYY, avoid topics you cover professionally...if at any time a situation arises where you're not sure what to do, seek guidance from your supervisor and/or contact the legal department."
8. The employer had a code of conduct listing its general philosophy of acting humanely and not discriminating against groups.
9. The claimant was aware of the social media policy in the employee handbook and CBA.
10. At all times relevant to this appeal, the claimant performed publicly as a stand-up comedian, usually making an audio and visual recording of his live act and posting it to his account on the websites YouTube and Instagram.
11. The claimant frequently used profanity and causal sexual references in his comedy act.
12. The claimant's comedy "bits" were mostly intense social satire of topics including: maternal sacrifice (referring to a mother medically donating a vagina using a common slang term for said body part); Iraq (where either he or descendants emigrated from) satirizing its acceptance of prostitution so long as it involved Chinese women; America's sexualization of women into old age compared with Arab countries policing their looks and sexuality; and the exploitation of Asian immigrants who may be of illegal status by labor agencies, including speaking to one by telephone one while making audience asides regarding the cheapness of the labor ranked by nationality.
13. During the course of employment, the claimant was aware his direct supervisor was familiar with his stand-up comedy material and watched at least some of it on the Instagram website because he could view entries under her name to indicate she "liked" the material.
14. The claimant used the stage name of "Jad S." rather than his full last name when performing in public.
15. The claimant used the screen name of "JadSlay" when posting recordings to YouTube and Instagram.
16. At some point, someone notified the employer's Vice President of News and Civic Dialogue of the claimant's performances and internet postings of it; in response, she and others viewed such postings to investigate.
17. On January 23, 2023, the employer informed the claimant he was terminated, citing "an egregious



violation of" its code of conduct and social media guidelines, and being "indirect conflict with the ~~WHYY~~ values of social responsibility".

18. The employer did not issue the claimant a warning or instruct him to delete any posted material before it terminated him.

## ISSUE

Is the claimant disqualified from receiving benefits under Section 402(e) of the Pennsylvania Unemployment Compensation ("UC") Act based on the separation from the employer?

## REASONING

Section 402(e) of the Pennsylvania UC Act provides that claimants shall be ineligible for compensation for any week in which their unemployment is due to a discharge or suspension from work for willful misconduct connected with the work. While the term "willful misconduct" is not defined in the Act, Pennsylvania courts in numerous decisions have considered it to include a deliberate violation of an employer rule or rules, a disregard of standards of behavior an employer has a right to expect of an employee, or negligence of such frequency or degree as to be evidence of an intentional disregard of the employer's interests or of the employee's duties. In appeal hearings involving discharged employees, the employer has the burden of establishing that the discharge was due to willful misconduct in connection with the work.

Regarding whether the claimant's comedy act was "work related", there is no evidence it involved his job duties for the employer, that he connected his stage persona with the employer, or even mentioned the employer during his performances. Although it may have been possible for someone to discover his identity if one intended to "investigate" him, the record does not show his identity would have been discovered by the public in general, or the employer's listeners or donors specifically, because he did not appear visually for his job and he does not his full name for the stage act or social media accounts.

Although the employer's rules regarding outside conduct are quite broad, even considering the content of his act to come within those rules, the obvious theme of his performances (in this record) was social unfairness and hypocrisy rather than discrimination. They were controversial and contained terms certain persons could find offensive, either due to explicit sexual or racial/ethnic nature used for "a cheap laugh." In context, however, the content was not inconsistent with that of other adult comedians' and would not be unfamiliar to the mildly sophisticated listener.

The record is unclear whether a particular employee or listener had complained about the claimant's act to the employer. Even if that occurred, however, once it determined that his comic content was inconsistent with its social media policy or CBA provision, it could have, per its policy, directed him to refrain from making it available online or issued him a warning. Finally, he showed his supervisor was aware of the nature of his act and had not cautioned him against it or complained about it. On this record, therefore, without a prior warning of directive to delete his posts, his off-duty act and the posting of it may not be considered disqualifying under Section 402(e).



**ORDER**

The determination of the Unemployment Compensation Service Center under Section 402(e) of the Pennsylvania Unemployment Compensation Act is **AFFIRMED**; the claimant is **NOT DISQUALIFIED** from receiving waiting week credit or compensation under said section effective January 23, 2023.

Rosaire Betti  
Referee

22483651



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**Pursuant to the provisions of the law, this referee 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 (Board) within the twenty one (21) day appeal period.**

**THE LAST DAY TO FILE AN APPEAL TO THIS DECISION IS 07/03/2023**

**If you wish to file a further appeal**

You have the right to file a further appeal to this decision no later than twenty one (21) days after the decision date. 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 appeals referee docket 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 through the PA UC online application.** This is the most efficient and preferred method of filing. Simply log on to <https://benefits.uc.pa.gov> to access your claim and click on [Unemployment Services > Appeals > Determinations > File Appeal](#) to begin the process. If you were issued more than one referee decision, please be sure to file a separate appeal to each decision. For example, if you were issued a decision that disqualifies benefits and a decision that establishes an overpayment, and wish to appeal both decisions, you must file a separate appeal to each decision, for a total of two appeals. If you file your appeal by internet, the appeal is filed on the date of receipt recorded by the Board's electronic transmission system.

**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  
651 Boas St., Rm 1119  
Harrisburg, PA 17121**

**You may file your appeal by common carrier.** If you file your appeal by common carrier, the appeal is filed on the date it is delivered to the common carrier as established by the records of the common carrier. You should use the above address to send your appeal by common carrier.

**You may file your appeal by fax.** If you file your appeal by fax, it must be received by the Department by 11:59 p.m. on the last day to appeal. The filing date will be determined by the date of receipt imprinted by the receiving fax machine. If there is no receipt date imprinted by the receiving fax machine, the sender's fax banner will control the date of filing. If neither date appears on the fax, the date of receipt recorded by the Department will serve as the date of filing. Your appeal should be **faxed** to the following number:

**717-346-4484**

**You may file your appeal via electronic mail (email).** If you file your appeal by email, the appeal is filed on the date of receipt recorded by the Board's electronic transmission system. If you wish to file your appeal by email, forward your appeal information to the Board at:

[UCBoardAppeals@pa.gov](mailto:UCBoardAppeals@pa.gov)



**WARNING:** Information submitted by email is not secure.

**NOTE: A party filing an appeal via fax or email is responsible for using the proper format and for delay, disruption or interruption of electronic signals and readability of the document and accepts the risk that the appeal may not be properly or timely filed.**

**You may file your appeal in person.** If you file your appeal in person, you may do so at any PA CareerLink® office during normal business hours on or before the last day to appeal shown above. The PA CareerLink® office will forward your appeal to the Board for processing.

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





**INTERESTED PARTIES:**

Susan Quatresols  
150 N 6th Street  
Philadelphia, PA 19106

Thomas Servodidio  
30 South 17th Street  
Duane Morris  
Philadelphia, PA 19103



English	IMPORTANT! THIS NOTICE MAY AFFECT YOUR UNEMPLOYMENT COMPENSATION RIGHTS OR BENEFITS AND SHOULD BE TRANSLATED IMMEDIATELY! If you need assistance, the UC Service Center will interpret this document free of charge.
Spanish	¡IMPORTANTE! ¡ESTE AVISO PUEDE AFECTAR SUS DERECHOS O BENEFICIOS DE COMPENSACIÓN POR DESEMPLEO Y DEBE TRADUCIRSE INMEDIATAMENTE! Si necesita ayuda, el Centro de Servicio de Compensación por Desempleo (UC) le brindará servicios de interpretación de este documento de forma gratuita.
Vietnamese	LƯU Ý QUAN TRỌNG! THÔNG BÁO NÀY CÓ THỂ ẢNH HƯỞNG ĐẾN QUYỀN LỢI HAY PHÚC LỢI THẤT NGHIỆP CỦA QUÝ VỊ VÀ NÊN ĐƯỢC THÔNG DỊCH NGAY! Nếu quý vị cần hỗ trợ, Trung tâm Dịch vụ Phúc lợi Thất nghiệp sẽ dịch tài liệu này miễn phí.
Arabic	انتبه! قد يؤثر هذا الإشعار على حقوق أو مخصصات إعانات البطالة الخاصة بك، ويجب ترجمته على الفور! إذا كنت بحاجة إلى المساعدة، سيقوم مركز خدمة إعانات البطالة بترجمة هذا المستند لك مجانًا.
Russian	ВНИМАНИЕ! СОДЕРЖАЩАЯСЯ В ДАННОМ УВЕДОМЛЕНИИ ИНФОРМАЦИЯ МОЖЕТ ПОВЛИЯТЬ НА ВАШЕ ПРАВО НА ПОЛУЧЕНИЕ КОМПЕНСАЦИОННЫХ ВЫПЛАТ ИЛИ ПОСОБИЙ ПО БЕЗРАБОТИЦЕ И ДОЛЖНА БЫТЬ НЕМЕДЛЕННО ПЕРЕВЕДЕНА! Если Вам необходима помощь, Сервисный центр UC окажет услуги по переводу этого документа бесплатно.
Cantonese (Traditional Chinese)	此為重要信息！本通知可能會影響您獲得失業補償金或福利的權利。因此應立即將其翻譯！如果您需要幫助，失業補償金服務中心將免費翻譯本文。
Hindi	इंपोर्टेंट! यह नोटिस आपके बेरोजगारी मुआवजे के अधिकार और लाभ को प्रभावित कर सकता है और तुरंत इसका अनुवाद किया जाना चाहिए। अगर आपको सहयोग की आवश्यकता है तो UC सर्विस सेंटर इस दस्तावेज़ का आपके लिए मुफ्त में अनुवाद कर सकता है।
Haitian Creole	ENPÒTAN! AVI SA A KA AFEKTE DWA W A KONPANSASYON POU CHOMAJ OUBYEN BENEFIS OU YO EPI OU DWE TRADWI LI IMEDYATMAN! Si w bezwen asistans, Sant Sèvis UC a pral entèprete dokiman sa a gratis.
Albanian	E RENDESISHME! KY NJOFTIM MUND TE NDIKOJE NE TE DREJTATE KOMPESIMIT DHE PERFITIMEVE TE PAPUNESISE DHE DUHET PERKTHYER MENJEHERE! Nese keni nevojje per asistim, Qendra e Sherbimit UC mund te perktheje kete document falas.
Nepali	जरुरी ! यो सूचनाले तपाईंको बेरोजगारी क्षतिपूर्तिको अधिकार वा लाभलाई प्रभावित गर्न सक्नेछ र तुरुन्त अनुवाद गर्नुपर्नेछ ! यदि तपाईंलाई सहयोग चाहिएमा, UC सेवा केन्द्रले यो कागजातको निःशुल्क अनुवाद गरिदिनेछ ।
Chinese/Mandarin (Simplified Chinese)	此为重要信息！本通知可能会影响您获得失业补偿金或福利的权利，因此应立即将其翻译！如果您需要帮助，失业补偿金服务中心将免费翻译本文档。
Gujarati	મહત્વપૂર્ણ! આ સૂચના તમારા અનિયમિત વળતરની હકી અથવા લાભને અસર કરે છે અને તરત જ ભાષાંતર થવી જોઈએ! જો તમને સહાયની જરૂર હોય, તો યુસી સેવા કેન્દ્ર નિ: શુલ્ક આ દસ્તાવેજનું અર્થઘટન કરશે.
Bengali	গুরুত্বপূর্ণ! এই বিজ্ঞপ্তি, আপনার বেকারত্বের ক্ষতিপূরণের অধিকার বা সুবিধাকে প্রভাবিত করতে পারে এবং তাৎক্ষণিকভাবে অনুবাদ করা উচিত! আপনার যদি সহায়তার প্রয়োজন হয়, ইউসি(UC) পরিষেবা কেন্দ্র বিনা মূল্যে এই দস্তাবেজটির ব্যাখ্যা করবে।

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Equal Opportunity Employer/Program





- French                    **IMPORTANT! CET AVIS PEUT AFFECTER VOS DROITS OU PRESTATIONS D'ASSURANCE DE CHÔMAGE ET DEVRAIT ÊTRE TRADUIT IMMÉDIATEMENT!** Si vous avez besoin d'aide, le centre de service UC interprétera ce document gratuitement.
  
- Somali                   **MUHIIM AH! OGEYSIISKAN WUXUU SAAMEYN KU YEELAN KARAA XUQUUQDAADA MAGDHAWGA SHAQO LA'AANTA AMA FAA'IDOOYINKA WAANA IN SI DEG-DEG AH LOO FASIRAAA!** Hadaad ubaahantahay kaalmo, Xarunta Adeegga UC ayaa turjumi doonta dukumintigan si bilaash ah.
  
- Korean                   **중요! 본 통지서는 귀하의 실업 보상에 대한 권리 또는 혜택에 영향을 줄 수 있으며 즉시 번역되어야 합니다!** 도움이 필요한 경우, UC Service Center에서 본 통지서에 대한 번역을 무료로 제공합니다.
  
- Cambodian/Khmer      **សំខាន់! សេចក្តីជូនដំណឹងនេះអាចនឹងជះឥទ្ធិពលដល់សិទ្ធិទទួលបានប្រាក់សំណង ឬអត្ថប្រយោជន៍របស់អ្នក និងគួរតែត្រូវបានបកប្រែភ្លាមៗ!** ប្រសិនបើអ្នកត្រូវការជំនួយ មជ្ឈមណ្ឌលសេវាកម្មយូស៊ី (UC Service Center) នឹងបកប្រែឯកសារនេះដោយឥតគិតថ្លៃ។
  
- Polish                   **WAŻNE! TO POWIADOMIENIE MOŻE WPŁYNAĆ NA TWOJE PRAWA DO ZASIŁKU DLA BEZROBOTNYCH!** Jeżeli będziesz potrzebować pomocy, Centrum Usług UC wyjaśni ten dokument za darmo.
  
- Portuguese              **IMPORTANTE! ESTE AVISO PODE CONTER INFORMAÇÕES SOBRE DIREITOS OU BENEFÍCIOS DE COMPENSAÇÃO POR DESEMPREGO AFETADOS E DEVE SER TRADUZIDO IMEDIATAMENTE!** Se precisar de assistência, o UC Service Center (Centro de Serviços da UC) traduzirá este documento gratuitamente.
  
- Malayalam              **സുപ്രധാനം! ഈ നോട്ടീസ് നിങ്ങളുടെ തൊഴിലില്ലായ്മാ നഷ്ടപരിഹാര അവകാശങ്ങളെ അല്ലെങ്കിൽ ആനുകൂല്യങ്ങളെ ബാധിച്ചേക്കാവുന്നതും ഉടനടി പരിഭാഷപ്പെടുത്തേണ്ടതുമാണ്. നിങ്ങൾക്ക് സഹായം ആവശ്യമാണെങ്കിൽ, യു.സി. സർവീസ് സെന്റർ ഈ പ്രമാണം സൗജന്യമായി ഭാഷാന്തരണം ചെയ്യുന്നതാണ്.**
  
- Bosnian                 **VAŽNO! OVA OBAVIJEST MOŽE UTICAJATI NA PRAVA NADLEŽNOG RADA ILI PREDNOSTI I TREBA SE ODMAH PREVESTI!** Ako vam je potrebna pomoć, UC Service Center će ovaj dokument besplatno interpretirati.
  
- Amharic                 **አስፈላጊ! ይህ ማስታወቂያ የእርስዎ የስራ አጥነት ማካካሻ ወይም ጥቅማጥቅሞች ላይ ተፅዕኖ ሊያሳድር ይችላል እናም በፍጥነት ማተራጎም አለበት!** እርዳታ ከፈለጉ የuc አገልግሎት ማጎልገል ይህንን ሰነድ በነፃ ይተርጉሙዋል።

