

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

EDGEMOOR COMMUNITY,)
CENTER)
)
Appellant,)
)
v.)
)
YVETTE BLACK)
and UNEMPLOYMENT)
INSURANCE APPEAL BOARD,)
)
Appellees.)

C.A. No. N10A-10-010 DCS

Submitted: September 1, 2011

Decided: October 25, 2011

*Appeal of a Decision of the Unemployment Insurance Appeal Board
Decision **REMANDED***

MEMORANDUM OPINION

Appearances:

Raymond W. Cobb, Esquire, Wilmington, Delaware
Attorney for Employer-Appellant Edgemoor Community Center

Victor F. Battaglia, Sr., Esquire, Wilmington Delaware
Attorney for Employee-Appellee Yvette Black

STRETT, J.

INTRODUCTION

Claimant Yvette Black, (“Black”), was employed by Edgemoor Community Center, (the “Center”), as an early childhood teacher from June 5, 2006, to April 23, 2010, when she was discharged.¹ Black was discharged from her employment due to a second incident of inappropriately handling a child under her care.² The Center is now appealing the decision of the Unemployment Insurance Appeal Board, (the “Board”), to award unemployment benefits to Black.³ The Center claims that the Board’s decision constitutes legal error. The Court agrees.

FACTUAL AND PROCEDURAL BACKGROUND

On August 14, 2009, Black received a written warning from the Center for the inappropriate handling of a child in her care by way of “plucking” the child in the mouth.⁴ According to Black, she received a verbal warning for the way she spoke to a child when she told the child “if you were my child a (sic) pluck you in the mouth.”⁵

Approximately eight months later, on April 22, 2010, a parent, Anna Pruden, (“Pruden”), contacted the Center’s director regarding the aggressive manner in which Black had interacted with her four-year-old child and the child of Michelle

¹ Record on Appeal, 9 (hereinafter R).

² R at 9-10, 36.

³ R at 26, 37.

⁴ R at 3, 9.

⁵ R at 1, 3. Neither the child nor the parent is identified in the Record.

Burns, (“Burns”), another child under Black’s care.⁶ According to Pruden, on or near April 15, 2010, she arrived at the Center to pick up her son, and while her son was walking toward her, Black grabbed his face, pulled on it, and told him in a rough tone that he needed to listen.⁷ Pruden said that she was in shock after witnessing the incident and immediately took her son home.⁸ Black claims to have no memory of the incident with Pruden’s son.⁹

Regarding a separate occurrence, Pruden told the director that on April 21, 2010, at about 5:30 p.m., she saw Burn’s son crying from a distance and Black shouting at the child to behave, grabbing the child, nudging the child over and causing him to fall, and then threatening the child by saying that he would not be acting like that next year in her classroom.¹⁰ A second witness to this event, Shakia Smith,¹¹ also felt that Black’s behavior toward Burns’ child was inappropriate in manner and in tone.¹² Furthermore, a witness “told the [manager] that [Black] push[ed] the child.”¹³ Even Black acknowledged that she gave the child a “gentle push,” and the child fell on the floor.¹⁴ At the same time, however,

⁶ R at 9, 36.

⁷ R at 9, 36.

⁸ R at 24, 36.

⁹ R at 36.

¹⁰ R at 9, 15, 36.

¹¹ See comment at Fn. 13.

¹² R at 15.

¹³ R at 1-2. The Court could not determine from the Record whether this witness and the witness, Shakia Smith, are one in the same.

¹⁴ R at 2, 10.

Black denies that she shouted or “pulled” Burns’ son.¹⁵ The Center did not dispute Black’s characterization of the events, but, indicated that nudging a child is not permitted and is deemed an inappropriate interaction according to the Center’s standards.¹⁶

Burns also witnessed the interaction between her child and Black.¹⁷ Burns wrote a letter stating that Black was *nudging* her son because he was being difficult (crying with his arms folded and refusing to go to his mother) and that Black was telling him that he would not behave in this manner when he was in her classroom next year.¹⁸ Burns did not consider this statement to her son as a threat.¹⁹ Burns’ letter did not mention any shouting, but it did indicate that her son “threw himself on the ground landing on his stomach” after being *nudged* by Black.²⁰ Burns also stated in the letter that her son sometimes throws himself on the floor this way and that the situation was not alarming to her.²¹

Black filed a claim for unemployment insurance benefits effective April 25, 2010, with the Department of Labor, Division of Unemployment. On May 21, 2010, a claims deputy determined that Black was discharged from the Center for

¹⁵ R at 37.

¹⁶ R at 9-10, 37.

¹⁷ R at 9, 13.

¹⁸ R at 9, 13, 37 (emphasis added).

¹⁹ R at 9, 13.

²⁰ R at 9, 13 (emphasis added).

²¹ R at 13.

willful misconduct and, as such, was disqualified for benefits.²² The claims deputy found that Black's misconduct was willful and wanton based on information obtained from Black on May 14, 2010, and listed on the deputy's fact finding statement.²³ The fact-finding statement indicates that Black admitted that she told a child she would "pluck" him in the mouth and she gently pushed a child so the child would go over to his mother.²⁴ Black appealed this denial of benefits on May 27, 2010.²⁵

A hearing before the appeals referee was held on July 20, 2010.²⁶ On the same date, the appeals referee affirmed the decision of the claims deputy and found that Black was disqualified for benefits because she was discharged from the Center for just cause.²⁷ The appeals referee determined that Black, by her own admission, *nudged* a child toward his mother and that this conduct was inappropriate handling of a child in the view of the Center.²⁸ The referee found that this *nudging* behavior in light of Black's prior warning for inappropriate conduct is what led to her discharge.²⁹ The referee further found that the

²² R at 4.

²³ R at 1-4.

²⁴ R at 1-2.

²⁵ R at 5-6.

²⁶ R at 7.

²⁷ R at 11.

²⁸ R at 10 (emphasis added).

²⁹ R at 11 (emphasis added).

misconduct was willful and wanton and, therefore, the Center had just cause for the firing which disqualifies Black from receiving benefits.³⁰

Black appealed the referee's decision on July 30, 2010, and a hearing was held before the Unemployment Insurance Appeal Board, (the "Board"), on September 15, 2010. Black testified at the hearing that she did not yell, pull or harm any student in her care.³¹ Black also testified regarding the letter from Burns that stated Black did not harm or threaten Burns' child.³² The letter from Burns did state, however, that Black "was nudging" her child.³³

On September 15, 2010, the Board reversed the referee's decision and approved benefits for Black because it found that the Center did not meet its burden in attempting to show that Black behaved inappropriately. The Board reasoned that, since the Center did not dispute Black's characterization of events, Black was a credible witness.

The Center has timely appealed the Board's decision to this honorable Court and filed an opening brief. Black responded with her answering brief. No reply brief was forthcoming. The matter is now ripe for decision.

³⁰ R at 11.

³¹ R at 23-24.

³² R at 13, 23-24.

³³ R at 13.

CONTENTIONS OF THE PARTIES

The Center contends that the Board's decision constitutes legal error in that its finding that Black did not behave inappropriately so as to warrant termination is not based on the correct legal standard for a determination on the just cause of termination.

Black asserts that the Board's decision is correct because the Board found her testimony that she did no harm to be credible.

STANDARD OF REVIEW

An aggrieved party "may secure judicial review [of a decision of the Unemployment Insurance Appeal Board] by commencing an action in the Superior Court" ³⁴ The Court reviews the Board's decision to determine if substantial evidence exists in the record to support the Board's findings of fact and to determine if the Board erred in its application of the law. ³⁵

Factual findings of the Board are deemed conclusive where such facts are supported by substantial evidence and upon the absence of any fraud. ³⁶ Substantial evidence consists of "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." ³⁷ The Court, in considering an appeal of the Board's decision, does not weigh any evidence or make any factual findings but

³⁴ 19 Del.C. § 3323.

³⁵ *Unemployment Ins. Appeal Bd. v. Martin*, 431 A.2d 1265, 1266 (Del. 1981); *Hubble v. Delmarva Temporary Staffing, Inc.*, 2003 WL 1980811, *2, Graves, J. (Del. Super. April 28, 2003).

³⁶ 19 Del.C. § 3323; *Hubble*, 2003 WL 1980811 at *2.

³⁷ *Hubble*, 2003 WL 1980811 at *2 (quoting from *Gorrell v. Division of Vocational Rehab. and Unemployment Ins. Appeal Bd.*, Del. Super., C.A. No. 96A-01-001, Graves, J. (July 31, 1996) Letter Op. at 4.).

only determines if substantial evidence exists upon which the Board's findings can be legally supported.³⁸

Regarding questions of law, however, the Court's review is *de novo*.³⁹

“Absent an error of law, the Board's decision will not be disturbed where there is substantial evidence to support its conclusions.”⁴⁰

Furthermore, the “Court is limited to consideration of the record which was before the administrative agency.”⁴¹ The Court considers the record in the light most favorable to the prevailing party below.⁴²

DISCUSSION

In this matter, the Court must determine whether the Board's findings that Black is qualified for unemployment benefits is supported by substantial evidence and free from legal error.

Under Delaware law, an individual is disqualified from receiving unemployment insurance compensation if she was discharged from employment for “just cause” in connection with her work.⁴³ The employer has the burden to

³⁸ *Hubble*, 2003 WL 1980811 at *2 (citing *McManus v. Christina Service Co.*, Del. Super., C.A. No. 96A-06-013, Silverman, J. (Jan. 31, 1997) Op. and Order at 4).

³⁹ *PAL of Wilmington v. Graham*, 2008 WL 2582986, *4 (Del. Super. June 18, 2008).

⁴⁰ *Wilson v. Breakers Hotel & Suites*, 2010 WL 2562214 (Del. Super. June 24, 2010) *reargument denied*, 2010 WL 3447685 (Del. Super. Aug. 23, 2010) and *aff'd*, 2011 WL 1565981 (Del. Apr. 25, 2011).

⁴¹ *Hubbard v. Unemployment Ins. Appeal Bd.*, 352 A.2d 761 (Del. 1976).

⁴² *Thompson v. Christiana Care Health Sys.*, 25 A.3d 778, 782 (Del. Aug. 12, 2011).

⁴³ 19 Del.C. § 3314(2); *Univ. of Delaware v. Unemployment Ins. Appeal Bd.*, 1975 WL 165709, *1, Stiftel, P.J. (Del. Super. Nov. 14, 1975); see also *E. I. DuPont De Nemours & Co. v. Dale*, 271 A.2d 35, 36 (Del. 1970) (stating that “[t]he interpretation and application of the Unemployment Compensation Law shall be to eliminate economic insecurity due to involuntary unemployment. The Act is stated to have been enacted for the benefit of persons unemployed through no fault of their own.”).

show just cause for a termination.⁴⁴ “Just cause” is defined as a willful or wanton act or pattern of conduct that violates the employer's interest, duties, or expected standard of conduct.”⁴⁵ The term wanton requires “heedless, malicious or reckless action ... [but] does not require actual intent to cause harm.”⁴⁶ “Just cause” can result from an isolated act by an employee that shows contempt for the acceptable procedures of the employer.⁴⁷ Where an employer specifically informs the employee regarding the kind of behavior that is prohibited, the employee is deemed aware of such even if she cannot appreciate its harmfulness.⁴⁸ Consequently, when an employee proceeds to do what she knows is prohibited, her conduct is reckless and justifies a termination.⁴⁹

Therefore, any decision by the Board that a claimant was discharged *without* just cause must be based on “findings of fact and conclusions of law adequate to support” such a decision.⁵⁰ A Board’s determination that a claimant was discharged without just cause is deficient where it does not address the allegations culminating in and the evidence supporting the discharge.⁵¹

⁴⁴ *Evans v. Tansley*, 1988 WL 32033, *1 (Del. 1988).

⁴⁵ *Mergliano v. Unemployment Ins. Appeal Bd.*, 2009 WL 3069676, *2 (Del. Super. Sept. 16, 2009); *Majaya v. Sojourner’s Place*, 2003 WL 21350542, at *4, Cooch, J., (Del. Super. June 6, 2003); *Starkey v. Unemployment Ins. Appeal Bd.*, 340 A.2d 165, 166 (Del. Super. 1975).

⁴⁶ *Majaya*, 2003 WL 21350542, at *4.

⁴⁷ *Mergliano*, 2009 WL 3069676 at *2.

⁴⁸ *Roshon v. Appoquinimink Sch. Dist.*, 2010 WL 3855179, *3 (Del. Oct. 4, 2010).

⁴⁹ *Roshon*, 2010 WL 3855179 at *3.

⁵⁰ *Bd. of Educ., Capital Sch. Dist. v. Johns*, 2002 WL 471175, *2, Ridgely, P.J. (Del. Super. Mar. 27, 2002) (emphasis added).

⁵¹ *See Johns*, 2002 WL 471175 at *2.

In the matter before the Court, the Board considered the testimony of Black, the testimony of Pruden, and the letter from Burns. Black's testimony consisted of her denials of any wrongful handling of a child.⁵² Pruden testified that she saw Black aggressively handle two different children on two different occasions—including yelling, grabbing, pushing, and threatening.⁵³ The Burns letter stated that Burns did not think Black interacted with her child in a harsh manner.⁵⁴ Based on this evidence, the Board found that Black did not engage in inappropriate behavior towards Burns' child and, thus, was not discharged for just cause.⁵⁵ Similarly, the Board also found that the Center did not demonstrate that Black engaged in willful misconduct regarding her behavior toward Pruden's child.⁵⁶

The Board's findings, however, are legally flawed. In order to determine whether the Center had just cause for Black's termination, the Board needs to find whether Black willfully or wantonly acted in violation of the Center's interest, the Center's duties, or the Center's standard of conduct. However, the Board's decision did not discuss any interest, duty, or standard of conduct of the Center in relation to Black's conduct. The Board made a determination that the Center did not meet their burden of persuasion without any discussion of what it is that the Center needed to show. Additionally, the Board found that Black did not commit

⁵² R at 23-24.

⁵³ R at 24.

⁵⁴ R at 23.

⁵⁵ R at 26.

⁵⁶ R at 25-26

an act of misconduct but did not define misconduct in terms of the standards of the Center. Without a comparison of Black's conduct to the Center's standards, although the Board did reference a "warning," there can be no legally sufficient decision regarding whether the Center had just cause to terminate Black.

Furthermore, the Board gave significant weight to the fact that Pruden's testimony was uncorroborated, but the Board never stated that her testimony was not credible. In contrast, the Board stated that Black's testimony (that she did not behave inappropriately) was credible but never provided any reason why her testimony was preferred over Pruden's.

The only additional evidence that the Board considered was the letter from Burns which the Board found corroborates Black's testimony because it stated that Black did not harm Burns' child. The issue, however, is not whether the letter corroborates Black's testimony at the hearing, which consisted only of Black's denial of wrongdoing, or whether Black believes that she did nothing wrong. The issue is whether the testimony provides evidence as to willful or wanton misconduct defined pursuant to the Center's standards.

Furthermore, the Board stated, "The [Center] failed to provide first-hand testimony from [Burns] that [Black] handled [Burns'] son inappropriately and did not dispute [Black's] characterization of the incident." However, Burns' opinion that her child either was or was not handled "inappropriately" is not the legal

standard. Again, the legal standard is whether the conduct was “reckless[ly] indifferen[t] leading to a deviation from established and acceptable workplace performance”⁵⁷ The Court finds that the Board’s decision is deficient as to findings of fact and conclusions of law regarding whether Black’s conduct was willful or wanton and as to whether the conduct was a deviation from the Center’s standards.

In addition, the Board equated the credibility of Black with its finding that the Center did not “dispute [Black’s] characterization of the incident” involving Burns’ child.⁵⁸ Without a legal analysis comparing Black’s behavior to the Center’s standards, however, Black’s characterization of the incident is ineffective. As such, the Center’s failure to dispute that characterization absent a proper legal analysis cannot provide credibility to Black.

Finally, it should be noted that the record contains a significant amount of relevant evidence that the Board could have considered in reaching its decision. In addition to the verbal testimony of Black and Pruden and the letter from Burns, the Record includes the following:

- Black’s statement on May 14, 2010, that she told a child she would “pluck” him in the mouth;⁵⁹
- Black’s statement on May 14, 2010, that she had verbal warnings in the past regarding how she spoke to children;⁶⁰

⁵⁷ *MRPC Financial Mgmt. LLC v. Carter*, 2003 WL 21517977, *4 (Del. Super. June 20, 2003).

⁵⁸ R at 25.

⁵⁹ R at 1-3.

- Black's statement on May 14, 2010, that she pushed a child;⁶¹
- Black's statement on May 14, 2010, that a co-worker had reported her for the inappropriate handling of a child;⁶²
- A finding by the claims deputy that Black had received a written reprimand in August 2009 for "plucking a child in the mouth,"⁶³
- Burns' statement in her letter that Black "was nudging" her son;⁶⁴
- The statement of a witness, Shakia Smith, comprised in a staff memo dated April 23, 2010, that Black handled a child in an inappropriate manner;⁶⁵
- The job description for Black's position detailing the requirement of interacting with children in a nurturing manner;⁶⁶ and
- Licensing requirements for child care staff outlined in the Center's letter to Black dated April 23, 2010.⁶⁷

Consequently, the Court finds that the Board's decision that Black's termination was not based on just cause amounts to legal error because it does not properly analyze Black's behavior pursuant to the Center's standards.

⁶⁰ R at 1-3.

⁶¹ R at 2-3.

⁶² R at 3.

⁶³ R at 3.

⁶⁴ R at 13.

⁶⁵ R at 15.

⁶⁶ R at 16-17.

⁶⁷ R at 27.

Accordingly, the decision of the Unemployment Insurance Appeal Board is ***REMANDED*** for findings of fact and conclusions of law as to whether the Center had just cause for the termination in accordance with this opinion.

IT IS SO ORDERED.

/s/ Diane Clarke Streett

J. Streett

Original to Prothonotary

cc: Katisha D. Fortune, Deputy Attorney General
Wilmington, Delaware