

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

KEVIN D. MARTIN,)	
)	
Appellant,)	
)	
v.)	C.A. No. N11A-01-007 CLS
)	
GOODWILL INDUSTRIES OF)	
DELAWARE AND DELAWARE)	
COUNTY, INC., and)	
UNEMPLOYMENT INSURANCE)	
APPEAL BOARD,)	
)	
Appellees.)	

Date Submitted: September 26, 2011

Date Decided: November 18, 2011

On Appeal from the Decision of the Unemployment Insurance Appeal Board.

AFFIRMED.

ORDER

Kevin D. Martin, *Pro Se*, 523 E. 35th Street, Wilmington, DE 19802. Appellant.

Wendy K. Voss, Esq., Michael B. Rush, Esq., Potter, Anderson & Carroon, LLP, Hercules Plaza, Sixth Floor, 1313 North Market Street, P.O. Box 951, Wilmington DE, 19899. Attorneys for Appellee, Goodwill Industries of Delaware & Delaware County, Inc.

Scott, J.

Introduction

Before this Court is the Appellant's appeal from the decision of the Unemployment Insurance Appeal Board ("Board"). The Court has reviewed the parties' submissions. For the reasons that follow, the decision of the Board is **AFFIRMED**.

Background

The Appellant, Kevin Martin ("Appellant" or "Martin"), was employed by Goodwill Industries of Delaware and Delaware County, Inc. ("Appellee" or "Goodwill") as a full-time transportation driver from June 2, 2008, until July 14, 2010. He was suspended from his employment on July 7, 2010, but was not officially terminated until July 14, 2010. The Appellant was discharged from Goodwill for unauthorized use of a company vehicle and entry into a secured area after work hours in his personal vehicle. These infractions were violation of Goodwill policy and procedure. Prior to Appellant's termination he received disciplinary warnings for similar violations of these policies and procedures.

The Appellant filed a claim for unemployment benefits with the Delaware Department of Labor on July 11, 2010. A Claims Deputy from the Department of Labor determined that Appellant was eligible for unemployment benefits because he was terminated from his position without just cause. Goodwill appealed this decision to the Appeals Referee. A hearing was held before the Appeals Referee

but Appellant did not attend. The Appeals Referee reversed the Claims Deputy's decision after testimony from Goodwill. The Appeals Referee found that the Appellant's actions "represented willful or wanton misconduct and provided the employer with sufficient just cause to discharge the claimant from his employment."¹

The Appellant then appealed the Referee's decision to the Board, who accepted Appellant's reason for not attending the hearing. The Board remanded the case to the Appeals Referee. After a second hearing, the Appeals Referee again reversed the July 28, 2010 decision from the Claims Deputy for the same reasons stated previously. Appellant appealed this decision to the Board who affirmed that Appeals Referee's decision. The Board held that Appellant was not eligible for unemployment benefits because he was terminated with just cause within the meaning of 19 *Del. C.* § 3314(2). Appellant appealed the Board's decision to this Court and Goodwill responded. The Unemployment Insurance Appeal Board, the reviewing body below, notified this Court by letter dated August 1, 2011, that it did not intend to take a position on the merits of Appellant's appeal on the ground that the Board has no cognizable interest in seeking to have

¹ R. at 28.

its rulings sustained.² The Board, acting in its administrative law capacity and subject to judicial review, has no interest in the outcome of this proceeding.³

Issues on Appeal

In Appellant's opening brief filed on July 7, 2011, he claims: (1) the reason for the termination was alleged theft and not a violation of Goodwill's company policies and procedure; and (2) the other Goodwill employees who were discharged are receiving unemployment benefits.

Appellant only raised the issue of alleged theft before the Board. Based on the appropriate standard of review, this Court is limited to the Referee and the Board's record and will not review new claims raised on appeal.⁴ Thus, because appellant did not raise the other arguments before the Board, this Court will only address Martin's first issue on appeal.

Goodwill argues that the Board did not commit legal error in denying benefits to Appellant, that there is substantial evidence in the record to support the Board's findings of fact and Appellant presents no grounds reversal of the Board's decision.

² *Wilmington Trust Co. v. Barron*, 470 A.2d 257, 261 (Del. 1983).

³ *See Hackett v. Board of Adjustment of the City of Rehoboth Beach*, 794 A.2d 596, 599 (Del. 2002).

⁴ *Roshon v. Appoquinimink School Dist.*, 5 A.3d 631, at *4 (Del. 2010) (TABLE).

Standard of Review

The scope of review of an appeal from the Board is limited to errors of law and whether the decision is supported by substantial evidence.⁵ This standard requires more than a scintilla of evidence but less than a preponderance of evidence.⁶ This Court will not weigh evidence, determine the credibility of the witnesses, or make its own factual findings and conclusions.⁷

Discussion

I. *The Board Did Not Commit Legal Error in Affirming the Decision of the Appeals Referee Who Found Appellant was Terminated With Just Cause.*

The Board did not commit legal error in affirming the decision of the Appeals Referee, who determined Appellant was terminated from his employment with just cause. Pursuant to 19 *Del. C.* § 3314(2), an individual is disqualified from benefits:

[f]or the week in which the individual was discharged from the individual's work for just cause in connection with the individual's work and for each week thereafter until the individual has been employed in each of 4 subsequent weeks (whether or not consecutive) and has earned wages in covered employment equal to not less than 4 times the weekly benefit amount.⁸

⁵ *Chester v. Adecco USA*, 2011 WL 1344740, at *2 (Del. Super. Ct. Apr. 6, 2011).

⁶ *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981).

⁷ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

⁸ 19 *Del. C.* § 3114(2).

To terminate an employee for just cause requires notice that further behavior or performance may lead to termination.⁹ An employer may terminate an employee for violating a reasonable company policy.¹⁰ An employee must be made aware of the policy's existence.¹¹ A two-step analysis is used when determining just cause: "1) whether a policy existed, and if so, what conduct was prohibited, and 2) whether the employee was apprised of the policy and if so, how was he made aware."¹² Knowledge of a company policy can occur through a written policy or where an employee was previously warned.¹³

The Board correctly applied the correct legal standard to the facts of this case. In their decision, the Board set forth the proper standard for just cause. The Board additionally noted that just cause exists where there is a "willful or wanton act or pattern of conduct in violation of the employer's interest, the employee's duties, or the employee's expected standard of conduct."¹⁴ It was not an error of law for the Board to conclude based on the decision of the Referee and its own hearing that Appellant was terminated with just cause and not eligible to collect unemployment benefits under 19 *Del. C.* § 3314(2).

⁹ *Barton*, 2004 WL 1284203, at *1.

¹⁰ *McCoy v. Occidental Chem., Corp.*, 1996 WL 111126, *3 (Del. Super. Ct. Feb. 7, 1996).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ R. at 110.

II. The Decision of the Board is Supported by Substantial Evidence.

The decision of the Board is supported by substantial evidence in the record. Evidence is substantial when a reasonable person would think the evidence presented was adequate to support the conclusion.¹⁵ In determining whether substantial evidence exists to support the Board's decision, this Court must view the record in the light most favorable to the prevailing party.¹⁶

Here, there is substantial evidence in the record supporting just cause for termination. The testimony of Goodwill employees before the Board establish that Goodwill had policies in place that prohibit employees from making unauthorized stops while using company vehicles, transporting personal belongings in company vehicles and entering secured areas after the employees have clocked out. Additionally, there is sufficient evidence in the record to conclude that Appellant was put on notice of these policies. Not only did Appellant sign a copy of the employee handbook but his testimony even acknowledges that drivers are not permitted to make unauthorized stops. Thus, there is substantial evidence in the record to support the Board's decision that Martin was put on notice of Goodwill's policies.

Appellant argues that the reason for his termination was related to theft and not the reasons provided by Goodwill. This argument is without merit. Appellant

¹⁵ *Oceanport Ind. v. Wilmington Stevedores.*, 636 A.2d 892, 899 (Del. 1994).

¹⁶ *Brommel v. Chrysler, LLC*, 2001 WL 4513086, at *3 (Del. Super. Ct. Oct. 28, 2010) (citing *E.I. DuPont De Nemours & Co. v. Fanpel*, 859 A.2d 1042, 1046-47 (Del. Super. Jan. 30, 2004)).

testified at the hearing that he believes theft and not a violation of company policies and procedures was the reason for his termination. The Board considered and rejected this argument. The Board held that, “the record in this case indicates that the policy violations [] were the ultimate reasons for the Claimant’s termination.”¹⁷ There was substantial evidence presented to the Board to conclude that Appellant was terminated for just cause for violating Goodwill’s procedures.

Since the Board committed no legal error and the determination was based on substantial evidence, the Board’s decision must be affirmed.

Conclusion

Based on the forgoing, the decision of the Board is **AFFIRMED**.

IT IS SO ORDERED.

/S/CALVIN L. SCOTT
Judge Calvin L. Scott, Jr.

¹⁷ R. at 110.