SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

SUSSEX COUNTY COURTHOUSE
1 The Circle, Suite 2
GEORGETOWN, DE 19947

December 22, 2011

Deborah Mack
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James F. Fuqua, Jr., Esquire
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RE: Deborah Mack v. RSC Landscaping
C.A. No. S11A-02-001-ESB
Letter Opinion

Date Submitted: November 7, 2011

Dear Ms. Mack and Counsel:

This is my decision on Deborah Mack's appeal of the Unemployment Insurance Appeal Board's denial of her claim for unemployment benefits. Mack worked as a landscaper for RSC Landscaping from February 11, 2002, until her termination on October 26, 2010. RSC terminated Mack a day after she threatened to punch a co-worker in the face at a job site. Mack filed a claim for unemployment benefits on October 26, 2010. RSC opposed Mack's claim, arguing that she was terminated for "just cause." The Board held a hearing on January 25, 2011. Mack and three RSC employees testified at the hearing. Mack was at a job site when she got into an argument with a co-worker named "Marta" over a pair of missing scissors. Kevin Bethard, an RSC employee who was working with Mack that day, told the Board that Mack threatened to punch Marta in the face. The situation was so bad, according to Bethard, that he pulled all of the employees off the job site and took them back to the office. Mack admitted that she got into an

argument with Marta, but denied threatening to punch her in the face. She told the Board that Bethard was not close enough to hear her argument with Marta. The Board accepted Bethard's testimony and ruled that Mack was terminated for "just cause" and was therefore ineligible for unemployment benefits. Mack then filed an appeal of the Board's decision with this Court.

STANDARD OF REVIEW

The Supreme Court and this Court repeatedly have emphasized the limited appellate review of the factual findings of an administrative agency. On appeal from a decision of the Board, this Court is limited to a determination of whether there is substantial evidence in the record sufficient to support the Board's findings, and that such findings are free from legal error.[1] Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[2] The Board's findings are conclusive and will be affirmed if supported by "competent evidence having probative value."[3] The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.[4] It merely determines if the evidence is legally adequate to support the agency's factual findings.[5] Absent an error of law, the Board's

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[1] *Unemployment Ins. Appeals Board of the Dept. of Labor v. Duncan*, 337 A.2d 308, 309 (Del. 1975).

[2] *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super. 1986), *app. dism.*, 515 A.2d 397 (Del. 1986).

[3] *Geegan v. Unemployment Compensation Commission*, 76 A.2d 116, 117 (Del. Super. 1950).

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

[5] 29 *Del.C.* § 10142(d).

decision will not be disturbed where there is substantial evidence to support it's conclusions.[6]

DISCUSSION

I have concluded that the Board's decision is in accordance with the applicable law and supported by substantial evidence in the record. A claimant is not eligible for unemployment benefits when he or she is terminated from employment for "just cause."[7] "Just cause" has been defined by this Court as a "wilful or wanton act in violation of either the employer's interest, or of the employee's duties, or of the employee's standard of conduct."[8] A wilful or wanton act requires the employee to be "conscious of [her] conduct or recklessly indifferent to its consequences."[9] Misconduct, a term generally synonymous with "just cause," does not denote "mere...inadvertence in isolated instances or good faith errors in judgment."[10] A finding that an employee's acts were inadvertent negates that cause.[11] When an employee is terminated for misconduct, the burden of proof generally lies with the employer to establish "just cause" for the termination.[12]

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[6] *Dallachiesa v. General Motors Corp.*, 140 A.2d 137 (Del. Super. 1958).

[7] 19 *Del.C.* § 3315(2).

[8] *Abex Corp. v. Todd*, 235 A.2d 271, 272 (Del. Super. 1967).

[9] *Coleman v. Department of Labor,* 288 A.2d 285, 288 (Del. Super. 1972).

[10] *Starkey v. Unemployment Insurance Appeal Board*, 340 A.2d 165, 166-67 (Del. Super. 1975).

[11] *Abex Corp.*, 235 A.2d at 272.

[12] *Curry v. Unemployment Insurance Appeal Board*, 1994 WL 315222 (Del. Super. May 25, 1994).

Certain conduct, by its very nature, necessarily constitutes wilful or wanton misconduct. A single instance of misconduct is sufficient to establish "just cause."[13] This can include some instances of insubordination, theft, violence or threats of violence, and other activities where the employee acts with reckless disregard for the employer's interest.[14] No rule requires an employer to provide an employee with a "warning that termination is imminent in all situations."[15] As the trier of fact, the Board determines the credibility of the witnesses, the weight of the evidence, and the proper inferences to be drawn from the evidence presented to it.[16]

It is well-established in the law that a threat of violence can be "just cause" for termination. RSC provided a witness that overheard Mack threaten to punch a co-worker in the face. The threat of violence by one employee against another employee is clearly against the employer's interest and the employee's standard of conduct. The fact that, in this case, it occurred at a customer's premises is even more egregious. Mack admitted that she got into an argument with a co-worker, but denied that she threatened to punch her. RSC's eyewitness to the incident testified otherwise. The Board found the testimony of the eyewitness to be credible. It is not the Court's role to determine the credibility of the

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[13] *Peninsula United Methodist Homes v. Crookshank*, 2000 WL 33114324 (Del. Super. Sept. 28, 2000).

[14] *See Tuttle v. Melon Bank of Delaware*, 659 A.2d 786 (Del. Super. 1995), *Hundley v. Riverside Hospital*, 1993 WL 542026 (Del. Super. Sept. 27, 1993), *Dozier v. Uncle Willie's Deli, A Division of Peninsula Oil Co., Inc.*, 1992 WL 423938 (Del. Super. Dec. 15, 1992), *Shaw v. Happy Harry Inc.*, 1993 WL 489499 (Del. Super. Oct. 27, 1993).

[15] *Federal Street Financial Service v. Davies*, 2000 WL 1211514, at *4 (Del. Super. June 28, 2000).

[16] *Snyder v. Quicksilver Trucking*, 2007 WL 315337 (Del. Super. Jan. 31, 2007).

witnesses. That role rests with the Board. There is substantial evidence in the record to support the Board's finding that Mack threatened to punch a co-worker in the face. That clearly constitutes "just cause" for her termination.

CONCLUSION

The Unemployment Insurance Appeal Board's decision is **AFFIRMED**.

IT IS SO ORDERED.

Very truly yours,

/S/ E. Scott Bradley

E. Scott Bradley

oc: Prothonotary's Office
cc: Unemployment Insurance Appeal Board