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

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| WANDA GREEN-HAYES,<br>Appellant, | ) | |
| v. | ) | C.A. No. N12A-02-011-PLA |
| DELAWARE DEPARTMENT OF LABOR, et al.,<br>Appellees. | ) | |

Submitted: July 25, 2012
Decided: August 8, 2012

ON APPEAL FROM A DECISION FROM THE
UNEMPLOYMENT INSURANCE APPEAL BOARD
AFFIRMED

Wanda Green-Hayes, Wilmington, Delaware, Appellant *Pro Se*.

Caroline L. Cross, Esquire, Department of Justice, Attorney for the Unemployment Insurance Appeals Board.

Thomas H. Ellis, Esquire, Department of Justice, Attorney for Department of Labor.

ABLEMAN, JUDGE

This 7th day of August, 2012, upon consideration of the appeal of Wanda Green-Hayes ("Green-Hayes") from the decision of the Unemployment Insurance Appeal Board ("the Board"), it appears to the Court that:

1) Green-Hayes began working for the Department of Labor ("DOL") Division of Vocational Rehabilitation ("the Division") as a Disability Determination Adjudicator I on or about October 1, 2008. Her job entailed reviewing medical records and evaluating social security disability claims. On an annual basis Green-Hayes was required to attend a Division-sponsored seminar for the purpose of receiving training regarding the State of Delaware's Acceptable Use Policy ("AUP"). The policy was specifically designed by the Delaware Department of Technology and Information to safeguard the state's computer equipment systems and the confidential information transmitted on them, including Personal Identifying Information known as "PII." After attending each of four training sessions since her employment began, Green-Hayes was required to sign and date statements acknowledging both her attendance and the fact that she had received the AUP. Green-Hayes did in fact sign documents attesting to the fact that she had reviewed the AUP on four occasions. The most recent training session she attended was in April 2011.

In addition to the last training session that Green-Hayes attended in April, all Division employees, including Green-Hayes, received by e-mail a copy of the United States Social Security Administration ("SSA") security bulletin which sets forth the proper methods of safeguarding PII as well as examples of violations of PII policies and procedures.

2) Notwithstanding the extensive training and the requirement of employee certification of knowledge and understanding of the policy, Green-Hayes admitted that, on June 10, 2011, she compromised the security of the system by deliberately sending an e-mail to her home e-mail address in violation of the AUP, and the SSA's e-mail directive of May 6, 2011. One of the managers of Green-Hayes' division testified that, while other employees had in the past accidentally disclosed PII, Green-Hayes' disclosure was admittedly intentional. Before both the Appeals Referee and the Board, Green-Hayes admitted that she had violated the policy by sending the e-mail to her private computer.

The private information, or PII, contained in the e-mail included the surname of the disabled applicant, the account number of her disability claim, and sensitive, privileged information concerning the claimant's medical condition.

3) As a result of this deliberate disclosure, the Division determined that Green-Hayes had violated the State of Delaware's Acceptable Use Policy, the Social Security Administration's Program Operations Manual System, and provisions of HIPAA, all of which exposed the State to potential litigation. As a result, Green-Hayes was discharged from her employment on August 17, 2011.

4) Green-Hayes filed for unemployment benefits pursuant to the Delaware Unemployment Compensation Act and her employer contested her claim. A DOL Claims Deputy found that Green-Hayes was disqualified for benefits under 19 *Del.C.* §3314(2) because her employer had met the burden of showing just cause for terminating Green-Hayes for intentionally violating the State of Delaware Acceptable Use Policy, HIPAA, and the Social Security Administration's programs operation manual. Green-Hayes timely appealed. After a hearing before a DOL Appeals Referee, the Claims Deputy's decision was affirmed. The Appeals Referee noted that a violation of the acceptable use policy "may certainly provide an employer with sufficient just cause to discharge an employee," and that Green-Hayes' conduct exposed the DOL to potential litigation and rose to the level of "willful or wanton misconduct."

5) Green-Hayes thereafter appealed the decision of the Appeals Referee. On February 1, 2012, a hearing was held before the Board. Green-Hayes again admitted that she violated her employer's policy by sending an e-mail containing protected client information to her home, but disagreed that her actions rose to the level of providing "just cause" to terminate her. She testified that she was under medical care at the time of the incident and that she is an insulin-dependent diabetic. She offered expanded testimony regarding her reasons for sending the e-mail, stating that she did so for personal reasons because she wanted "the situation rectified." She claimed that it was difficult to do her work because she had been called a racist. She conceded only that she was "inattentive" in failing to notice that the e-mail contained personal information but defended her actions by stating that a Google search would lead to the same information, and the information contained in the e-mail would not be sufficient to access the client's personal account.

6) After considering the record below and the testimony presented at the hearing, the Board affirmed the Appeal Referee's decision and held that Green-Hayes was disqualified from receiving benefits. The Board found that Green-Hayes engaged in willful and wanton conduct that was sufficiently serious to justify her dismissal. Specifically, the Board found

that the employer had just cause to terminate Green-Hayes because she compromised confidential information when she deliberately sent the e-mail to her home in clear violation of its stated established policy of which she was well aware.

7) Green-Hayes filed a *pro se* appeal from the Board's decision to this Court on February 17, 2012. As best as can be gleaned from Green-Hayes' brief, she is contending that the Board's decision should be reversed on the following grounds: (1) the e-mail sent to her home computer was to "ensure my complaint of being called a racist would be reviewed as indicated within a timely manner;" (2) she did not violate the Employer's policy regarding PII because the e-mail had only the last name of the claimant, not the full name, and it did not contain the social security number; (3) "continued stressors as it was becoming difficult to work and I needed to contact my primary care physician;" and (4) there was no malicious intent and the Delaware Disability Officer should have followed their own procedures "which begins with a verbal warning."

8) This Court's appellate review of decisions of the Board is limited. The Court's function is to determine whether the Board's findings and conclusions are supported by substantial evidence and free from legal

error.[1] The substantial evidence standard is satisfied if the Board's ruling is supported by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[2] The Court does not weigh evidence, decide questions of credibility, or engage in fact-finding in reviewing a Board decision.[3]

9) Under 19 *Del. C.* §3314(2), an individual is ineligible for benefits when discharged for "just cause."[4] The employer bears the burden of proving the existence of just cause by a preponderance of the evidence.[5] Just cause is found when an employee engaged in a "willful or wanton act or pattern of conduct in violation of the employer's interest, the employee's duties, or the employer's expected code of conduct."[6] An employee's acts will be considered willful or wanton if she was "conscious of [her] conduct or recklessly indifferent of its consequences."[7] An employee's conduct is considered "wanton" when it is "heedless, malicious, or reckless, but not

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[1] *Stoltz Mgmt Co. v. Consumer Affairs Bd*., 616 A.2d 1205, 1208 (Del. 1992); *see also Lively v. Dover Wipes Co.,* 2003 WL. 21213415, at *1 (Del. Super. May 16, 2003).
[2] *Anchor Motor Freight v. Ciabottoni*, 716 A.2d 154, 156 (Del. 1998) (citation omitted).
[3] *Hall v. Rollins Leasing*, 1996 WL 659476, at *2 (Del. Super. Oct. 4, 1996) (citing *Johnson v. Chrysler Corp*., 213 A.2d 64, 66 (Del. 1965)); *see also Duncan v. Del. Dep't of Labor*, 2002 WL 31160324, at *2 (Del. Super. Sept. 2, 2002).
[4] 19 *Del. C.* §3314(2)
[5] *Diamond State Port Corp. v. Ferguson*, 2003 WL 168635, at *2 (Del. Super. Jan. 23, 2003).
[6] *See, e.g.*, *Avon Products, Inc. v. Wilson*, 513 A.2d 1315, 1317 (Del. 1986); *Abex Corp v. Todd*, 235 A.2d 271, 272 (Del. Super. 1967).
[7] *Filanowski v. Port Contractors, Inc.*, 2007 WL 64758, at *3 (Del. Super. Jan. 2, 2007), *aff'd*, 931 A.2d 436 (Del. 2007) (quoting *Mosley v. Initial Sec*., 2002 WL 31236207, at *2 (Del. Super. Oct. 2, 2002).

done with actual intent to cause harm."[8] By contrast, "willful" conduct is that which "implies actual, specific or evil intent."[9] Where a company policy against certain conduct is "clearly communicated" to the employee, a single incident of misconduct may justify termination.[10] Furthermore, willful or wanton misconduct can justify immediate dismissal without notice if sufficiently serious.[11] It is also well-settled under Delaware law that even a single act of misconduct may constitute "just cause" for terminating an employee. Thus, an employer is not obligated to withstand multiple acts of serious misconduct before termination is appropriate.

10) Here, the Board's conclusion that Green-Hayes was terminated for just cause is supported by substantial evidence. There is no dispute that Green-Hayes violated Division policy when she intentionally sent an e-mail containing confidential information to a non-secure destination as she readily acknowledged that she did so for the purpose of "rectifying the situation" regarding her discontent about being labeled a racist.[12] And while Green-Hayes claims that others who violated the policy were not similarly

[8] *Tuttle v. Mellon Bank of Del*., 659 A.2d 786, 789 (Del. Super. 1995).
[9] *Id*.
[10] *Ross v. Zenith Prods*, 2004 WL 2087955, at *3 (Del. Super. Sept. 17, 2004).
[11] *Tuttle*, 659 A.2d at 789; *Coleman v. Dept of Labor*, 288 A.2d 285, 288 (Del. 1972).
[12] Although Green-Hayes repeatedly alludes to her need to correct what she believed to be an injustice towards her, it is not entirely clear from the record what she was attempting to rectify or how she intended to do so through the e-mail that violated the AUP.

terminated, the test for just cause for termination in this context does not include any consideration of the discipline other employees may have received.[13] Nor is there any evidence in the record before this Court that the employer ever tolerated or condoned previous intentional violations of the State's AUP by its employees.

11) More importantly, Green-Hayes was repeatedly placed on notice that the release of PII was outside the expected standard of conduct for DOL employees and that discharge from employment was a possible consequence for failing to follow the AUP. An employee's violation of a company policy of which that employee is aware may provide just cause for termination of employment.[14] Similarly, an employer is not required to give multiple warnings before choosing to terminate employment.[15] As long as the employer's policy is clearly communicated to the employee, the employer has given adequate notice to justify termination even after a single violation of that policy.[16]

12) In this case, Green-Hayes was repeatedly placed on notice that the release of PII was a violation of the AUP as she annually signed acknowledgments that she had reviewed the policy on at least four

[13] *Smoot v. Comcast Cablevision*, 2004 WL 2914287 at *4 (Del. Super. Nov. 16, 2004).
[14] *Fader v. Burris Foods*, 1997 WL 366889, at *2 (Del. Super. May 14, 1997).
[15] *Coleman v. Dept. of Labor*, 288 A.2d 285, 288 (Del. Super. 1972).
[16] *Wilm. Savings Fund Soc'y v. Moeller*, 1997 WL 719315 at *3 (Del. Super. Sept. 24, 1997).

occasions. Her claim in this litigation that she did not read the AUP does not excuse her from the responsibility to adhere to it.[17]

13) Green-Hayes' wanton and willful misconduct, consisting of behavior that was clearly against her employer's interests, subjecting the employer to potential litigation, in deliberate violation of a policy of which she was repeatedly made aware, was sufficiently egregious that termination without notice was justified.

14) For the foregoing reasons, the decision of the Unemployment Insurance Appeal Board is hereby **AFFIRMED**.

**IT IS SO ORDERED**.

*/s/ Peggy L. Ableman*
**Peggy L. Ableman, Judge**

Original to Prothonotary
cc: Wanda Green-Hayes
Caroline L. Cross, Esquire
Thomas H. Ellis, Esquire

[17] *Smoot v. Comcast Cablevision*, 2004 WL 2914287 at *4 (Del. Super. Nov. 16, 2004).