SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
1 THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947
(302) 856-5257

Albert Egerson
324 N Tull Dr.
Seaford, Delaware 19973

James T. Wakely, Esquire
Deputy Attorney General
Department of Justice
820 North French St.
Wilmington, Delaware 19801

Re: Albert Egerson v. Seaford Popeyes Inc. and the Unemployment Insurance Appeal Board
C.A. No. S13A-09-001

On Appeal from the Unemployment Insurance Appeal Board: AFFIRMED

Date Submitted: January 15, 2014
Date Decided: January 24, 2014

Dear Mr. Egerson and Mr. Wakely:

Albert Egerson ("Egerson") appeals the decision of the Unemployment Insurance Appeal Board ("the Board") that found Egerson had been discharged from his place of employment for just cause in connection with that employment. The Board's decision is affirmed for the reasons stated below.

Nature and Stage of the Proceedings

On May 6, 2012, a Claims Deputy found Egerson had been discharged from his work for just cause and was therefore disqualified from the receipt of unemployment benefits. After a hearing, and by way of written decision mailed June 5, 2013, the Appeals Referee agreed with the Claims Deputy's determination. Egerson appealed to the Board, which upheld the Appeals Referee's decision and denied Egerson's request for benefits by way of written decision mailed on September

5, 2013. Egerson has timely filed an appeal in this Court. The other parties have not participated in briefing and the Court is deciding the case on the filings pursuant to Superior Court Civil Rule 107(f).

The relevant facts are as follows. Egerson was employed by Seaford Popeyes, Inc. ("Employer") from August 1, 2011 until his termination on April 10, 2013. On April 8, 2013, Egerson entered the workplace and approached Sharon Kinzer ("the Manager") and asked her if she had anything to say to him. The Manager answered Egerson in the negative. Egerson then proceeded to confront Alisha Baull (" the Employee"). It was during this confrontation that Egerson was loud, discourteous, and used profanity in violation of Employer's policy. Furthermore, Employer's customers overheard the incident. According to the Company's policy, an employee's use of profanity, and/or rudeness, or discourtesy towards customers and/or other employees may result in discipline and/or discharge. As a result, Egerson was discharged for violation of Employer's policy which prohibits such behavior.

Discussion

When reviewing the decisions of the Board, this Court must determine whether the Board's findings and conclusions of law are free from legal error and are supported by substantial evidence in the record.[1] "Substantial evidence" is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[2] This Court's review is narrow: "It is not the appellate court's

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[1] *Unemployment Ins. Appeal Bd. v. Martin*, 431 A.2d 1265 (Del. 1981); *Pochvatilla v. United States Postal Serv.*, 1997 WL 524062 (Del. Super. Jun. 9, 1997); 19 *Del. C.* § 3223(a) ("In any judicial proceeding under this section, the findings of the [Board] as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the Court shall be confined to questions of law.").

[2] *Gorrel v. Division of Vocations Rehab.*, 1996 WL 453356, at *2 (Del. Super. July 31, 1996).

role to weigh the evidence, determine credibility questions or make its own factual findings, but merely to decide if the evidence is legally adequate to support the agency's factual findings."[3]

In this case, the findings of the Board are supported by substantial evidence in the record. Delaware law states that "violation of a reasonable company rule may constitute just cause for discharge if the employee is aware of the policy and the possible subsequent termination."[4] Knowledge of a company policy may be established by evidence of a written policy, i.e., an employer's handbook.[5]

With regard to Egerson's claim for benefits, the Board held:

> The Board finds that the Employer has established the existence of the policy. A written policy prohibiting the use of profanity was attached to Referee's decision.... The record also reflects that [Egerson] was provided with a copy of that policy on August 1, 2011. Thus, the sole question before the Board is whether [Egerson] violated that policy. The Board finds that he did.
>
> Before the Referee, [the Manager] and [the Employee] both testified about [Egerson's] actions on April 8, 2013. The Referee deemed that testimony credible. The Board finds no reason to reject that conclusion. [Egerson's] testimony before the Board that he did not use profanity that day is not credible. Because the Board can discern no error in the Referee'[s] judgment, we must affirm the decision below.

On appeal, Egerson contests the accuracy of the testimony of the Manager and the Employee. Unfortunately for Egerson, the record reflects a factual dispute that involved the credibility of witnesses, a dispute that the Board clearly resolved against Egerson. That resolution is binding on

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[3] *McManus v. Christiana Serv. Co.*, 1997 WL 127953, at *1 (Del. Super. Jan. 31, 1997).

[4] *Wilson v. Unemployment Ins. Appeal Bd.,* 2011 WL 3243366, at *8 (Del. Super. Jul. 27, 2011) (citation omitted).

[5] *Burgos v. Perdue Farms, Inc.,* 2011 WL 1487076, at *2 (Del. Super. Apr. 19, 2011).

this Court.[6]

Conclusion

The Board's decision finding Egerson was terminated for just cause in connection with his employment is AFFIRMED.

IT IS SO ORDERED.

Very truly yours,

/s/ T. Henley Graves

T. Henley Graves

cc: Prothonotary
cc: Unemployment Insurance Appeal Board
Seaford Popeyes, Inc.

[6] *Starkey v. Unemployment Ins. Appeal Bd.,* 340 A.2d 165, 167 (Del. Super 1975).