

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

<b>LAURA MILLER-BLOCK</b>	)	
	)	CIVIL ACTION NUMBER
Appellant	)	
	)	10A-01-014-JOH
v.	)	
	)	
<b>RALPH SMITH INC. and</b>	)	
<b>UNEMPLOYMENT INSURANCE</b>	)	
<b>APPEAL BOARD</b>	)	
	)	
Defendants	)	

*Submitted: October 21, 2010*  
*Decided: January 20, 2011*

**MEMORANDUM OPINION**

*Upon Appeal From the Unemployment  
Insurance Appeal Board - **AFFIRMED***

***Appearances:***

Laura Miller-Block, 212 Yates Avenue, Woodlyn, Pennsylvania, 19904, Pro Se, Appellant

Ralph Smith, Inc., 239 Market Street, West Chester, Pennsylvania, 19380, Pro Se Appellee

Phillip G. Johnson, Esquire, Department of Justice, Wilmington, Delaware, attorney for Unemployment Insurance Appeal Board, Appellee

HERLIHY, Judge

Before the Court is an appeal from the Unemployment Insurance Appeal Board's ("Board") affirmation of the Appeals Referee's decision in the case of Laura Miller-Block v. Ralph Smith, Inc. For the reasons stated below, the Board's determination is affirmed.

***Factual Background & Procedural Posture***

Laura Miller-Block ("Miller-Block") was working as a manager for Ralph G. Smith, Inc. in its household goods division from December 2008 until May 8, 2009, when she was discharged. She was a full-time employee making \$600 a week.<sup>1</sup> On Monday, May 4, 2009, Miller-Block called into work and said she had thrown out her back, and would not be able to work that day but would come in on Tuesday.<sup>2</sup> On Tuesday, she did not report to work and did not call. Miller-Block called on Wednesday saying she would be at work on Thursday. Again on Thursday, she neither reported to work nor called in. On Thursday afternoon, her employer, Mr. Ralph Smith ("Smith") made the decision to terminate her employment. Miller-Block reported to work on payday, Friday, May 8, 2009, and was informed of her termination.

Miller-Block was told that she must have a doctor's note to validate her absence.<sup>3</sup> Miller-Block submitted a doctor's note which stated she was under a doctor's care "from

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<sup>1</sup> Appeal Bd. Determination,

<sup>2</sup> Tr. Of Referee Hr'g at 7:11-15.

<sup>3</sup> Tr. Of Referee Hr'g at 9:9-12.

5/4/09 to 5/6/09 and will be able to return to work...on 5/7/09.”<sup>4</sup> Miller-Block makes several conflicting allegations about why she did not show up or call her employer on Thursday. First, at the Appeals Referee hearing, she claims that Smith told her she needed a doctor’s note, and since she did not have one as of Thursday, she went to the doctor’s office instead of reporting to work.<sup>5</sup> However, the note was clearly signed by her doctor on Wednesday, “5/6/09.”<sup>6</sup> Further, at the Appeals Referee hearing she claims she did not contact Smith on Thursday.<sup>7</sup> However, at the Board hearing, she claims first that she called the office number, but nobody answered the phone and the answering machine was broken.<sup>8</sup> She then also claims that on Thursday her phone, which was allegedly a company cell phone, was turned off by Smith.<sup>9</sup> Finally, at the Board hearing, she claims that she was too tired, and that a muscle relaxer that the doctor gave her “threw [her] for a loop” to such an extent that she was virtually incapacitated on Thursday.<sup>10</sup> Smith also testified to some previous absences by Miller-Block where he questioned her explanations for her absence, and the trust relationship between employee and employer had already been

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<sup>4</sup> Appeal Bd. Determination R., 30.

<sup>5</sup> Tr. of Referee Hr’g at 9:8-12, 10:18-21.

<sup>6</sup> *Id.*, 30.

<sup>7</sup> Tr. of Referee Hr’g at 10:18-21.

<sup>8</sup> Tr. of Appeal Bd. Hr’g at 5:3-21.

<sup>9</sup> *Id.* at 5:2-7.

<sup>10</sup> *Id.* at 4:19-25.

broken prior to the final absences which resulted in Miller-Block's termination. In her Opening Brief on appeal in this Court, Miller-Block also alleges that while she was at home, she continued to perform the functions of her job by making phone calls, scheduling customers, and speaking with drivers from her home on her employer's behalf.<sup>11</sup> However, Miller-Block offers no evidence of these activities, and did not make any mention of working from home at either the Appeals Referee hearing or the Board hearing. As the Court is bound to the record below, these allegation can not be considered.

Miller-Block applied for Unemployment Insurance Benefits, but the initial grant of benefits to her was revoked after the Department of Labor determined she was discharged from work for just cause in connection with her work under 19 *Del. C.* §3314(2). She made a timely appeal, and after a hearing with the Appeals Referee, she was again denied benefits for the same reason. Miller-Block again timely appealed to the Appeals Board, and after a hearing on December 2, 2009, the Appeals Referee's decision denying benefits was upheld. Miller-Block timely filed an appeal. The employer did not have the courtesy to file any papers or argument of any kind in this Court.

### *Standard of Review*

A party disagreeing with the determination of the Appeals Board "may secure

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<sup>11</sup> Letter from Laura Miller-Block, Appellant, filed with Prothonotary July 8, 2010 (Dated June 30, 2010).

judicial review [of the decision] by commencing an action in the Superior Court.”<sup>12</sup> On an appeal from the Board, the Court’s role is to ascertain whether the Board’s conclusions are supported by substantial evidence and free from legal error.<sup>13</sup> On an appeal from denial of unemployment benefits, the Superior Court is limited to consideration of the record.<sup>14</sup> When the Board affirms a referee’s decision after taking additional evidence, the Court relies upon the referee’s determinations for the findings of fact and conclusions of law.<sup>15</sup>

Substantial evidence means “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”<sup>16</sup> This standard of review requires the reviewing court to search the entire record to determine whether, on the basis of all the testimony and exhibits before the agency, it could fairly and reasonably reach the conclusion that it did.<sup>17</sup> Questions of conflict in testimony and witness credibility are resolved by the fact finder, be it the Board or referee, and not by the Court.<sup>18</sup> In reviewing the record for substantial evidence, the Court will consider the record in the light most

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<sup>12</sup> 19 *Del. C.* §3323.

<sup>13</sup> *Gen. Motors Corp. v. Jarrell*, 493 A.2d 978, 980 (Del. Super. 1985).

<sup>14</sup> *Petty v. U. of Del.*, 450 A.2d 392, 396 (Del. 1982).

<sup>15</sup> *Boughton v. Div. of Unemploy. Ins., Dept. of Labor*, 300 A.2d 25, 26 (Del. Super. 1972).

<sup>16</sup> *DABCC v. Newsome*, 690 A.2d 906, 910 (Del. 1996).

<sup>17</sup> *Nat’l Cash Register v. Riner*, 424 A.2d 669, 674-75 (Del. Super. 1980).

<sup>18</sup> *Shively v. Klein*, 551 A.2d 41, 45 (Del. 1988).

favorable to the party prevailing below.<sup>19</sup> The Board’s decision must be affirmed if it is supported by substantial evidence and free of mistake of law.<sup>20</sup>

### *Discussion*

Under 19 *Del. C.* §3314(2), a person is disqualified from receiving unemployment insurance benefits if he she was terminated for “just cause in connection” with her work. The element of “just cause” has been defined 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 expected standard of conduct.”<sup>21</sup> The employer has the burden to show that the employee was conscious of her conduct and recklessly indifferent to its consequences.<sup>22</sup> The issue in this case is whether Miller-Block was terminated with just cause.<sup>23</sup> The Court must discern whether Miller-Block was conscious that her conduct during her absence was in violation of Smith’s interest or her duties, or of her expected standard of conduct as an employee of Smith.

The Appeals Referee found that Miller-Block’s failure to report or call in to work on Thursday, May 7, 2009 was “just cause” to support her termination and disqualify her

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<sup>19</sup> *Stigars v. Speakman Co.*, Del. Super., C.A.No. 92A-08-21, Herlihy, J. (March 19, 1993), *aff’d.*, No. 125, 1993, Moore, J. (September 28, 1993).

<sup>20</sup> *A. Mazzetti & Sons, Inc. v. Ruffin*, 437 A.2d 1120 (Del. 1981).

<sup>21</sup> *Abex Corp. v. Todd*, 235 A.2d 271, 272 (Del. Super. 1967).

<sup>22</sup> *Coleman v. Dept. of Labor*, 288 A.2d 285, 288 (Del. Super. 1972).

<sup>23</sup> Referee Report, 18.

from benefits. The Appeals Referee noted that, in particular, support of this decision was the fact that her doctor's note certified her to return to work on May 7th, and she neither called in or obtained another doctor's note for that day. At this point, Miller-Block had not yet made the claim that she was so under the influence of muscle relaxants that she could not come to work. Instead, during the Appeals Referee hearing, she claimed she missed work on Thursday because she could not return to work without a doctor's note, and had to go to the doctor's office to get it. This contradicts the evidence before the Appeals Referee, who noted that the doctor's note is dated Wednesday, May 6, 2009. He found that these facts indicated the employer has sufficiently established just cause for discharge within the meaning of 19 *Del. C.* §3314(2), and affirmed the decision of the claims deputy denying Miller-Block unemployment benefits.

Miller-Block timely appealed the determination to the Appeal Board. The Board affirmed the Referee's decision, citing Miller-Block's "no-call/no-show on May 7, 2009" as sufficient just cause to terminate her employment.<sup>24</sup> Miller-Block knew her employer expected a doctor's note as a condition to her returning to work. Her lack of a doctor's note for Thursday's absence was in direct violation of the expected standard of conduct established by Smith to maintain her employment. Additionally, the Board affirmed the Appeals Referee's finding that Miller-Block's failure to call Smith showed a conscious

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<sup>24</sup> Bd. Report, 50. The Board also discusses the possibility of benefits disqualification when a person leaves work voluntarily, without good cause, but determines that those standards do not apply in this case, since Miller-Block was terminated for just cause.

indifference to her employer's interests and the employee duties. A review of the testimony and exhibits in this matter demonstrate that the Board and Appeals Referee had adequate factual basis to reach their conclusion fairly and reasonably. Viewing the entire record in the light most favorable to the party prevailing below, Ralph G. Smith, Inc., and finding that the Board's decision is supported by substantial evidence with no mistake of law, the decision of the Unemployment Insurance Appeal Board is **AFFIRMED**.

**IT IS SO ORDERED.**

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J.