IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

JOANNE DAVIS,	)	
	)	
	)	
Employee/Appellant,	)	C.A. No. N10A-06-009 MMJ
	)	
v.	)	
	)	
DELAWARE PARK,	)	
	)	
	)	
Employer/Appellee.	)	

Submitted: May 4, 2011
Decided: June 28, 2011

Appeal from the Unemployment Insurance Appeal Board
AFFIRMED

MEMORANDUM OPINION

Joanne Davis, *Pro Se*, Wilmington, DE

Katisha Fortune, Esquire, Department of Justice, Wilmington, DE, Attorney for the Unemployment Insurance Appeal Board

JOHNSTON, J.

FACTUAL AND PROCEDURAL CONTEXT

Claimant Joanne Davis was employed by Delaware Park as a dining services attendant from July 1, 2005 to December 2, 2009. On November 27, 2009, Davis walked by a gaming machine and a patron stopped Davis for assistance. The patron had inserted a $20 bill into the machine, but did not receive credit. Surveillance footage revealed that Davis bent down and picked up an item from the floor. The patron approached another Delaware Park employee about the loss.

On November 28, 2009, the Delaware Park security manager questioned Davis, and she admitted to picking up the bill. Davis was familiar with Delaware Park's Found Currency policy, which provides that an employee cannot take possession of currency in a manner inconsistent with her job responsibilities. On December 2, 2009, after further investigation, Delaware Park terminated Davis for violating the Found Currency Policy.

On December 13, 2009, Davis applied for unemployment benefits. On January 19, 2010, a Claims Deputy denied her application. The Deputy found that Delaware Park had just cause to terminate Davis, because she engaged in an "act of wanton and willful misconduct that was not in the employer's best interest and was in violation of the employee's expected

standard of conduct . . .." Davis appealed the Deputy's decision to an Appeals Referee.

On February 18, 2010, the Referee affirmed the Deputy's decision. The Referee held that Davis' conduct "represented a serious breach of the standard of conduct expected of her as an employee." The Department of Labor ("DOL") mailed the Referee's decision on February 19, 2010. Davis had until March 1, 2010 to appeal the Referee's decision to the Unemployment Insurance Appeal Board ("Board"). Davis appealed on March 2, 2010.

On March 31, 2010, the Board declined to accept Davis' appeal because it was untimely. The DOL mailed the Board's decision on April 13, 2010 by first-class mail to Davis' last address of record, and it was not returned as undeliverable. The decision stated: "Date Decision Becomes Final: 04/23/2010." Davis again appealed to the Board on May 17, 2010.

On May 19, 2010 the Board declined to accept Davis' appeal because it was again untimely. The DOL mailed the Board's decision on May 28, 2010. The decision became final on June 8, 2010.

On June 21, 2010, Davis filed a *pro se* appeal of the Board's decision to this Court.

STANDARD OF REVIEW

On appeal, the Superior Court reviews legal issues *de novo*.[1] The Superior Court must determine if the Board's factual findings are supported by substantial evidence in the record and are free from legal error.[2] Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[3] If the record lacks satisfactory proof in support of the Board's finding or decision, the Court may overturn the Board's decision.[4] In addition, when the Board makes a discretionary decision, the Court must determine if the Board's action was an abuse of discretion.[5] An abuse of discretion exists when the Board "exceeds the bounds of reason in view of the circumstances and has ignored recognized rules of law or practice so as to produce injustice."[6]

ANALYSIS

Ten days after the decision of the Unemployment Insurance Appeal Board has become final, any party may secure judicial review by commencing an action in the Superior Court.[7] It is undisputed that Davis

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[1] *Person-Gaines v. Pepco Holdings, Inc.*, 981 A.2d 1159, 1161 (Del 2009).
[2] *Unemployment Ins. Appeal Bd. v. Duncan*, 621 A.2d 340, 342 (Del. 1993).
[3] *Histed v. E.I. duPont de Nemours & Co.*, 621 A.2d 340, 342 (citing *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981)).
[4] *Id*. at 66-67.
[5] *Stacey v. People's Settlement*, 2009 WL 891054 (Del. Super.).
[6] *Id.*
[7] 19 *Del. C.* § 3323(a).

filed an untimely appeal to the Superior Court. The Board's decision was mailed on May 28, 2010. Davis had until June 8, 2010 to file an appeal to the Court; however, she did not file an appeal until June 21, 2010. Davis offered no justification for filing late and there is no evidence to suggest the DOL made any error in mailing the Board's decision.

Additionally, Davis twice filed untimely appeals to the Board. A claimant must file an appeal to the Board within ten days of the Referee's decision and a claimant has ten days to appeal the Board's decision before it becomes final.[8] The ten-day periods begin on the date the decision is mailed, unless the decision fails to reach a party because of a DOL mistake.[9] Delaware law presumes that a properly addressed mailing has been received by the addressee.[10] "The addressee's mere denial of receipt . . . is insufficient to rebut this presumption."[11] The Referee's decision was mailed February 19, 2010, and the last day to appeal the Referee's decision to the Board was March 1, 2010. Davis did not file an application for further review until March 2, 2010. The Board's decision denying further review was mailed on April 13, 2010, and the last day to appeal this decision was April 23, 2010. Davis did not appeal until May 17, 2010.

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[8] 19 *Del. C.* § 3322(a).
[9] *Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 224 (Del. 1991).
[10] *Lively v. Dover Wipes Co.*, 2003 WL 21213415, at *1 (Del. Super.).
[11] *Brown v. City of Wilmington*, 1995 WL 653460, at *3 (Del. Super.).

Davis' Notice of Appeal to this Court states, in its entirety, the following grounds:

(1) Because I can't find a job.

(2) Not working and I have Bill to paid (sic).

Even assuming Davis' appeal to this Court should not be denied as untimely, Davis' claim lacks merit. The undisputed facts clearly demonstrate that Delaware Park had just cause to terminate her employment.

An individual shall be disqualified for benefits when discharged "for just cause in connection with the individual's work."[12] "Generally, the term 'just cause' refers to 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."[13] "Wilful or wanton conduct requires a showing that one was conscious of his conduct or recklessly indifferent of its consequences; it need not necessarily connote bad motive, ill design or malice."[14] "Violation of a reasonable company rule may constitute just cause for discharge [if] the employee [is] aware that the policy exists and may be cause for discharge."[15] Awareness of a company policy may be

[12] 19 *Del. C.* § 3314(2)
[13] *Abex Corp. v. Todd,* 235 A.2d 271, 272 (Del. Super. 1967).
[14] *McCoy v. Occidental Chemical Corp.*, 1996 WL 111126, at *3 (citing *Coleman v. Dep't of Labor,* 288 A.2d 285, 288 (Del. Super. 1972)).
[15] *Id.*

established where there is a written policy, such as an employer's handbook.[16]

The Found Currency Policy was written in the Employee Handbook. Davis signed an acknowledgement form stating she received the Employee Handbook upon being hired. Davis' admitted violation of the policy constitutes just cause for termination.

CONCLUSION

Davis did not file a timely appeal to the Superior Court. Therefore, the appeal must be denied. Further, the appeal lacks merit. Davis clearly was terminated for cause.

THEREFORE, the Court hereby **AFFIRMS** the Board's decision in its entirety.

IT IS SO ORDERED.

/s/ *Mary M. Johnston*
The Honorable Mary M. Johnston

[16] *Id.*