

IN THE SUPREME COURT OF THE STATE OF DELAWARE

FRANCES MERGLIANO,	§
	§ No. 362, 2013
Appellant Below-	§
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
REHOBOTH DONUT SHOP, INC.,	§ in and for Sussex County
	§ C.A. No. S13A-03-002
Appellee Below-	§
Appellee.	§

Submitted: September 3, 2013

Decided: September 12, 2013

Before **STEELE**, Chief Justice, **HOLLAND**, and **RIDGELY**, Justices

ORDER

This 12th day of September 2013, upon consideration of the appellant’s opening brief, the appellee’s motion to affirm, and the record below, it appears to the Court:

(1) The appellant, Frances Mergliano, filed this appeal from the Superior Court’s decision, dated June 24, 2014, which affirmed the decision of the Unemployment Insurance Appeal Board (“the Board”) denying Mergliano’s claim for unemployment benefits. The appellee, Rehoboth Donut Shop, Inc. (“Employer”), filed a motion to affirm the judgment below on the ground that it is manifest on the face of Mergliano’s opening brief that her appeal is without merit. We agree and affirm.

(2) The record reflects that Mergliano worked for Employer from April 2009 until July 9, 2012, when she was discharged. Mergliano filed a claim for unemployment benefits. A Claims Deputy reviewed Mergliano's claim and determined that she was not entitled to benefits because she had been terminated for just cause. Mergliano appealed that ruling. An Appeals Referee held a hearing on September 13, 2012. The Appeals Referee reversed the Claims Deputy's determination. Employer then appealed to the Board. The Board held a hearing on March 8, 2013 and reversed the Appeals Referee's ruling on the ground that Employer had terminated Mergliano for just cause. On Mergliano's appeal from the Board's decision, the Superior Court concluded that the Board's findings and conclusions were free from legal error and were supported by substantial evidence in the record. Accordingly, the Superior Court affirmed the Board's denial of unemployment benefits. Mergliano appeals that ruling.

(3) Mergliano's sole issue on appeal is that the Board committed legal error when it conducted a de novo review of the Appeals Referee's decision and allowed Employer to present new witnesses and evidence at the hearing before the Board. Mergliano suggests that Employer's evidence to the Board should have been limited to the evidence that was presented to the Appeals Referee. Employer, on the other hand, contends that this issue is controlled by settled Delaware law, which allows the Board to hear additional evidence at the Board hearing level.

(4) We agree with Employer’s position. Section 3320 of Title 19 of the Delaware Code “affords the Board substantial latitude as to what evidence it may consider in reaching a decision. The Board may base its decision on evidence previously submitted to the Appeals Referee or on new, additional evidence.”¹ Accordingly, we find no legal error in the Board’s admission of evidence that was not previously presented by Employer to the Appeals Referee. Moreover, after careful consideration, we find that the Board’s conclusion that Mergliano was terminated for just cause is supported by substantial evidence and is free from legal error.² Accordingly, we affirm.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

¹ *Robbins v. Deaton*, 1994 WL 45344 (Del. Super. Feb. 7, 1994). See also *Filanowski v. Port Contractors, Inc.*, 2007 WL 2229017 (Del. Super. Jan. 2, 2007).

² *Edmonds v. Kelly Services*, 2012 WL 4033377 (Del. Sept. 12, 2012).