

IN THE UTAH COURT OF APPEALS

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Darlene Aguiar,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Petitioner,)		
)	Case No. 20080015-CA	
v.)		
)		
Workforce Services and)	F I L E D	
Resource Management, Inc.,)	(May 8, 2008)	
)		
Respondents.)	<table border="1"><tr><td>2008 UT App 161</td></tr></table>	2008 UT App 161
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Original Proceeding in this Court

Attorneys: Darlene Aguiar, Washington, Petitioner Pro Se
 Geoffrey T. Landward, Salt Lake City, for Respondents

Before Judges Greenwood, Billings, and McHugh.

PER CURIAM:

Darlene Aguiar seeks judicial review of a decision of the Workforce Appeals Board (the Board) disqualifying her from receiving unemployment benefits. This court will reverse an administrative agency's findings of fact "only if the findings are not supported by substantial evidence." Drake v. Industrial Comm'n, 939 P.2d 177, 181 (Utah 1997). We will not disturb the Board's conclusion regarding the application of law to facts unless it "exceeds the bounds of reasonableness and rationality." Nelson v. Department of Employment Sec., 801 P.2d 158, 161 (Utah Ct. App. 1990).

The elements of the determination that an employee was terminated for just cause are culpability, knowledge, and control. See Utah Admin. Code R994-405-202. The Board's findings on each of the factors are supported by substantial evidence in the record. The employer discharged Aguiar based upon her consistently negative attitude; her inappropriate treatment of the employer, co-employees, clients, and insurance companies; and her failure to follow instructions. Although there was evidence that Aguiar failed to report to work on at least two occasions, the Board found that this was not the precipitating event leading to her discharge. Aguiar received both verbal and written warnings in July and August prior to her

discharge. Those warnings clearly explained the behaviors that caused the employer concern and clarified the employer's expectations for improvement. Despite these warnings, Aguiar continued to exhibit disruptive and disrespectful behavior. After giving her ample opportunity to demonstrate improvement, the employer discharged her. The element of knowledge was established by the written and verbal warnings. It was within Aguiar's control to address the employer's requirements for her conduct. Finally, the behavior was culpable because it jeopardized the employer's interests in maintaining both workplace productivity and good relationships with its clients and customers. Based upon its supported findings of fact, the Board's conclusion that Aguiar was terminated for just cause and was therefore disqualified from receiving unemployment benefits is reasonable and rational.

Before the Board and in this court, Aguiar claims that she was verbally and sexually harassed by her employer and makes numerous claims about the working environment that she contends the Board failed to adequately consider. The Board correctly noted that if Aguiar had quit her job and cited harassment as the reason, the Department of workforce Services and the Board would have taken evidence on that issue and determined whether she had good cause to quit. Because Aguiar did not quit, the issue was whether there was just cause to discharge her and the evidence was appropriately limited to the evidence relevant to that issue.

Accordingly, we affirm the Board's determination that Aguiar was discharged for just cause and was therefore disqualified from receiving benefits.

Pamela T. Greenwood,
Presiding Judge

Judith M. Billings, Judge

Carolyn B. McHugh, Judge