

IN THE UTAH COURT OF APPEALS

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Pauline Stone,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner,)	
)	Case No. 20050375-CA
v.)	
)	F I L E D
Department of Workforce)	(September 22, 2005)
Services, Workforce Appeals)	
Board, and K Mart Corporation,)	2005 UT App 407
)	
Respondents.)	

Original Proceeding in this Court

Attorneys: Pauline Stone, Salt Lake City, Petitioner Pro Se
Suzan Pixton, Salt Lake City, for Respondent
Workforce Appeals Board

Before Judges Bench, Greenwood, and Thorne.

PER CURIAM:

Pauline Stone seeks judicial review of a decision of the Workforce Appeals Board (Board) denying unemployment benefits.

An individual is ineligible for unemployment benefits when he or she is discharged for "just cause." Utah Code Ann. § 35A-4-405(2)(a) (2001). Factors to be considered in determining whether just cause exists are culpability, knowledge, and control. See Utah Admin. Code R994-405-202. We uphold the agency's findings of fact if they are supported by substantial evidence when reviewed in light of the whole record before the court. See VanLeeuwen v. Industrial Comm'n, 901 P.2d 281, 284 (Utah Ct. App. 1995). "An agency's application of law to its findings of fact will not be disturbed unless its determination 'exceeds the bounds of reasonableness and rationality.'" Johnson v. Department of Employment Sec., 782 P.2d 965, 968 (Utah Ct. App. 1989) (citations omitted).

To successfully challenge the Board's findings of fact, a petitioner must demonstrate that the challenged findings are not "supported by substantial evidence when viewed in light of the whole record before the court." Grace Drilling Co. v. Board of Review, 776 P.2d 63, 67 (Utah Ct. App. 1989). Stone has not undertaken this burden. Instead, her arguments before this court

have evolved into claims that were not raised at the hearing before the Administrative Law Judge (ALJ) or before the Board.

At the hearing, Stone testified that she had "always known that Department Leads worked nights, but the other Managers always worked around" her schedule and had not complained. However, before this court Stone asserts that it was a condition of her employment that she would never be required to work a night shift, and argues that the new store manager failed to "educate[] herself with the knowledge of my requirements for my no nights working conditions." However, no testimony established that this was an express condition of her employment, rather than a matter of personal preference. In addition, she now claims that she does not recall a time when managers were required to work night shifts and asserts that her appeal is based upon entrapment by the store manager. Stone's arguments are replete with factual assertions not supported by testimony and arguments regarding the reasonableness of the employer's scheduling decisions that are based upon facts that were not before the Board.

In reviewing the Board's decisions, this court is limited to the record created in the agency. The ALJ carefully explained this limitation at the hearing, stating:

This is the only hearing you will ever have. Therefore it is very important to explain everything here today. If there is a further appeal only your testimony given here today can be used in that further appeal. Therefore, it is very important to explain everything here today.

Testimony at the hearing does not support the assertion that an agreement existed that Stone would never be required to work nights. At most, the testimony established that she had not been required to do so because her preferences had been accommodated. The Board found that due to budgetary and other concerns, a new store manager determined that Stone would need to work one night shift per week from 4:00 to 10:30 p.m. throughout the Christmas season and possibly through February. Although Stone testified that she offered to be demoted in order to avoid night shifts, the manager testified that there were no positions in which Stone would not have to work some night shifts.

The Board concluded that the requirements of culpability, knowledge, and control were established to justify Stone's termination for just cause. Stone knew of her employer's reasonable expectation that she would work one night shift per week. The Board also concluded that it was within Stone's control to comply with the reasonable request, and it was unreasonable to decline the request because she did not wish to

leave her adult daughter at home alone until 10:30. Finally, the Board concluded that her conduct was culpable. Stone chose not to comply with the employer's reasonable requests for what was "not a substantial change" in her shift and was necessary due to budget constraints. The Board further concluded that "continuing to allow the claimant to dictate her own schedule would have adversely affected the employer." Stone essentially argues that the employer did not comply with her reasonable requests, but the appropriate analysis inquires whether Stone was justified in failing to comply with her employer's reasonable requests. The Board's decision that she was terminated for just cause, and therefore disqualified from employment benefits, was reasonable and rational.

We affirm the decision to deny unemployment benefits based upon termination for just cause.

Russell W. Bench,
Associate Presiding Judge

Pamela T. Greenwood, Judge

William A. Thorne Jr., Judge