IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

LYNETTE JACKSON,	)	
	)	C.A. No. 07A-07-002 JTV
Appellant,	)	
	)	
v.	)	
	)	
CHRISTIANA CARE and	)	
UNEMPLOYMENT INSURANCE	)	
APPEAL BOARD,	)	
	)	
Appellees.	)	

Submitted: November 11, 2007
Decided: February 29, 2008

Ms. Lynette Jackson, Pro Se.

David H. Williams, Esq., and James H. McMackin, III, Esq., Morris, James, LLP, Wilmington, Delaware. Attorneys for Appellee Christiana Care.

Upon Consideration of Appellant's Appeal
From Decision of The
Unemployment Industrial Accident Board
AFFIRMED

VAUGHN, President Judge

ORDER

Upon consideration of the briefs of the parties and the record of the case, it appears that:

1. Lynette Jackson, appea1s from a decision of the Unemployment Insurance Appeals Board which denied her petition for unemployment compensation. The Board's decision was that the claimant was terminated from her job with Christiana Care for just cause and was disqualified from receiving unemployment benefits.[1]

2. In reviewing the decisions of the Board, the court must determine whether the findings and conclusions of the Board are free from legal error and supported by substantial evidence in the record.[2] The function of the reviewing court is to determine whether the agency's decision is supported by substantial evidence.[3] Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[4] The appellate court does not weigh the

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[1] 19 *Del. C.* §§ 3314(2), 3315(3).

[2] *Unemployment Ins. Appeal Bd. v. Martin*, 431 A.2d 1265 (Del. 1981); *Ponchvatilla v. United States Postal Service*, Del. Super., C.A. No. 96A-06-19, Cooch, J. (June 9, 1997) (Mem. Op.) At *2; 19 *Del. C.* § 3323(a) ("In any judicial proceeding under this section, the findings of the [UIAB] as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the Court shall be confined to questions of law.").

[3] *General Motors v. Freeman*, 164 A.2d 686, 688 (Del. 1960); *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66-67 (Del. 1965).

[4] *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battisa v. Chrylser Corp.*, 517 A.2d 295, 297 (Del. Super. Ct. 1986), *appeal dismissed*, 515 A.2d 397 (Del. 1986).

evidence, determine questions of credibility, or make its own factual findings.[5] The reviewing court merely determines if the evidence is legally adequate to support the agency's factual findings.[6]

3. The claimant worked for Christiana Care as a full-time unit clerk from January 9, 2006 until February 9, 2007. She signed for and received the employee handbook, which included the attendance policy, on her first day on the job. Under Christiana Care's attendance policy, the claimant was permitted six occurrences of unplanned absences per rolling year. An occurrence is "an unplanned absence of one day away from scheduled work without prior approval, or a number of consecutive, unplanned absence[s]." A rolling year is any twelve month period, without reference to the original date of employment.

4. The claimant received a "positive coaching" for her overall attendance on September 6, 2006 because she "fell out of standard" by acquiring five occurrences in nine months.[7] The employer's representative who conducted the September positive coaching session testified that at that time he discussed with the claimant her

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[5] *Johnson v. Chrysler*, 213 A.2d at 66.

[6] *Majaya v. Sojourners' Place*, 2003 Del. Super. LEXIS 212, at *12; See 19 *Del. C.* § 3323(a) (providing that, absent fraud, the factual findings of the Board shall be conclusive and the jurisdiction of a reviewing court shall be confined to questions of law).

[7] Christiana Care has a prorated system for service of less than one year, in which the standard absences for nine months is four occurrences. There is an absenteeism matrix to calculate how many absences are permissible for the amount of months employed. To fall out of standard, Claimant missed March 1, April 14, May 30 and 31, July 21 and 24, August 29, September 1 and 2, 2006.

attendance record and the attendance matrix. After her September 6, 2006 positive coaching, the claimant went on a leave of absence from September 15 - December 7, 2006. On December 8, 2006, the claimant was given a "decision-making leave" due to a prior altercation with a supervisor, which occurred in part because of the claimant's alleged refusal to answer patients' call bells the previous day. The session included a warning that any further infraction would expose her to a review for termination. A Disciplinary Action Record created at that session included that warning and listed previous job performance coaching and core value coaching.[8] [9] Thereafter, the claimant incurred two more absence occurrences.[10] Her seventh absence occurrence between February 1st and 5th and placed her out of standard for the entire year.[11] On February 7, 2007, another employer's representative conducted a "positive coaching" which resulted in the claimant's termination on February 8.[12]

5. An employee may be disqualified from receiving benefits when discharged

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[8] The form clearly stated that Jackson received either job performance or core values positive coaching on January 25, February 10, June 1, and June 6, 2006.

[9] Jackson refused to sign the Disciplinary Action Record form.

[10] Claimant missed January 22 and 23 and February 1, 2, and 5, 2007.

[11] Jackson's reason for the absence was sickness, but she did not provide a doctor's note. According to Christiana Care's policy, even a doctor's note is not enough. A permissible absence must be FMLA qualified.

[12] Claimant was fired on February 8, 2007.

for just cause.[13] Delaware Courts have consistently defined "just cause" as a "willful or wanton act in violation of either the employer's interests, or of the employee's duties, or of the employer's expected standard of conduct."[14] Willful or wanton misconduct requires a showing that one was conscious of one's conduct or was recklessly indifferent to its consequences.[15] In the context of unemployment benefits, "willful" implies actual, specific, or evil intent, while "wanton" implies needless, malicious, or reckless conduct, but does not require actual intent to cause harm.[16] To establish that the employee acted willfully or wantonly out of standard with the employer's policy, the employer need not show that the employee had a bad motive or malice intent.[17] However, there must be evidence that the employee was on notice of the policy and of his/her deviation therefrom.[18]

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[13] 19 *Del. C.* § 3314(2), providing "An individual shall be disqualified for benefits . . . [f]or the week in which the individual was discharged from the individual's work for just cause in connection with the individual's work . . . ."

[14] *Krouse v. Cape Henlopen Sch. Dist.*, 1997 Del. Super. LEXIS 502, at *7; *Avon Products, Inc. v. Wilson*, 513 A.2d 1315, 1317 (Del. 1987); *Starkey v. Unemployment Ins. Appeal Bd.*, 340 A.2d 165, 167 (Del. Super. Ct. 1975).

[15] *Reeves v. Conmac Sec.,* 2006 Del. Super. LEXIS 51, at *11 (citing *Coleman v. Dep't of Labor*, 288 A.2d 285, 288 (Del. Super. Ct. 1972)).

[16] *Id.*, at *11-12 (citing *Boughton v. Division of Unemployment Ins. of Dep't of Labor*, 300 A.2d 25, 26 (Del. Super. Ct. 1972)); *Krouse*, 1997 Del. Super. LEXIS 502, at *7.

[17] *Barton v. Innolink Sys.*, 2004 Del. Super. LEXIS 177, at *5 (citing *MRPC Fin. Mgmt. LLC v Carter,* 2003 Del. Super. LEXIS 237 at *12).

[18] *Id.* (expressing that "the concept of just cause does include notice to the employee that further poor behavior or performance may lead to termination").

6. Violation of a reasonable company rule may constitute just cause for discharge, but the employee must be aware that the policy exists and may be cause for discharge.[19] This Court has adopted a two-step analysis to determine whether there was just cause: 1) whether a policy existed, and if so, what conduct was prohibited, and 2) whether the employee was apprised of the policy and if so, how was he or she made aware.[20] Knowledge of a company policy may be established where there is evidence of a written policy, such as an employer's handbook,[21] or where an employee had been previously warned regarding objectionable conduct.[22]

7. The claimant contends that when she signed the policy she thought she had a clear understanding of it, and she only found out that her understanding was not clear at the February 7 conference. She contends that because she acted under a misinterpretation of the policy, she could not have acted willfully or wantonly. However, the record shows that even if the claimant signed the handbook without fully appreciating its meaning, the employer warned the claimant through positive coaching that her conduct would not be tolerated, and she was at risk of termination. When an employee is so warned of her deviation from the policy, then a subsequent

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[19] *McCoy v. Occidental Chem. Corp.*, 1996 Del. Super. LEXIS 55, at *8.

[20] *Id.*, at *9.

[21] *Id.* (citing *Honore v. Unemployment Ins. Appeal*, Del. Super., C.A. No. 92A-12-007, Steele, R.J., (Oct. 5, 1993)).

[22] *Id.,* at *9.

violation of a similar nature is subject to a just cause dismissal.[23]

8. There is substantial evidence to support the Board's determination that the claimant was terminated in accordance with an employer policy of which she was aware and that she was given due warning before the occurrence which resulted in the termination. Since the Board's decision is supported by substantial evidence and is free of legal error, it is ***affirmed***.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.
President Judge

oc: Prothonotary
cc: Order Distribution
File

[23] *Avon Products, Inc. v. Wilson*, 513 A.2d 1315, 1317 (Del. 1986).