

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

SUSSEX COUNTY COURTHOUSE
1 The Circle, Suite 2
GEORGETOWN, DE 19947

February 21, 2008

Tasha Marie Stevens, Esquire
Fuqua and Yori, P.A.
28 The Circle
P.O. Box 250
Georgetown, DE 19947

William W. Bowser, Esquire
Michael Stafford, Esquire
Young Conaway Stargatt & Taylor, LLP
The Brandywine Building
1000 West Street, 17th Floor
P.O. Box 391
Wilmington, DE 19899-0391

RE: Norman v. Perdue Farms, Inc., et al.
C.A. No. 07A-05-002
Letter Opinion

Date Submitted: November 6, 2007

Dear Counsel:

This is my decision on Mary E. Norman's appeal of the Unemployment Insurance Appeal Board's denial of her claim for her unemployment benefits. Norman worked in a poultry processing plant for Perdue Farms, Inc. She left work on a medical leave of absence. Perdue has a leave of absence policy. It requires all employees on a leave of absence to update a leave of absence form every 30 days explaining why they are still out of work. When Norman did not do this, Perdue sent her a letter instructing her to come to the office and update the form. Norman received the letter but she did not do as directed. Perdue then terminated Norman. She then filed a claim for unemployment benefits with the Department of Labor. The Claims Deputy, Appeals Referee and Board all denied Norman's claim. She then filed an appeal with this Court. I have affirmed the Board's decision because Norman willfully violated Perdue's leave of absence policy by not updating her leave of absence form.

STATEMENT OF THE CASE

There were hearings before the Appeals Referee and Board. Norman and Adriana Mason, a Perdue human resources representative, testified at the hearing before the Appeals Referee. David Jones, a Perdue human resources manager, and Mason testified at the hearing before the Board. Norman was present but did not testify. Jones and Mason testified about Perdue's leave of absence policy and Norman's failure to comply with it. Norman testified at great length about Perdue's handling of her medical records.

Norman started working at Perdue on February 25, 2004. She left work on a medical leave of absence on June 19, 2006. Perdue has a leave of absence policy. When an employee wants to take a leave of absence, the employee has to fill out and sign a request to leave form. The form contains the employee's name, social security number, department, address and reason for seeking a leave of absence. The form states that it has to be reviewed and renewed by the employee every 30 days. This update has to be done, according to Jones, regardless of how long the employee will be out of work. It further states that the employee understands that if the employee does not update the form, then the employee's failure to do so will be considered by Perdue as a voluntary resignation of the employee's job.

Norman's doctor prepared a "Certificate To Return To Work Or School." It stated that Norman would be out of work because of diabetes and hypertension from June 19, 2006 to October 15, 2006. Norman did not update her medical leave of absence form in July or August. When Perdue realized this, it sent a certified letter to Norman on August 31, 2006. The letter stated that Norman had not updated her medical leave of absence form, that it was now two weeks late, and that Norman was to go to the Human Resources Department to update the form by 12:00 noon on Tuesday,

September 5, 2006. The letter also stated that if Norman failed to do as directed, that she would be terminated. Norman received and signed for the letter on September 1, 2006. However, she did not go to the office and update the form as she was directed to do. Indeed, Perdue never heard from Norman at all. Perdue terminated Norman on September 5, 2006. Norman did not update the form because she believed that her doctor was faxing notes to Perdue every time that she saw him. Jones testified that it was the absence of Norman's current medical information that prompted Perdue's medical department to ask him to tell Norman to come to the office and update her medical leave of absence form. The record does not establish that Norman's doctor sent Perdue a note in response to Perdue's letter to Norman. Norman testified that Perdue lost all of her medical records several times and tricked her into signing another release so that Perdue could get more copies of her medical records.

The Board denied Norman's claim for unemployment benefits, reasoning that Norman's refusal to come to the office and update her medical leave of absence form was a willful violation of Perdue's leave of absence policy.

STANDARD OF REVIEW

The Supreme Court and this Court repeatedly have emphasized the limited appellate review of the factual findings of an administrative agency. On appeal from a decision of the UIAB, this Court is limited to a determination of whether there is substantial evidence in the record sufficient to support the Board's findings, and that such findings are free from legal error.¹ Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support

¹ *Employment Ins. Appeals Board of the Dept. of Labor v. Duncan*, 337 A.2d 308, 309 (Del. 1975); *Longobardi v. Unemployment Ins. Appeal Board*, 287 A.2d 690, 692 (Del. Super. 1971), *aff'd* 293 A.2d 295 (Del. 1972).

a conclusion.² The Board’s findings are conclusive and will be affirmed if supported by “competent evidence having probative value.”³ The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.⁴ It merely determines if the evidence is legally adequate to support the agency's factual findings.⁵ Absent an error of law, the Board's decision will not be disturbed where there is substantial evidence to support its conclusions.⁶

DISCUSSION

Norman argues that the Board’s finding of wanton or willful behavior on her part is not supported by substantial evidence in the record. In order to demonstrate that a discharged employee is ineligible for unemployment benefits, the burden is on the employer to prove just cause by a preponderance of evidence.⁷ Delaware Courts have defined “just cause” as “a willful or wanton act or pattern of conduct in violation of the employer’s interest, the employee’s duties, or the employee’s expected standard of conduct.”⁸ Willful conduct implies actual, specific or evil intent.⁹ Wanton conduct is that which is heedless, malicious or reckless, but is not done with actual intent to cause

² *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. 1986), *app. dismiss.*, 515 A.2d 397 (Del. 1986).

³ *Geegan v. Unemployment Compensation Commission*, 76 A.2d 116, 117 (Del. 1950).

⁴ *Johnson v. Chrysler Corp.*, 312 A.2d 64, 66 (Del. 1965).

⁵ 29 Del.C. § 10142(d).

⁶ *Dellachiesa v. General Motors Corp.*, 140 A.2d 137 (Del. Super. 1958).

⁷ *Freeman v. Burriss Food and UIAB*, 2007 WL 949495, at *3 (Del. Super. March 19, 2007).

⁸ *Majaya v. Sojourners’ Place*, 2003 WL 21350542, at *4 (Del. Super.)(citing *Avon Prods., Inc. v. Wilson*, 513 A.2d 1315, 1317 (Del. 1986)).

⁹ *Boughton v. Dept. of Labor*, 300 A.2d 25, 26 (Del. Super. 1972).

harm.¹⁰ Willful or wanton conduct provides the basis for a just cause discharge if a showing is made “that the employee was conscious of the employee’s conduct and recklessly indifferent to its consequences.”¹¹ This conduct can justify dismissal without warning if the conduct is sufficiently egregious.¹²

Discharge for failure to comply with an employer’s policies can constitute just cause if it is shown that the policy forming the basis for the discharge actually existed, that the employee knew about the policy, and that the employee knew a violation of the policy may be cause for discharge.¹³ When a violation of company policy is at issue, the employer need not give multiple warnings before choosing to discharge the employee.¹⁴ As long as the company policy is clearly communicated to the employee, the employer has given adequate notice to justify the employee’s discharge after a single violation of that policy.¹⁵ Such communication can be found where there is evidence of a written policy, such as in an employee handbook.¹⁶

There is no doubt that Perdue had a leave of absence policy, that Norman was aware of it, and that Norman knew she could be terminated for violating it. This was spelled out in the leave of absence form that Norman signed when she went out of work on a medical leave absence on June

¹⁰ *Id.*

¹¹ *News Journal v. McCune*, 1996 WL 280761, at *3 (Del. Super.).

¹² *Diamond Materials v. Manganaro*, 1999 WL 1611274, at *4 (Del. Super.).

¹³ *See McCoy v. Occidental Chemical Corp.*, 1996 WL 111126, at *3 (Del. Super.); *Smoot v. Comcast Cablevision*, 2004 WL 2914287, at *4 (Del. Super.).

¹⁴ *Smoot*, 2004 WL 2914287, at *4.

¹⁵ *Id.*

¹⁶ *Fade v. Burris Foods*, 1997 WL 366889, at *2 (Del. Super.).

19, 2006, and in the letter that she received on September 1, 2006. Similarly, there is no doubt that Norman consciously decided not to comply with the policy. Norman believed that Perdue had lost her medical records several times and had tricked her into signing another release so that it could get more copies of her medical records. She was so tired of dealing with Perdue's requests for her medical records that she relied on her doctor to send notes to Perdue about her medical condition.¹⁷ While Norman may have believed that her doctor was faxing notes to Perdue every time that she saw him, her belief was contrary to what she was told to do in the letter that Perdue sent to her. The letter did not direct Norman to have her doctor send a note to Perdue. It directed Norman to come to the office and update her leave of absence form in accordance with Perdue's leave of absence policy. Norman never did this and, aside from her testimony, there is no evidence in the record that her doctor sent a note to Perdue in response to Perdue's letter to Norman. In any event, it does not matter what Norman's doctor did or did not do because it was Norman and no one else that was supposed to update her leave of absence form. The Board's conclusion that Norman willfully violated Perdue's leave of absence policy by not going to the office and updating her medical leave of absence form is in accordance with the applicable law and supported by substantial evidence in the record.

¹⁷ The following is an excerpt of Norman's testimony about Perdue's handling of her medical records: "It got so bad, I am telling you know, it got so bad they wouldn't touch my notes because they knew they had messed up. So then they are going to try and work me with the other doctor and then he told them I can't touch her. I don't know anything about her. You have nothing here. You have nothing here when I had a folder like this. And then they are going to give, every time I went to the doctor I sent them the papers. It got so bad that I was so sick that my doctor just started faxing them and faxing them and faxing them papers and I go over there and there are two papers in a folder. But they are going to come back on me and tell me that I am fired." Tr. at 14.

CONCLUSION

The Board's decision is affirmed.

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley

oc: Prothonotary
cc: Unemployment Insurance Appeal Board