

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY

CASHEA A. KELLY, )  
 ) C.A. No.: K10A-10-003 JTV  
Appellant, )  
 )  
v. )  
 )  
PRECIOUS MOMENTS EDUC. )  
AND COMM. CENTER, OWNER/ )  
OPERATOR: ANGELA WILSON, )  
 )  
Appellees. )

*Submitted: August 5, 2011*  
*Decided: November 30, 2011*

Cashea A. Kelly, *Pro Se*.

Glynis Gibson, Gibson & Nowak, Dover, Delaware. Attorney for Appellees.

*Upon Consideration of Appellant's*  
*Appeal From Decision of the*  
*Unemployment Insurance Appeals Board*  
**AFFIRMED**

**VAUGHN, President Judge**

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**ORDER**

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

1. This is an appeal from a decision of the Unemployment Insurance Appeal Board. The appellant/claimant, Cashea A. Kelly, was hired by the appellee/employer, Precious Moments Education and Communication Center, to dual positions as a lead teacher and teacher's assistant. The employer operates a licensed child care facility. The claimant worked in those positions from November 10, 2008 through November 5, 2009. The state requires that teachers in licensed child-care facilities meet certain qualifications in order for the child care facility to be licensed. A certification which the claimant was required to have was known as a TECE I, which apparently means successful completion of a class bearing that name. At the time the claimant was hired, the employer apparently believed that she had the necessary certifications. However, she did not have the TECE I certification. She enrolled in a TECE I class in the spring of 2009. However, she did not complete the class. In November 2009, she was discharged because she did not complete the TECE I course and obtain the TECE I certification.

2. The claimant contends that she was unaware of the qualification requirements because she was never asked and did not discuss qualifications with the employer. She did fail the TECE 1, but she contends she believed the certification was to result in a salary increase if obtained, and was not a requirement of employment.

3. When reviewing decisions from the Board, the court is limited to

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consideration of the record which was before the administrative agency.<sup>1</sup> The court must determine whether the findings and conclusions of the Board are free from legal error and are supported by substantial evidence in the record.<sup>2</sup> Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.<sup>3</sup> The court does not weigh the evidence, determine questions of credibility, or make its own factual findings.<sup>4</sup> The reviewing court merely determines if the evidence is legally adequate to support the agency's factual findings.<sup>5</sup>

4. Pursuant to 19 *Del. C.* § 3314 an employee is ineligible to receive unemployment benefits if he or she has been terminated for just cause.<sup>6</sup> The term

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<sup>1</sup> *Hubbard v. Unemployment Ins. Appeal Bd.*, 352 A.2d 761, 763 (Del. 1976).

<sup>2</sup> *Unemployment Ins. Appeal Bd. v. Martin*, 431 A.2d 1265, 1266 (Del. 1981); *Pochvatilla v. United States Postal Serv.*, 1997 WL 524062, at \*2 (Del. Super. June 9, 1997); 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.”).

<sup>3</sup> *Oceanport Ind. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del. 1994); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super. 1986).

<sup>4</sup> *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

<sup>5</sup> *Majaya v. Sojourners' Place*, 2003 WL 21350542, at \*4 (Del. Super. June 6, 2003); *see also* 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).

<sup>6</sup> The statute provides: “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 and for each week thereafter until the individual has been employed in each of 4 subsequent weeks ....” 19 *Del. C.* § 3314(2).

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“just cause” denotes a wilful or wanton act in violation of either the employer’s interest, or the employee’s expected standard of conduct.<sup>7</sup> Wilful or wanton conduct is “that which is evidenced by either conscious action, or reckless indifference leading to a deviation from established and acceptable workplace performance.”<sup>8</sup> In a termination case, the employer has the burden of proving just cause.<sup>9</sup>

5. The Appeals Referee found for the claimant, reasoning that just cause for termination did not exist because the claimant did not actively misrepresent her qualifications prior to employment and the employer failed to check the claimant’s qualifications prior to offering her employment.

6. The Board, however, reversed the Appeals Referee. In its summary of evidence, it made the following pertinent evidentiary observations: that the certification was not required as a condition of being hired in the first place, but that the claimant needed to obtain it once she was hired; that there was evidence that the claimant had been warned that her job would be in jeopardy if the TECE I was not obtained; that the claimant failed to obtain the certification, despite being given nearly a year to do so; and that the claimant failed the TECE I course because she did not meet attendance requirements or make up missed work; and that keeping the

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<sup>7</sup> *Moeller v. Wilmington Sav. Fund Soc’y*, 723 A.2d 1177, 1179 (Del. 1999); *Tuttle v. Mellon Bank of Del.*, 659 A.2d 786, 789 (Del. Super. 1995); *Abex Corp. v. Todd*, 235 A.2d 271, 271 (Del. Super. 1967).

<sup>8</sup> *MRPC Fin. Mgmt. LLC v. Carter*, 2003 WL 21517977, at \*4 (Del. Super. June 20, 2003).

<sup>9</sup> *Country Life Homes, Inc. v. Unemployment Ins. Appeal Bd.*, 2007 WL 1519520, at \*3 (Del. Super. May 8, 2007); *Carter*, 2003 WL 21517977, at \*4.

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claimant on as an employee despite failure of the TECE I course jeopardized the employer's own certification. Under these circumstances, the Board determined that the claimant's failure to be licensed properly as required by the State licensing authority was just cause for termination and denied benefits. The Board's findings are clearly supported by the evidence.

7. This Court has previously recognized that failure of an employee to be properly licensed to perform work within the course and scope of employment constitutes just cause for termination.<sup>10</sup> Here, putting aside any possible misunderstanding concerning required qualifications at the time the claimant was hired, I am satisfied that her failure to successfully complete the class because of missed classes and failure to make up missed work, after being put on notice that successful completion of the class was a necessary condition of continued employment and after being given a reasonable opportunity to complete the course, constitutes just cause for termination. Therefore, the decision below is *affirmed*.

**IT IS SO ORDERED.**

/s/ James T. Vaughn, Jr.

President Judge

oc: Prothonotary  
cc: Order Distribution  
File

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<sup>10</sup> *Bishop v. Trexler*, 2005 WL 272936, at \*2.