IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

DIAMOND STATE YOUTH, INC., Appellant,	)	
v.	)	C.A. No.: 07A-12-006 FSS
BRIAN WEBSTER and UNEMPLOYMENT INSURANCE APPEAL BOARD, Appellees.	)	

Submitted: July 21, 2008
Decided: August 8, 2008

ORDER

Upon Appeal from the Unemployment Insurance Appeal Board – REVERSED AND REMANDED

1. Appellant filed a timely appeal from the Unemployment Insurance Appeal Board's November 28, 2007 award of benefits. The Board found that Appellant failed to meet its burden of proving that Appellee was discharged for cause.

2. Appellant presented evidence to the Board, which if believed, showed that Appellee was fired after he used the company's credit card to cover his personal expenses. Specifically, Appellee used Appellant's credit card to put gasoline into his personal vehicle.

3. At the Board's hearing, Appellee testified that he admitted the theft to the Delaware State Police, and that he had pleaded guilty in Justice of the Peace Court. Nevertheless, Appellee further testified that his admission was coerced, and he asked the Board to suppress it.

4. Concerning Appellee's admitted confession and guilty plea, the Board inexplicably appears to have ignored that testimony. Instead, as to the police report and its reference to the admission, the Board held:

> the alleged confession of the claimant to the actions leading to his termination is not admissible hearsay, and the Board cannot base its decision on that evidence.[1]

5. Appellant's testimony that he admitted the theft to the police was not hearsay. Furthermore, as Appellant correctly argues, Appellee's confession and guilty plea were admissible under Delaware Rule of Evidence 801(d)(2), as an admission by party-opponent.

6. Taking into account Appellant's admission and the other evidence, including hearsay that could be considered in an administrative hearing, the Board potentially could have concluded that Appellee used Appellant's credit card to steal from Appellant. And, if the Board had viewed the evidence that way, there was

[1] The police report was received by the Board without objection.

reason to find that Appellee's discharge was for cause.

7. The administrative hearing was a civil proceeding. The Board, therefore, did not have the authority to "suppress" Appellee's confession and guilty plea.[2] The Board could have found that the confession and guilty plea were untrustworthy and it could have concluded that Appellant otherwise failed to meet its burden of proof. It appears, however, that the Board erroneously refused to consider Appellee's confession and guilty plea, at all. That oversight may have been important to the outcome.

8. There is a deeper and more difficult issue that this case might have presented. Some jurisdictions apply collateral estoppel, or issue preclusion, to guilty pleas. Put simply, where a litigant pleads guilty and is convicted by a court, the litigant may not challenge the conviction in subsequent, civil litigation.[3] A virtue of collateral estoppel is that it prevents contradictory fact-finding by different tribunals. Thus, if collateral estoppel applied here, the Board could not have considered Appellee's explanation for his guilty plea. The Board would have had to accept the Justice of the Peace Court's fact-finding and the Board, therefore, would have had

---

[2] *See generally*, *U.S. v. Janis*, 428 U. S. 433 *reh'g denied* 429 U.S. 874 (1976) (the exclusionary rule does not apply to exclude evidence from a civil proceeding).

[3] *See State of New Jersey v. Gonzalez*, 641 A.2d 1060 (N.J. Super. Ct. App. Div. 1994), *aff'd* 667 A.2d 684 (N.J. 1995)(Former casino employee collaterally estopped from challenging, in a licensing hearing, his prior guilty plea to drug charges.).

to have found that Appellee stole from Appellant. The sophisticated question whether collateral estoppel applies to guilty pleas has not been definitively decided in Delaware,[4] however, and it was not presented to the Board, nor is it before the court now.

Because the Board's November 28, 2007 decision awarding benefits turned on an error of law, it is **REVERSED**. The case is **REMANDED** to the Unemployment Insurance Appeals Board for a new hearing. The court urges the Board to rule on the evidence's admissibility as soon as it is offered. That way, the parties will know the state of the record as they make it.

IT IS SO ORDERED.

Date: August 8, 2008

/s/ Fred S. Silverman
Judge

OC: Prothonotary (Civil Division)
pc: Michael C. Heyden, Esquire
Brian Webster, Appellee
Unemployment Insurance Appeal Board

[4] *See Petrella v. Alexander*, Del. Super., C.A. No. 90C-JL-261, Taylor, J. (Nov. 8, 1991)(ORDER)(citing *Warmouth v. State Bd. of Examiners in Optometry*, 514 A.2d 1119 (Del. Super. 1985) *aff'd* 511 A.2d 1 (Del. 1986); *Evans v. Meekins*, Del. Super., C.A. No. 86C-JA-142, Bifferato, J. (Dec. 3, 1986) (Letter Op.)) (Superior Court consistently applies collateral estoppel to preclude subsequent challenges to prior convictions).