

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

HENRY E. BROWN,)	
)	
Appellant,)	
)	C.A. No. 08A-04-003-JRJ
v.)	
)	
PARKVIEW NURSING AND)	
REHABILITATION)	
CENTER,)	
)	
Appellee.)	

Date Submitted: March 17, 2009
Date Decided: June 30, 2009

OPINION

Upon Appeal of the Decision of the Unemployment Insurance Appeal Board:
AFFIRMED.

Henry E. Brown, *pro se*, 1903 N. Jefferson Street, Wilmington, DE 19802,
Appellant.

David H. Williams, Esquire, 500 Delaware Avenue, Suite 1500, P.O. Box 2306,
Wilmington, DE 19899, Attorney for Parkview Nursing and Rehabilitation Center.

Jurden, J.

I. INTRODUCTION

Henry Brown (“Brown”) appeals the decision of the Unemployment Insurance Appeal Board (“the Board”) denying his request for unemployment benefits. For the reasons set forth below, the Court finds that the Board’s decision denying Brown’s unemployment benefits is free from legal error and supported by substantial evidence. Accordingly, the Board’s decision is **AFFIRMED**.

II. STATEMENT OF FACTS

Brown was unemployed and receiving unemployment benefits when he applied to be a cook at the Parkview Nursing and Rehabilitation Center (“Parkview”). Brown filled out the Parkview employment application, which asks applicants if they have ever “received a verdict other than not guilty in any kind of criminal proceeding including but not limited to felonies or misdemeanors.”¹ Brown answered in the affirmative, noting that he had two felony convictions in Pennsylvania, both for “association[.]”² On page five of Brown’s application for employment, Brown signed and dated the certification and acknowledgement form that states, “I realize that employment depends upon the successful completion of pre-employment testing, which includes the following: reference checks/service

¹ Record on Appeal (“Record”) at 45, Docket Item (“D.I.”) 4.

² Record at 43.

letters, *criminal background check*, child and abuse registry checks, substance abuse screen and verification of licensure/certification where applicable.”³

Parkview offered Brown a position and he commenced working on July 23, 2007. On September 12, 2007, Kenneth Thompson (“Thompson”), the Investigative Administrator for Parkview, notified the Human Resources Director at Parkview, Jameca West (“West”), that Brown had been convicted of Criminally Negligent Homicide and Murder Second Degree in Pennsylvania in 1979 and 1980 respectively.⁴ Consequently, Parkview terminated Brown’s employment effective September 18, 2007. Thompson notified Brown in writing that Delaware law “automatically disqualifies [him] from employment in a nursing home” because of Brown’s prior convictions.⁵ West testified that she would not have hired Brown had she known of these criminal charges.⁶

Brown filed an application for unemployment benefits on September 30, 2007.⁷ On January 2, 2008, an appeals referee in the Department of Labor held a hearing and determined that Brown was discharged from his work for just cause and was therefore ineligible for unemployment benefits.⁸ Brown appealed this decision to the Board. The Board held a hearing to address the matter on February 6, 2008. The Board affirmed the decision of the appeals referee, finding that

³ *Id.* at 45 (emphasis added).

⁴ Board Hr’g Tr. (“Hr’g Tr.”) at 7, Feb. 6, 2008; Record at 78.

⁵ Record at 56 (citing “Title 16, Del. C. Ch. 11”).

⁶ Hr’g Tr. at 8.

⁷ Record at 61.

⁸ *Id.* at 40.

Brown was discharged from his work for just cause for “failing to pass a background check that revealed adjudication of guilt for crimes that disqualified him from working in a nursing home in Delaware.”⁹

Brown appealed the Board’s decision to this Court on April 7, 2008. On appeal, Brown does not dispute the validity or application of 16 *Del. C.* § 1141. Nor does he dispute his criminal history. Brown argues that he was unaware of any law that disqualifies him from employment at a nursing home and that, had he known this information, he would not have applied and forfeited his unemployment benefits.¹⁰ Brown also argues that Parkview should not have hired him before his criminal background check was completed.¹¹ In Brown’s own words, “The law is what it is! The practice need[s] to be changed.”¹²

III. STANDARD OF REVIEW

This Court’s appellate review of the Board’s decision is limited. In reviewing a decision of the Board, this Court must determine whether its findings and conclusions are “free from legal error and supported by substantial evidence in the record.”¹³ Substantial evidence means “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”¹⁴ The “substantial evidence” standard means “more than a scintilla but less than a preponderance of

⁹ *Id.* at 64.

¹⁰ Brown’s Opening Br., D.I. 10; Record at 84.

¹¹ Record at 84.

¹² Brown’s Opening Br.

¹³ *PAL of Wilmington v. Graham*, 2008 WL 258986, at *3 (Del. Super. June 18, 2008).

¹⁴ *Anchor Motor Freight v. Ciabottoni*, 716 A.2d 154, 156 (Del. 1998).

the evidence.”¹⁵ The Court “does not weigh the evidence, determine questions of credibility, or make its own factual findings.”¹⁶ The Court reviews questions of law *de novo* to determine “whether the Board erred in formulating or applying legal precepts.”¹⁷

IV. ANALYSIS

There is substantial evidence to support the Board’s finding that Parkview discharged Brown for just cause. Under Delaware law, an individual is disqualified from receiving unemployment compensation benefits when “the individual was discharged from the individual’s work for just cause in connection with the individual’s work”¹⁸ An employer bears the burden of proving by a preponderance of the evidence at the hearing that an employee was discharged for just cause.¹⁹ “Just cause” is defined 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.”²⁰ An employee’s conduct will be considered willful or wanton when he is “conscious of his conduct or recklessly indifferent of its consequences.”²¹

¹⁵ *Breeding v. Contractors-One-Inc.*, 549 A.2d 1102, 1104 (Del. 1988).

¹⁶ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

¹⁷ *Id.*

¹⁸ 19 *Del. C.* § 3314(2).

¹⁹ *Country Life Homes, Inc. v. Unemployment Ins. Appeal Bd.*, 2007 WL 1519520, at *3 (Del. Super. May 8, 2007).

²⁰ *Majaya v. Sojourner’s Place*, 2003 WL 21350542 (Del. Super. June 6, 2003).

²¹ *Filanowski v. Port Contractors, Inc.*, 2007 WL 64758, at *3 (Del. Super. Jan. 2, 2007) (citation omitted).

Delaware law forbids Brown from working at Parkview, or any other nursing home in Delaware. According to 16 *Del. C.* § 1141(c): “No employer who operates a nursing home . . . may hire any applicant without obtaining a report of the person’s entire criminal history record” The Statute further directs the Delaware Department of Health and Social Services (“DHSS”) to “promulgate regulations regarding the criteria for unsuitability for employment, including the types of criminal convictions which automatically disqualify a person from working in a nursing home” Brown’s prior convictions of Criminally Negligent Homicide and Murder Second Degree are among those prohibited by the DHSS regulations.²² A nursing home may “hire an applicant on a conditional basis”²³ In such a circumstance, an applicant’s “final employment” status will be contingent on the employer’s confirmation that there are no “disqualifying convictions as defined by DHSS regulations.”²⁴ When Parkview confirmed that Brown was disqualified from working at its facility, it immediately terminated his conditional employment, as required by law.²⁵

Brown’s ignorance of the law is no excuse.²⁶ Brown acknowledged in writing that his employment with Parkview depended upon his successful

²² 16 *Del. Admin. C.* § 3105-6.5 (“Conviction of any act causing death, as defined by 11. *Del. C.* Ch. 5 Subchapter II, Subpart B, with no time limit.”)

²³ 16 *Del. C.* § 1141(f).

²⁴ *Id.*

²⁵ *Id.* (“an employer must immediately terminate a conditionally-hired employee upon notification of the employee’s convictions of any disqualifying crime[.]”)

²⁶ See e.g. *Spicer v. Spicer Unlimited*, 2005 WL 914469 (Del. Super. April 21, 2005).

completion of a criminal background check. Brown's criminal background prohibits him from working at Parkview or any other nursing home facility in Delaware. According to West, she asked Brown about his "association charge" in his job interview, but Brown did not elaborate on the details.²⁷ There is substantial evidence to support the Board's finding that Brown was recklessly indifferent to the consequences of his actions and, as a result, his termination was for just cause.

V. CONCLUSION

Because the Court finds that the Board's decision to deny Brown unemployment benefits is supported by substantial evidence, and there is no legal error, the Board's decision is **AFFIRMED**.

IT IS SO ORDERED.

Jan R. Jurden, Judge

²⁷ Hr'g Tr. at 8; Record at 78.