

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

ADRIAN STEWART,)
Appellant,)
)
v.) C.A. No. 09A-01-011 JRJ
)
)
BEST WESTERN HOTEL)
and)
UNEMPLOYMENT INSURANCE)
APPEAL BOARD)
Appellees.)

Submitted: May 12, 2009
Decided: August 11, 2009

Upon Appeal from the Unemployment Insurance Appeal Board:
AFFIRMED.

OPINION

Adrian Stewart, *pro se*, 827 Bennett Street, Wilmington, DE 19801,
Appellant.

Best Western Hotel, unrepresented, 1807 Concord Pike, Wilmington, DE
19803, Appellee.

Daniel Logan, Deputy Attorney General, Department of Justice, 820 North
French Street, Wilmington, DE 19801, Attorney for Appellee,
Unemployment Insurance Appeal Board.

Jurden, J.

I. INTRODUCTION

Adrian Stewart (“Stewart”) 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 Stewart’s unemployment benefits is free from legal error and supported by substantial evidence. Accordingly, the Board’s decision is **AFFIRMED**.

II. STATEMENT OF FACTS

Stewart was employed by Best Western Hotel (“Best Western”) at various times since 2003.¹ Most recently, Stewart was employed as a driver for Best Western from August 4, 2007 through August 6, 2008.² Stewart worked full-time and earned \$10.25 per hour.³ He was scheduled to work from 3:00 p.m. until 11:00 p.m.⁴

At the time Stewart was hired, he had his own personal transportation to work.⁵ However, Stewart eventually was required to take the bus to work.⁶ As a result of this change, Stewart requested a 2:30 p.m. to 10:30 p.m. shift to coincide with the bus schedule.⁷ Mary Taylor (“Taylor”), Best

¹ Record on Appeal (“Record”) at 84, Docket Item (“D.I.”) 3.

² Referee Hr’g Tr. at 3-4, Oct. 2, 2008; Record at 48-49.

³ Record at 48.

⁴ *Id.* at 57.

⁵ *Id.* at 27.

⁶ *Id.*

⁷ *Id.*

Western's General Manager, denied this request and explained to Stewart that he was not permitted to make his own hours.⁸

Taylor testified that there was an ongoing problem with Stewart leaving work early.⁹ During the last week in July 2008, Stewart left early due to transportation issues.¹⁰ Stewart's supervisor, Douglas Hooper ("Hooper"), issued a written warning to Stewart on August 4, 2008, which explained that Stewart was not permitted to "punch out early."¹¹ Furthermore, Hooper advised Stewart that if he did not change his behavior, he would be terminated.¹² Stewart signed an acknowledgment of this written warning.¹³ Stewart left work early again on August 6, 2008.¹⁴ As a result, Stewart was terminated.¹⁵

Stewart filed for unemployment benefits on August 10, 2008.¹⁶ At the time of filing, Stewart listed the reason for separation as a "termination."¹⁷ However, Best Western submitted information to the Delaware Department of Labor indicating that Stewart was "frustrated with

⁸ *Id.* at 3.

⁹ Referee Hr'g Tr. at 4.

¹⁰ Record at 27.

¹¹ Referee Hr'g Tr. at 4.

¹² Record at 4.

¹³ *Id.*

¹⁴ Referee Hr'g Tr. at 4.

¹⁵ Record at 51.

¹⁶ *Id.* at 22.

¹⁷ *Id.*

working and scheduling issues and walked off the job.”¹⁸ The Delaware Department of Labor concluded that Stewart was disqualified from receiving unemployment benefits pursuant to 19 *Del. C.* § 3314(2).¹⁹

Stewart appealed the Department of Labor’s denial of his benefits to an Appeals Referee on September 10, 2008.²⁰ The Appeals Referee affirmed the decision of the Department of Labor on October 20, 2008, concluding that Stewart was discharged from his work for just cause.²¹

Stewart appealed the Referee’s decision to the Unemployment Insurance Appeal Board on October 22, 2008.²² The Board affirmed the decision of the Referee on December 3, 2008, and determined that Stewart was discharged for just cause because he “chose to walk off his shift after having been told that such behavior would lead to termination.”²³ Stewart filed the instant appeal on March 23, 2009.²⁴

III. STANDARD OF REVIEW

In reviewing a decision on appeal from the Board, this Court must determine if the decision is supported by substantial evidence and is free

¹⁸ *Id.*

¹⁹ Record at 22. 19 *Del. C.* § 3314(2) explains that if an employer had “just cause” to terminate an employee, the employee is consequently disqualified from receiving unemployment benefits.

²⁰ Record at 26.

²¹ *Id.* at 28.

²² *Id.* at 82.

²³ *Id.* at 86.

²⁴ Stewart’s Opening Brief (“Opening Brief”) at 1, D.I. 6.

from legal error.²⁵ Substantial evidence has been defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”²⁶ The Court does not “weigh the evidence, determine questions of creditability, or make its own factual findings.”²⁷

On appeal, this court is limited to an evaluation of the record that was before the Board.²⁸ When the Board adopts the factual findings of an Appeals Referee, this Court will also review the Appeals Referee’s findings of fact and conclusions of law.²⁹ If the Board’s decision is supported by substantial evidence, this Court “must affirm the ruling unless it identifies an abuse of discretion or a clear error of law.”³⁰ Questions of law are reviewed *de novo* to determine “whether the Board erred in formulating or applying legal precepts.”³¹

IV. ANALYSIS

There is substantial evidence to support the Board’s finding that Best Western terminated Stewart for just cause. Under Delaware law, an employee is disqualified from receiving unemployment compensation

²⁵ See *Short v. Unemployment Ins. Appeal Bd.*, 1986 WL 17127, at *1 (Del. July 30, 1986) (citing *Unemployment Ins. Appeal Bd. v. Duncan*, 337 A.2d 308 (Del.1975)).

²⁶ *Fed. St. Fin. Serv. v. Davies*, 2000 WL 1211514, at *2 (Del. Super. June 28, 2000) (quoting *Gorrell v. Div. of Vocational Rehab. and Unemployment Ins. Appeal Bd.*, 1996 WL 453356, at * 2 (Del. Super. July 31, 1996)).

²⁷ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

²⁸ *Majaya v. Sojourner’s Place*, 2003 WL 21350542, at *4 (Del. Super. June 6, 2003).

²⁹ *Id.*

³⁰ *Bolden v. Kraft Foods*, 2005 WL 3526324, at *2 (Del. Super. Dec. 21, 2005) (citing *Digiacombo v. Bd. of Public Educ.*, 507 A.2d 542, 546 (Del.1994)).

³¹ *Johnson*, 213 A.2d at 66.

benefits when “the individual was discharged from the individual’s work for just cause in connection with the individual’s work.”³² An employer bears the burden of proving by a preponderance of the evidence at the hearing that an employee was discharged for just cause.³³

“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.”³⁴ An employee’s conduct will be considered willful or wanton when he is “conscious of his conduct or recklessly indifferent of its consequences.”³⁵ Generally, an employee’s poor attendance will serve as the basis for a just cause termination.³⁶

On appeal, Stewart argues that he was not terminated for just cause because his poor attendance at work was due to family emergencies, severe medical problems, and work-related injuries.³⁷ He also claims that he was not given adequate warning of his termination because he was only warned for calling off from work and not for walking away from his shift.³⁸

Best Western relied on Stewart to perform his duties as a driver in the course of operating its business. Stewart’s repeated failure to remain at

³² 19 *Del. C.* § 3314(2).

³³ *Country Life Homes, Inc. v. Unemployment Ins. Appeal Bd.*, 2007 WL 1519520, at *3 (Del. Super. May 8, 2007).

³⁴ *Majaya*, 2003 WL 21350542, at *4.

³⁵ *Filanowski v. Port Contractors, Inc.*, 2007 WL 64758, at *3 (Del. Super. Jan. 2, 2007) (citation omitted).

³⁶ *Ortiz v. Unemployment Ins. Appeal Bd.*, 317 A.2d 100, 101 (Del. 1974).

³⁷ Record at 110.

³⁸ *Id.*

work for his entire shift directly contradicted Best Western's instructions. Furthermore, Stewart was given notice that his job was in jeopardy on several occasions. In Hooper's August 4, 2008 letter, Stewart was explicitly warned that he was not permitted to deviate from his expected hours.³⁹ Stewart was advised that if he did not adhere to his scheduled shift hours, he would be terminated.⁴⁰

Stewart's actions in leaving work early without permission were willful because he did so voluntarily, intentionally, and deliberately. Stewart's actions were also not in the best interest of his employer because Best Western needed an insured driver to take guests back and forth to restaurants, shopping, and work.⁴¹ Best Western had just cause for terminating Stewart because he voluntarily left work contrary to his employer's explicit instructions. This Court finds that Best Western has met its burden of proof that Stewart was terminated for just cause and he is therefore disqualified from receiving unemployment benefits.

³⁹ See Record at 4.

⁴⁰ *Id.*

⁴¹ Referee H'rg. Tr. at 4.

V. CONCLUSION

Because the Court finds that the Board's decision to deny Stewart unemployment benefits is supported by substantial evidence and is free from legal error, the Board's decision is **AFFIRMED**.

IT IS SO ORDERED.

Jan R. Jurden, Judge

cc: Prothonotary (original)