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

PATRICIA L. BEDDIA,	)	
	)	
Appellant,	)	
	)	C.A. No. 08A-09-007 PLA
v.	)	
	)	
COPPER PENNY SPORTSWEAR and UNEMPLOYMENT INSURANCE APPEAL BOARD,	)	
	)	
Appellees.	)	

ON APPEAL FROM THE
UNEMPLOYMENT INSURANCE APPEAL BOARD
AFFIRMED

Submitted: June 4, 2009
Decided: August 25, 2009

This 25th day of August, 2009, upon consideration of the appeal of Patricia L. Beddia ("Beddia") from the decision of the Unemployment Insurance Appeal Board ("the Board"), it appears to the Court that:

1. Beddia began working at the Copper Penny Sportswear store ("Copper Penny") in fall 2007.[1] The owner of Copper Penny Sportswear, Penny Weingartner ("Weingartner"), also owns an ice cream store called Scoops. Weingartner employed Beddia's daughter at Scoops for several

[1] Beddia and her former employer dispute the precise date on which Beddia became an employee.

years. In May 2008, however, Beddia's daughter was dismissed from her job at Scoops, allegedly as the result of theft from the store. Beddia left work early without notice on Monday, May 19, 2008. That evening, Beddia went to Scoops to confront Weingartner regarding her daughter's termination.

2. Beddia and Weingartner offer conflicting accounts of their May 19th discussion. Beddia recounts that the two had a private, albeit heated conversation, in which she expressed her dismay at her daughter's termination. Weingartner, by contrast, claims that Beddia was "screaming and hollering" at the back door of Scoops, within view and earshot of customers, as well as Scoops employees.[2] According to Weingartner, Beddia said Weingartner was a liar and a terrible boss, and threatened to post signs attacking Weingartner's businesses. Scoops manager Colleen Robinson testified before the Board that Beddia was screaming at Weingartner and could be heard inside Scoops, where customers were present. Robinson also heard Beddia threaten to post derogatory signs about Weingartner's businesses. Concerned about the reactions of customers, Robinson went outside to interrupt Beddia, at which time Weingartner came

[2] Docket 4, at 68 (Tr. of Hr'g Before the Unemployment Insurance Appeal Board (September 10, 2008)).

inside the Scoops building. Weingartner and Robinson claim that after they locked the door, Beddia banged on the entrance and screamed profanities at Weingartner before walking away. The next day, Beddia was absent without explanation from work at Copper Penny. Weingartner e-mailed Beddia to inquire as to whether she intended to quit. Beddia stated that she was not resigning.

3. On the morning of Thursday, May 22, Weingartner sent Beddia an e-mail instructing Beddia not to report to work until she was called because Weingartner "need[ed] time to decide whether or not to continue [Beddia's] employment."[3] Weingartner expressed dismay over Beddia's "rude and disrespectful . . . outburst . . . in front of [her] co-workers," her threats to damage Copper Penny's business, and her unexplained absences from work.[4] Beddia did not receive Weingartner's e-mail before reporting to work that morning. When Beddia arrived, she apparently told other Copper Penny employees that she planned to work until she was fired. Beddia's co-workers suggested that she call Weingartner. During the ensuing telephone conversation, Weingartner told Beddia to go home and check her e-mail. Beddia refused to clock out after repeated requests, and

[3] Docket 4, at 8.

[4] *Id.* at 7.

the tenor of the conversation devolved until Beddia told Weingartner to "go f— herself" and hung up.[5] Before the Board, Copper Penny employees Nikki Guhl and Beverly Hardy testified to overhearing Beddia's side of the conversation, including her use of profanity.[6] Weingartner called back after approximately ten minutes and spoke to another employee at the Copper Penny store who reported that Beddia was still refusing to leave. Beddia allegedly made copies of documents and demanded to know which of her co-workers "ratted her out."[7] Beddia eventually departed. At this point, Weingartner considered Beddia's employment to be terminated as a result of insubordination, disrespect to her co-workers, and derogatory statements about the business.

4. Beddia filed for unemployment benefits with the Department of Labor (DOL), and Copper Penny contested her claim. A DOL Claims Deputy found that Beddia was disqualified for benefits under 19 *Del. C.* § 3314(2) because Copper Penny had met the burden of showing just cause for terminating Beddia due to her "several acts of misconduct."[8] Beddia timely

[5] Docket 4, at 81 (Tr. of Hr'g Before the Unemployment Insurance Appeal Board).

[6] *Id.* at 73-74.

[7] *Id.* at 73.

[8] Docket 4, at 23 (Determination of Claims Deputy (June 12, 2008)). Under 19 *Del. C.* § 3314(2), an individual is disqualified from receiving unemployment benefits "[f]or the

appealed. After a hearing before a DOL Appeals Referee, the Claims Deputy's determination of disqualification was reversed. The Appeals Referee found that Beddia was entitled to benefits because her misconduct occurred "in a single isolated incident or as a result of poor judgment" and did not "rise to the level of willful or wanton misconduct" or constitute a pattern of misconduct sufficient to justify her termination.[9] The Appeals Referee noted that "[o]rdinarily for there to be a finding of willful or wanton misconduct a prior unequivocal warning is required to place the employee on clear notice that repetition of certain conduct may result in termination."[10] The Appeals Referee found that Beddia had not been given an unequivocal warning, and thus concluded that her actions did not constitute an "intentional disregard for her employer's interests" disqualifying her from receiving unemployment benefits.[11]

5. Copper Penny appealed the decision of the Appeals Referee. On September 10, 2008, a hearing was held before the Board. Copper

---

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 (whether or not consecutive) and has earned wages in covered employment equal to not less than 4 times the weekly benefit amount."

[9] Docket 4, at 33 (Decision of Appeals Referee (August 1, 2008)).

[10] *Id.*

[11] *Id.*

Penny elicited new testimony from Colleen Robinson, Nikki Guhl, and Beverly Hardy to corroborate Weingartner's version of events. Weingartner herself offered expanded testimony regarding her reasons for terminating Beddia, explaining that Beddia was terminated not merely for refusing to leave the Copper Penny's premises when instructed, but also for her derogatory comments and disrespect to co-workers.[12] After considering the record below and the testimony presented at the hearing, the Board reversed the Appeals Referee's decision and held that Beddia was disqualified from receiving benefits. The Board found that Beddia engaged in willful and wanton conduct that was sufficiently serious to justify dismissal without notice. Specifically, the Board found that Copper Penny had just cause to terminate Beddia based upon several different incidents of misconduct during the week of May 19, 2008: Beddia's use of profanity towards Weingartner in the presence of other employees; "hostile, and potentially violent" conduct before customers; repeated refusals to leave Copper Penny despite Weingartner's instructions; attempts to "instigate trouble among her

[12] Docket 4, at 71.

co-workers"; and "threats to alienate customers by posting signs critical of the Employer."[13]

6. Beddia filed a *pro se* appeal from the Board's decision to this Court on September 22, 2008. Beddia argues that the Board's decision should be reversed on the following grounds: (1) Weingartner lied in her testimony about Beddia's employment starting date and wage; (2) Beddia's absences were not without notice because she informed Weingartner that she would not be at work on Tuesday, May 20, 2008; (3) Colleen Robinson lied in stating that customers and Scoops employers could hear Beddia's confrontation with Weingartner on May 19; (4) Beverly Hardy and Nikki Guhl lied in claiming that Beddia did not leave Copper Penny when instructed on May 22, as Beddia's departure was only delayed by trips to her vehicle to retrieve Copper Penny merchandise; (5) contrary to the Board's finding that she showed no remorse for her actions, Beddia called and e-mailed Weingartner to apologize; and (6) Beddia was informed by former co-workers that "every summer someone gets fired," and thus Weingartner's stated reasons for terminating her were pretenses.[14]

[13] Docket 4, at 59 (Decision of the Unemployment Insurance Appeal Board (September 12, 2008)).

[14] Docket 3 (Notice of Appeal (September 17, 2008)); Docket 7 (Appellant's Br.).

7. This Court's appellate review of decisions of the Board is limited. The Court's function is to determine whether the Board's findings and conclusions are supported by substantial evidence and free from legal error.[15] The substantial evidence standard is satisfied if the Board's ruling is supported by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[16] The Court does not weigh evidence, decide questions of credibility, or engage in fact-finding in reviewing a Board decision.[17]

8. Under 19 *Del. C.* § 3314(2), an individual is ineligible for benefits when discharged for "just cause."[18] The employer bears the burden of proving the existence of just cause by a preponderance of the evidence.[19] Just cause is found when an employee engaged in a "willful or wanton act or pattern of conduct in violation of the employer's interest, the employee's

---

[15] *Stoltz Mgmt. Co. v. Consumer Affairs Bd.*, 616 A.2d 1205, 1208 (Del. 1992); *see also Lively v. Dover Wipes* Co., 2003 WL 21213415, at *1 (Del. Super. May 16, 2003).

[16] *Anchor Motor Freight v. Ciabottoni*, 716 A.2d 154, 156 (Del. 1998) (citation omitted).

[17] *Hall v. Rollins Leasing*, 1996 WL 659476, at *2 (Del. Super. Oct. 4, 1996) (citing *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965)); *see also Duncan v. Del. Dep't of Labor*, 2002 WL 31160324, at *2 (Del. Super. Sept. 2, 2002).

[18] 19 *Del. C.* § 3314(2).

[19] *Diamond State Port Corp. v. Ferguson*, 2003 WL 168635, at *2 (Del. Super. Jan. 23, 2003).

duties, or the employer's expected code of conduct."[20] An employee's acts will be considered willful or wanton if she was "conscious of [her] conduct or recklessly indifferent of its consequences."[21] An employee's conduct is considered "wanton" when it is "heedless, malicious, or reckless, but not done with actual intent to cause harm."[22] By contrast, "willful" conduct is that which "implies actual, specific, or evil intent."[23] Where a company policy against certain conduct is "clearly communicated" to the employee, a single incident of misconduct may justify termination.[24] Furthermore, willful or wanton misconduct can justify immediate dismissal without notice if sufficiently serious.[25]

9. Here, the Board's conclusion that Beddia was terminated for just cause is supported by substantial evidence. The Board has sole discretion to resolve disputes of fact and credibility by accepting the

---

[20] *See, e.g.*, *Avon Products, Inc. v. Wilson*, 513 A.2d 1315, 1317 (Del. 1986); *Abex Corp. v. Todd*, 235 A.2d 271, 272 (Del. Super. 1967).

[21] *Filanowski v. Port Contractors, Inc.*, 2007 WL 64758, at *3 (Del. Super. Jan. 2, 2007), *aff'd*, 931 A.2d 436 (Del. 2007) (quoting *Mosley v. Initial Sec.*, 2002 WL 31236207, at *2 (Del. Super. Oct. 2, 2002)).

[22] *Tuttle v. Mellon Bank of Del.*, 659 A.2d 786, 789 (Del. Super. 1995).

[23] *Id.*

[24] *Ross v. Zenith Prods.*, 2004 WL 2087955, at *3 (Del. Super. Sept. 17, 2004).

[25] *Tuttle*, 659 A.2d at 789.

testimony of one witness over another.[26] The Board properly exercised its discretion in accepting the testimony of Weingartner and the other witnesses offered by Copper Penny over Beddia's testimony, and this Court will not disturb the Board's findings. Beddia's conclusory allegations that the employer's witnesses lied in their testimony do not provide a basis for overturning the Board's decision. The Court also notes that many of the relevant particulars testified to by the employer's witnesses, including the fact that Beddia repeatedly used profanity against Weingartner, were consistent with Beddia's own account.

10. Based upon the record, including the testimony of the employer's witnesses, the Board had substantial evidence from which to conclude that Copper Penny possessed just cause to terminate Beddia's employment. This Court has previously held that an employee's use of obscene language against a supervisor without sufficient provocation can constitute willful or wanton misconduct that justifies termination.[27] In this case, Beddia's conduct went far beyond a single use of profanity. Beddia demonstrated clearly wanton conduct in addressing obscenity and aggressive

---

[26] *Connections Community Support Programs, Inc. v. Bantum*, 2001 WL 1628474, at *2 (Del. Super. March 30, 2001) (citing *DiSabatino Bros., Inc. v. Wortman*, 453 A.2d 102, 105-06 (Del. 1982)); *Produce City, Inc. v. Radziewicz*, 1999 WL 743958, at *3 (Del. Super. July 7, 1999).

[27] *See Price v. Kirby & Holloway*, 1994 WL 682323, at *2 (Del. Super. Oct. 27, 1994).

behavior toward her supervisor before co-workers and customers in a manner calculated to undermine Weingartner's authority, absenting herself from work without prior notice or explanation, confronting co-workers about "ratting her out," and refusing to leave the Copper Penny shop when instructed to do so. Her threats to cause damage to Weingartner's business reputation rose to the level of willfulness. Beddia's dismay over her daughter's termination from Scoops does not constitute a provocation sufficient to mitigate a persistent course of insubordination, derogatory statements about the employer's businesses, and disrespect towards other employees. Beddia's wanton and willful misconduct, consisting of behavior that was clearly against the employer's interests and continued over several days, was sufficiently severe and prolonged that termination without notice was justified.[28]

[28] Moreover, Weingartner attempted to ensure that Beddia received clear notice that she was violating her employer's policies by the May 22 e-mail, which stated that Beddia's conduct was "inexcusable" and "will not be tolerated" and that her employment was at risk. *See* Docket 4, at 7. Weingartner specifically asked Beddia to leave work and read this e-mail on the morning of May 22, but Beddia refused to comply and escalated the situation with further insubordination. It would have begged logic for the Board to find that the employer lacked just cause to terminate Beddia based upon failure to provide sufficient notice of the risk of termination when Beddia's insubordinate misconduct included evading this warning.

11. For the foregoing reasons, the decision of the Board is hereby **AFFIRMED.**

IT IS SO ORDERED.

Peggy L. Ableman, Judge

Original to Prothonotary
cc: Patricia L. Beddia
Philip G. Johnson, Esq.
Copper Penny Sportswear