

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
ONE THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947

September 16, 2009

Frances A. Mergliano
39 Blossom Way
Millsboro, Delaware 19966

Chris Hawkins, Area Supervisor
McDonald's of Millsboro
c/o The Meoli Companies
32422 Long Neck Road
Suite 201
Millsboro, Delaware 19966

**RE: Frances Mergliano v. Unemployment Insurance Appeal Board
Civil Action No. 09A-02-001**

Submitted: September 4, 2009
Decided: September 16, 2009

Unemployment Insurance Appeal Board's Decision
Denying Benefits to Appellant: **AFFIRMED**

Dear Ms. Mergliano and Mr. Hawkins:

Frances Mergliano ("Ms. Mergliano") appeals the decision of the Unemployment Insurance Appeals Board ("the Board") that denied Ms. Mergliano's request for unemployment insurance benefits. The Board denied Ms. Mergliano's request for benefits after concluding she was discharged from her position with McDonald's ("Employer") for just cause. For the reasons set forth herein, the Board's decision is affirmed.

Procedural & Factual Background

Ms. Mergliano was working for Employer when she became loud and disrespectful in front of customers. The supervisor on duty, Stephanie Thompson ("Ms. Thompson"), asked Ms.

Mergliano to leave the premises but Ms. Mergliano continued to complain loudly. Ms. Thompson then asked Ms. Mergliano to turn in her uniform and fired Mrs. Mergliano. A week later, Ms. Thompson called Ms. Mergliano and asked her if she would like to return to work, which Ms. Mergliano did. There was, at that point, some discussion of considering the week for which Ms. Mergliano was not at work a suspension.

By way of decision dated October 18, 2008, a Claims Deputy determined that Ms. Mergliano was not eligible to receive unemployment benefits because she had not been terminated from her job but, rather, had been suspended. Ms. Mergliano appealed the decision and a hearing was held before an Appeals Referee. By way of letter decision mailed November 19, 2008, the Appeals Referee modified the Claims Deputy's decision, finding that Ms. Mergliano had been terminated. The Appeals Referee considered the parting as a termination because (1) Ms. Thompson had asked Ms. Mergliano to turn in her uniform and (2) Ms. Thompson did not discuss the notion of treating the parting as a suspension with Ms. Mergliano until a week after the incident. Although the Appeals Referee found that Ms. Mergliano had been fired from her job post, the Referee affirmed the Claims Deputy's denial of benefits.

Ms. Mergliano appealed the Appeals Referee's determination to the Board. A hearing was held on the matter on December 16, 2008, and a decision mailed to the parties on February 9, 2009. The Board found the testimony supported the conclusion that Ms. Mergliano had engaged in inappropriate behavior in front of Employer's customers. Accordingly, the Board concluded Employer terminated Ms. Mergliano's employment for just cause and Ms. Mergliano was not entitled to benefits for the week she did not work. Ms. Mergliano appeals that decision.

Discussion

When reviewing the decisions of the Board, this Court must determine whether the Board's findings and conclusions of law are free from legal error and are supported by substantial evidence in the record. *Unemployment Ins. Appeal Bd. v. Martin*, 431 A.2d 1265 (Del. 1981); *Pochvatilla v. United States Postal Serv.*, 1997 WL 524062 (Del. Super. Jun. 9, 1997); 19 *Del. C.* § 3323(a) (“In any judicial proceeding under this section, the findings of the [Board] 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.”). “Substantial evidence” is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion”. *Gorrell v. Division of Vocational Rehab.*, 1996 WL 453356, at *2 (Del. Super. July 31, 1996), *aff'd*, 693 A.2d 1082 (Del. 1997) (TABLE). The Court's review is limited: “It is not the appellate court's role to weigh the evidence, determine credibility questions or make its own factual findings, but merely to decide if the evidence is legally adequate to support the agency's factual findings.” *McManus v. Christiana Serv. Co.*, 1997 WL 127953, at *1 (Del. Super. Jan. 31, 1997).

In this case, the findings of the Board are supported by substantial evidence in the record. Section 3314 of Title 19 of the Delaware Code provides, in pertinent part, that one shall be disqualified for unemployment benefits if she has been “discharged from [her] work for just cause in connection with [her] work.” 19 *Del. C.* § 3314(2). “Generally, the term ‘just cause’ refers to a wilful or wanton act in violation of either the employer's interest, or of the employee's duties, or of the employee's expected standard of conduct.” *Abex Corp. v. Todd*, 235 A.2d 271, 272 (Del. Super. 1967). Just cause may arise from an isolated incident of behavior that displays contempt for the

normal procedures followed in the workplace. *Dozier v. Uncle Willie's Deli*, 1992 WL 423938, at **3-4 (Del. Super. Dec. 15, 1992).

The Board found (1) Ms. Mergliano belligerently addressed her supervisor in front of Employer's customers and (2) this behavior was clearly adverse to Employer's interest and in violation of Ms. Mergliano's expected standard of conduct. The Court finds the Board's conclusions to be supported by the evidence presented below and free from legal error.

Conclusion

For the reasons set forth herein, the Board's decision denying unemployment insurance benefits to Ms. Mergliano is affirmed.

Very truly yours,

T. Henley Graves

cc: Prothonotary
Unemployment Insurance Appeal Board