

2. Despite her remarkable credentials, Appellee had trouble learning her job. Appellee could not effectively edit doctors' reports, handle front-desk chores, or code properly. Appellant tried to help, working with Appellee one-on-one and having her do web-based training. Nothing worked. Appellee's subpar performance continued, resulting in patients' appointments being rescheduled and other disruptions.

3. Her suspicions raised, Appellant ordered Appellee's college transcripts. Appellant learned Appellee greatly understated how long she was in school. Appellee attended three undergraduate schools from 1987-2003 and, instead of two years as her resume promised, it took five years for Appellee to finish her master's degree.

4. In May 2011, Appellant fired Appellee, who then applied for unemployment benefits. A claims deputy granted Appellee's unemployment benefits, holding she was fired without "good cause."¹ Appellant timely appealed to an appeals referee.

5. The appeals referee upheld the claims deputy, finding that "[although Appellee's] resume may be misleading as to the time she spent studying for each degree, she attained the degrees listed from the mentioned institutions in

¹ 19 *Del. C.* § 3314(2) ("An individual shall be disqualified for benefits for the week in which the individual was discharged for just cause in connection with the individual's work . . .").

the last year given for each school [on her resume].” In other words, the referee found Appellee’s exaggerations were immaterial. Additionally, the referee held:

[Appellant] showed there was poor performance on the part of [Appellee] who was not able to do the work for which she was hired. There can be no question that it is a willful act in violation of [Appellant’s] interests to misrepresent one’s qualifications when [they] are essential to the performance of a job. [Appellee] had the qualifications essential to the performance of the position offered. [G]iven the factual circumstances for which [Appellee] was discharged, the tribunal is unable to find willful or wanton misconduct on the part of [Appellee] such that would support discharge for just cause.

6. Appellant timely appealed to the Board, which heard the appeal on November 9, 2011. After a full hearing, the Board deadlocked, leaving the referee’s decision controlling.² Appellant then timely appealed to this court.

7. The court’s role on appeal from the Board is limited. The court does not re-weigh evidence.³ The Board determines witness credibility and resolves testimony conflicts.⁴ The court may only decide if the Board’s factual findings are supported by substantial evidence and are legally error-free.⁵ Substantial evidence means such relevant evidence as a reasonable mind might

² *Pulli v. Intervet, Inc.*, 2006 WL 1173901 (Del. Super. Apr. 24, 2006) (Graves, R.J.).

³ *Murphy Marine Services, Inc. v. Brittingham*, 19 A.3d 302, 2011 WL 1716452, at *2 (Del. May 5, 2011) (TABLE).

⁴ *Id.*

⁵ *Unemployment Ins. Appeal Bd. v. Duncan*, 337 A.2d 308, 309 (Del. 1975).

accept as adequate to support a conclusion.⁶ If the Board's findings hold up and are legally error-free, the court must affirm unless the Board abused its discretion.⁷ If, however, the Board's findings are not supported by substantial evidence, they cannot stand.⁸

8. The referee and the Board had reason to find that Appellee's exaggerations amounted to willful conduct. Appellee was not mistaken in her belief that she breezed through college and graduate school while working full-time. Appellee had to have known that, even if she received her degrees in the end, it took a lot longer than she told Appellant it did.

9. The referee and the Board also correctly understood that there has to be a link between an employee's misconduct and her termination. The problem here is that the referee and the Board did not consider the indisputable link between Appellee's exaggerations and her dismissal. Although the referee mentioned that Appellee was qualified for the offered position, he failed to take into account Appellant's needs and the basis for Appellee's hiring. Appellant testified, and neither the referee nor the Board disputes her testimony:

[I]t is very important for me to have [an] office manager to be able to multitask. With her resume, she is very impressive to me. That shows her ability . . . to

⁶ *Murphy Marine Services, Inc. v. Brittingham*, 19 A.3d 302, 2011 WL 1716452, at *2.

⁷ *Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991).

⁸ *See Murphy Marine Services, Inc.*, 19 A.3d 302, 2011 WL 1716452, at *2.

multitask[] and complete [the] job in very efficient timing.

Thus, the fact Appellee eventually earned the degrees is not the be-all, end-all. Appellant, in deciding Appellee was the applicant to hire over the others, relied on Appellee's intentional misstatements. This is not a case where an employee, having claimed falsely to have been a varsity athlete, could not master a computerized billing system. So, the employee's resume inflation was immaterial. Here, there is a link between Appellee's misstatements and her poor performance.

10. The referee and Board correctly appreciated that an employee's inability, try as she might, to keep up is not, itself, willful misconduct. The problem is that Appellee held herself out, inaccurately, as a quick learner who was organized and efficient. As stated above, Appellant hired Appellee relying on her exaggerated multitasking abilities. But for Appellee's exaggerations, she would not have been hired. That appears to be how the record stands. Thus, the exaggerations were material to the hiring decision and Appellee's poor performance.

11. The referee and Board did not take into account or explain away the established link between Appellee's exaggerations and her poor performance. Because Appellee's misstatements, Appellant's reliance on them, Appellee's poor performance, and the link between the misstatements and poor

performance were established, it cannot be said that the referee's and Board's decisions are supported by the evidence.

For the foregoing reasons, the Board's January 15, 2012 decision is **REVERSED AND REMANDED** for proceedings consistent with this decision.

IT IS SO ORDERED.

/s/ Fred S. Silverman

Judge

cc: Prothonotary
pc: Robert D. Goldberg, Esquire
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Caroline Lee Cross, Deputy Attorney General