IN THE SUPERIOR COURT OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

MILTON MCGEE,	)	
	)	
Appellant,	)	
	)	
v.	)	C.A. No. N12A-03-016 WCC
	)	
AMAZON.COM and	)	
UNEMPLOYMENT INSURANCE	)	
APPEAL BOARD,	)	
	)	
Appellees.	)	

Submitted: October 22, 2013
Decided: January 31, 2013

Appeal from the Unemployment Insurance Appeal Board – AFFIRMED

OPINION

Milton McGee. 321 W. 29th Street, Wilmington, DE 19802. *Pro Se* Appellant.

Caroline L. Cross, Esquire. Department of Justice, 820 N. French Street, Wilmington, DE 19801. Attorney for Unemployment Insurance Appeal Board.

CARPENTER, J.

Milton McGee ("McGee") appeals the March 18, 2012 decision by the Unemployment Insurance Appeal Board ("UIAB"), which affirmed the Appeals Referee's denial of unemployment compensation benefits. McGee, who was employed by Amazon.com ("Amazon") as a warehouse associate, challenges the UIAB's finding that he is ineligible to receive benefits because he was discharged from work for just cause. Specifically, McGee argues that: 1) he was under the impression his previously accumulated points had been cleared and, therefore, his "attendance would be starting over"; 2) he properly requested the day off but could not fill out the required approval form because none were available; and 3) Amazon did not follow company policy regarding employee termination. Upon review of the record in this matter, the decision of the UIAB is hereby **AFFIRMED**.

FACTUAL BACKGROUND

McGee was employed as a warehouse associate by Amazon from April 2007 until June 2011. However, McGee was terminated from his employment as of June 17, 2011 due to excessive absenteeism and tardiness. All Amazon employees are provided an employee handbook at the time of hire, which explains Amazon's employment policies. There is no dispute that McGee received the handbook and was familiar with the policies.

Amazon uses both a warning and point system. Under the warning system, an employee is terminated if three (3) written warnings for attendance are received in one twelve-month period. Under the point system, an employee is similarly terminated if six (6) points are accumulated within a twelve-month period, even if the employee does not receive a final written warning. An employee receives one and one-half (1.5) points for missing work and one-half (0.5) point for being tardy.

Over the course of his employment with Amazon, McGee accumulated points and received multiple warnings for missing scheduled shifts and for being late. After McGee received one-half (0.5) point for being late for his shift on December 2, 2010, McGee received his first written warning on December 10, 2010. Specifically, the first written warning indicated that McGee had accumulated a total of five (5) points for attendance and tardiness, warning that his job was in jeopardy and that termination would result if he reached six (6) points. Further, by signing the warning, McGee was aware he was required to meet specified attendance expectations going forward. Despite the first final warning, McGee was late for his shift on December 17, 2010, resulting in the receipt of one-half (0.5) point and a second warning on January 12, 2011. Like the previous warning, the second warning stressed the risk of termination if McGee failed to improve his attendance and tardiness.

Although McGee's attendance points were reset to zero (0) in March 2011, he accumulated another five and one-half (5.5) points during April, May, and June of 2011. On June 13, 2011, when McGee again missed his scheduled shift, he received a third warning and was terminated.

PROCEDURAL BACKGROUND

McGee filed a claim for unemployment benefits effective June 19, 2011. The Claims Deputy denied the claim on July 15, 2011, finding McGee was not entitled to the receipt of unemployment benefits under 19 *Del. C.* § 3314(2) because he was discharged from his employer for just cause. McGee filed a timely appeal to the Appeals Referee. A hearing took place before the Appeals Referee on August 22, 2011, at which McGee appeared on his own behalf and Jamie Duncan ("Duncan"), a human resources representative, testified on behalf of Amazon. In a decision mailed September 13, 2011, the Appeals Referee affirmed the Claims Deputy's denial of benefits, finding that McGee was disqualified from receiving benefits under 19 *Del. C.* § 3314(1) because he was terminated for just cause.

McGee then appealed to the UIAB, which held a hearing on February 29, 2012. Finding that Amazon had just cause to discharge McGee pursuant to

19 *Del. C.* § 3314(2), the UIAB affirmed the Appeals Referee's denial of benefits on March 18, 2012.

The Appellant filed a *pro se* appeal in this Court on March 23, 2012. Neither Amazon nor the UIAB filed a response brief.

STANDARD OF REVIEW

The Delaware Supreme Court and this Court have repeatedly emphasized the Court's limited appellate review regarding an administrative agency's factual findings.[1] On appeal, the Court's review of the UIAB's decision is limited to determining whether the UIAB's findings and conclusions are supported by substantial evidence and free of legal error.[2] Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[3] Stated alternatively, substantial evidence is "that evidence from which an agency fairly and reasonably could reach the conclusion it did."[4] Specifically, "[i]t is more than a scintilla of evidence, but less than a preponderance."[5]

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[1] *Indus. Rentals, Inc. v. New Castle County Bd. of Adjustment,* 2000 WL 710087 (Del. Super. May 15, 2000), *rev'd on other grounds*, 776 A.2d 528 (Del. 2001); *Pub. Water Supply Co. v. DiPasquale*, 735 A.2d 378, 382 (Del. 1998).
[2] *Unemployment Ins. Appeals Bd. of the Dept. of Labor v. Duncan*, 337 A.2d 308, 209 (Del. 1975).
[3] *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981).
[4] *Mellow v. Bd. of Adjustment of New Castle County*, 565 A.2d 947, 954 (Del. Super. 1988) (citing *Nat'l Cash Register v. Riner*, 424 A.2d 669, 674-75 (Del. Super. 1980)).
[5] *Olney*, 425 A.2d at 614.

However, when reviewing a decision on appeal from the UIAB, the Court "does not weigh the evidence, determine questions of credibility, or make its own factual findings."[6] It is well established that it is the role of the UIAB—not this Court—to resolve conflicts in testimony and issues of credibility.[7] The UIAB's findings are conclusive and will be affirmed if supported by "competent evidence having probative value."[8] Further, the Court must give deference to "the experience and specialized competence" of the UIAB.[9] This Court, therefore, "does not sit as the trier of fact, nor should the Court replace its judgment for that of the [UIAB]."[10] As a result, if substantial evidence exists and there is no error of law, the Court must affirm the UIAB's decision.[11]

DISCUSSION

In the notice of appeal filed with this Court, McGee contends that: 1) the UIAB "[d]id not listen to all the facts"; 2) "other workers who were fired for the same reason . . . is [sic] getting employment insurance"; 3) he "was misled into believing [his] H.R. rep was honest"; and 4) he was and still is "going thru [sic] a

[6] *ILC of Dover, Inc. v. Kelley*, 1999 WL 1427805 (Del. Super. Nov. 22, 1999) (citing *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965)).
[7] *See Mooney v. Benson Mgmt. Co.*, 451 A.2d 839, 841 (Del. Super. 1982), *rev'd on other grounds*, 466 A.2d 1209 (Del. 1983).
[8] *Geegan v. Unemployment Comp. Comm'n.*, 76 A.2d 116, 117 (Del. Super. 1950).
[9] *Reeves v. Conmac Sec.*, 2006 WL 496136, at *3 (Del. Super. Feb. 21, 2006) (citing *Histed v. E.I. DuPont de Nemours & Co.*, 621 A.2d 340, 342 (Del. 1993)).
[10] *Id.* at *3 (citing *Johnson*, 213 A.2d at 66).
[11] *Stevens v. State*, 802 A.2d 939, 944 (Del. Super. 2002).

bad divorce and trying to get [his] son."[12] After reviewing the UIAB's decision and the record in this case, the Court concludes that the UIAB committed no legal error in finding that McGee was discharged for just cause in connection with his employment.

Under Delaware law, an individual is ineligible for benefits when discharged for "just cause."[13] In a discharge case, the employer has the burden of proving "just cause" by a preponderance of the evidence.[14] "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."[15] "Willful or wanton conduct" is defined as "that which is evidenced by either conscious action, or reckless indifference leading to a deviation from established and acceptable workplace performance; it is unnecessary that it be founded in bad motive or malice."[16] Further, "[j]ust cause includes notice to the employee in the form of a final warning that further poor behavior or performance may lead to termination."[17]

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[12] R. at 85.
[13] *See* 19 *Del. C.* § 3314(2).
[14] *Barton v. Innolink Sys., Inc.*, 2004 WL 1284203, at *1 (Del. Super. May 28, 2004).
[15] R. at 84 (quoting *Majaya v. Sojourner's Place and Unemployment Ins. Appeal Bd.*, 2003 WL 21350542, at *4 (Del. Super. June 6, 2003)).
[16] *MRPC Fin. Mgmt. LLC v. Carter*, 2003 WL 21517977 (Del. Super. June 20, 2003).
[17] R. at 84 (quoting *Pinghera v. Creative Home Solutions, Inc.*, 2002 WL 31814887, at *2 (Del. Super. Nov. 14, 2002)).

In spite of McGee's attempt to justify his behavior, the Court finds there was substantial evidence on the record to support the UIAB's finding that Amazon had just cause to discharge McGee and that this decision was free of legal error. Violation of a reasonable company policy may constitute just cause for discharge, provided that the employee is aware the policy exists and may be cause for discharge.[18] There is no dispute that a company policy existed here, and actual knowledge of that policy can be imputed to McGee, particularly since he received numerous warnings regarding his objectionable conduct.[19] Although McGee presented testimony to the contrary, the UIAB is free to determine "the credibility of witnesses, the weight to be given their testimony, and the inferences to be drawn therefrom . . . ."[20] At the hearing, the UIAB was not persuaded by McGee's testimony and reasonably found that McGee was aware he was at risk for termination. Specifically, the UIAB noted that McGee was on notice through the two (2) final warnings that he needed to immediately improve his attendance record or risk losing his job. Further, the UIAB's decision, which found that McGee's receipt of his third warning within a twelve-month period violated Amazon's policy, was clearly supported by the record and was sufficient to

[18] *McCoy v. Occidental Chem. Corp.*, 1996 WL 111126, at *3 (Del. Super. Feb. 7, 1996) (citing *Parvusa v. Tipton Trucking Co., Inc.*, 1993 WL 562196, at *4 (Del. Super. Dec. 1, 1993)).
[19] *See id.* at *3 (citing *Honore v. Unemployment Ins. Appeal Bd.*, 1993 WL 485918 (Del. Super. Oct. 5, 1993); *see also Parvusa*, 1993 WL 562196, at *4.
[20] *Behr v. Unemployment Ins. Appeal Bd.*, 1995 WL 109026, at *2 (Del. Super. Feb. 7, 1995).

determine McGee was terminated for just cause. Finding the UIAB did not err in basing its decision, in part, on credibility determinations to conclude that McGee was discharged for just cause, the Court will not disturb the UIAB's decision on appeal.

CONCLUSION

For the reasons stated above, the Court concludes that the decision of the Unemployment Insurance Appeal Board is hereby **AFFIRMED**.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.
Judge William C. Carpenter, Jr.