IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

MARY DANIELS,	)	
	)	
Appellant,	)	
	)	
V.	)	C.A. No. N12A-05-001 JRS
	)	
FSQ and	)	
The UNEMPLOYMENT	)	
INSURANCE APPEAL BOARD,	)	
	)	
Appellees.	)	

Date Submitted: January 4, 2013
Date Decided: February 13, 2013

Upon Consideration of
Appeal From the Unemployment Insurance Appeal Board.
AFFIRMED.

This 13th day of February, 2013, upon consideration of the *pro se* appeal of Mary Daniels from the decision of the Unemployment Insurance Appeal Board (the "Board"), disqualifying her from the receipt of unemployment benefits, it appears to the Court that:

1. Ms. Daniels was employed as a cook at Foulk Manor North from May 31, 2007 until her employment was terminated on December 23, 2011.[1]

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[1] Record at 1, 11 (hereinafter "R at _").

Foulk Manor North is a retirement community owned by the employer, Five Star Quality Care, Inc. ("FSQ").[2]

2. On December 27, 2011 Ms. Daniels filed for unemployment benefits with the Delaware Department of Labor ("DOL"). A claims deputy with the DOL found that the employer, FSQ did not meet its burden of proving that Ms. Daniels was discharged from employment for "just cause." The claims deputy therefore found that Ms. Daniels was eligible to receive unemployment insurance benefits pursuant to 19 *Del. C.§* 3314(2).[3] FSQ timely appealed the decision of the claims deputy.[4]

3. An administrative hearing was held before Appeals Referee Kathleen Smith on February 16, 2012.[5] Ms. Daniels attended the hearing along with two representatives of the employer: Jerome Powers, Ms. Daniels' supervisor and Michelle Wright, a human resources representative.[6] Mr. Powers testified that Ms. Daniels engaged in an argument with a co-worker in the kitchen of the facility on

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[2] *Id.* at 1, 18, 21.

[3] *Id.* at 9.

[4] *Id.* at 10-11.

[5] *Id.* at 13; 19 *Del. C.§* 3314(2): "For the 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."

[6] R. at 14, 18.

December 10, 2011.[7] The argument was overheard by the daughter of a resident of the facility who ultimately relayed what she had witnessed to the executive director of the facility.[8] The altercation between Ms. Daniels and the other employee was documented in a disciplinary action record.[9] Mr. Powers testified that the altercation was classified as a "category III work rule violation," a terminable offense.[10] The appeals referee reversed the claims deputy's decision, finding that Ms. Daniels was disqualified from receiving benefits because she was discharged from employment for just cause pursuant to 19 *Del. C.§* 3314(2).[11] Ms. Daniels timely appealed the referee's decision on February 22, 2012.[12]

4. The appeal was heard by the Board on April 18, 2012.[13] At the hearing, Ms. Daniels testified that her employer had deviated from its disciplinary protocol as set forth in its handbook by not immediately suspending her and by

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[7] *Id.* at 17, 18.

[8] *Id.*

[9] *Id*. at 18; The disciplinary action record was admitted into evidence over Ms. Daniels' objection. Ms. Daniels failed to identify a legal basis for her objection.

[10] *Id.* at 19-21; Mr. Powers offered a selection of the employer's handbook into evidence addressing category III offenses accompanied by Ms. Daniels signed employee acknowledgment form relating to her receipt of the handbook. The documents were received into evidence without objection. *Id.* at 38, 39.

[11] *Id.* at 32.

[12] *Id.* at 41-44.

[13] *Id.* at 46, 47; Ms. Daniels testified at the hearing. A representative of the employer did not appear.

extending her suspension beyond five days.[14] The Board interpreted the language of the employer's handbook less strictly than suggested by Ms. Daniels and held that the employer's practices did not negate the conduct for which Ms. Daniels was terminated.[15] The Board affirmed the referee's decision disqualifying Ms. Daniels from the receipt of benefits noting that Ms. Daniels was aware of the employer's policy relating to the nature and consequences of category III violations.[16] Ms. Daniels has appealed the Board's decision to this Court.[17]

5. The Court's review of Ms. Daniels' appeal is limited to determining whether the Board's decision was supported by substantial evidence and free from legal error.[18] Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[19] Further, the Board's decisions are reviewed for an abuse of discretion in the absence of legal error, with alleged errors of law reviewed *de novo*.[20] The Court will find an abuse of discretion when the Board "exceeds the bounds of reason in view of the

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[14] *Id.* at 50, 51.

[15] *Id.* at 56, 57.

[16] *Id.* The Board referenced the employee acknowledgment form signed by Ms. Daniels and admitted into evidence.

[17] *Id.* at 61, 64.

[18] *See, e.g., Unemployment Ins. Appeal Bd. v. Duncan,* 337 A.2d 308, 309 (Del. 1975); *Meacham v. Delaware Dept. of Labor*, 2002 WL 442168 (Del. Super. Mar. 21, 2002).

[19] *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981).

[20] *Miller v. Garda CL Atl., Inc.*, 2011 WL 1344900 at *1 (Del. Super. Apr. 7, 2011).

circumstances and has ignored recognized rules of law or practice so as to produce injustice."[21] Ultimately, the Court "will not intrude on the [Board's] role as trier of fact by disturbing the [Board's] credibility determinations or factual findings."[22]

6. In her opening brief to the Court, Ms. Daniels addresses the disciplinary form and selected pages of the employer's handbook admitted into evidence at the referee's hearing. Ms. Daniels questions the authenticity of the documents referring to the materials as a "paper trail of fabrication."[23] The Board chose to give weight to this evidence and as stated above, the Court will not disturb the credibility determinations made by the Board. Further the Court does not find the Board's consideration of the documents to constitute legal error.[24] Ms. Daniels also takes issue with the employer's termination procedure asserting that the altercation occurred on December 11, 2011, but she did not receive her final "write

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[21] *McIntyre v. Unemployment Ins. Appeal Bd.*, 2008 WL 1886342 (Del. Super. Apr. 29, 2008) aff'd, 962 A.2d 917 (Del. 2008).

[22] *Toribio v. Peninsula United Methodist Homes, Inc.*, 2009 WL 153871 (Del. Super. Jan. 23, 2009).

[23] Employee's Opening Brief at 2, 3; The Court notes that Ms. Daniels objected to the admission of the disciplinary form, but did not state a legal basis for her objection. She did not object to the admission of the employer's handbook. Moreover, there is no factual basis for her allegation in the record.

[24] The Court notes "[a]dministrative boards are not constrained by the rigid evidentiary rules which govern jury trials, but should hear all evidence which could conceivably throw light on the controversy. Therefore, an informal tribunal, such as the UIAB, is not bound by the Delaware Rules of Evidence, but it may follow those rules in its discretion so long as a party is not unduly prejudiced." *Baker v. Hosp. Billing & Collection Serv., Ltd.*, 2003 WL 21538020 at *3 (Del. Super. Apr. 30, 2003).

up" until December 23, 2011.[25] The Board reviewed the relevant pages of the employer's handbook, interpreted the language and reasonably found that the employer's disciplinary process was acceptable in light of the infraction. During the time between the infraction and the final termination, Ms. Daniels was suspended pending an investigation of the incident. It seems a reasonable employer practice that an employee would receive a final determination once an ongoing investigation concluded. It is clear to the Court, as it was to the Board, that Ms. Daniels engaged in an altercation at work that constituted a terminable offense. Both she and her fellow combatant were terminated as a direct result of the altercation.

7. Based on the foregoing, the Court is satisfied that the Board applied the correct legal standards and that its decision is supported by substantial evidence. Accordingly, the decision of the Board denying benefits to Ms. Daniels must be **AFFIRMED.**

IT IS SO ORDERED.

/s/ Charles E. Butler
Judge Charles E. Butler

Original to Prothonotary

[25] Employee's Opening Brief at 2.