

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

KENDRA D. REID,	)	
	)	
Appellant,	)	
	)	
v.	)	C.A. No. N12A-05-008 WCC
	)	
HENRIETTA JOHNSON	)	
MEDICAL CENTER and	)	
UNEMPLOYMENT INSURANCE	)	
APPEAL BOARD,	)	
	)	
Appellees.	)	

Submitted: September 25, 2012  
Decided: December 27, 2012

**Appeal from the Unemployment Industrial Accident Board – DENIED.**

**OPINION**

Kendra D. Reid. 634 Ferris Street, Apt 1, Wilmington, DE 19805. *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.**

Kendra Reid (“Appellant”) appeals the May 2, 2012 decision by the Unemployment Insurance Appeal Board (“UIAB”), which modified and affirmed the Appeals Referee’s denial of unemployment compensation benefits. The Appellant, who was employed by Henrietta Johnson Medical Center (“HJMC”) as a medical assistant, challenges the UIAB’s finding that she is ineligible to receive benefits because she was discharged from her work for just cause. Specifically, the Appellant argues that she did not voluntarily quit her employment but was, instead, terminated by HJMC without just cause. Upon review of the record in this matter, the decision of the UIAB is hereby **AFFIRMED**.

#### **FACTUAL BACKGROUND**

On March 1, 2011, HJMC decided to become a federally qualified health center in order to increase the organization’s productivity. In order to do so, all medical assistants were required to become certified; the certification would not only increase their responsibility and earnings but would enable physicians to see more patients. To facilitate the medical assistants’ certification and prepare them to sit for the certification exam, HJMC instituted a training program. Specifically, HJMC provided the medical assistants with training materials and a tutor who was available for two hours every Wednesday for four months. Additionally, HJMC paid the

\$135 exam fee for each medical assistant's first attempt. If, however, the medical assistants did not receive a passing score on their first attempt, HJMC notified the medical assistants that they would be responsible for both taking the exam a second time within 30 days of the first attempt and paying the exam fee for the second attempt. Further, all medical assistants signed an agreement, which stated that their position would not be guaranteed if they did not pass the certification exam the second time.

On July 6, 2011, the Appellant signed an agreement to take the National Center for Competency Testing Exam in order to become a certified medical assistant with HJMC. Specifically, the Appellant understood that HJMC would only pay for her first exam and that she would be required to take and pay for a second exam within 30 days of the original exam if she did not pass on her first attempt. Further, the Appellant acknowledged that her current position as a medical assistant with HJMC would not be guaranteed if she did not pass the second exam. Additionally, the Appellant recognized that she was responsible for continuing her certification every two years once she became certified.

The Appellant failed her first attempt at the certification exam. As a result, Terry Reed ("Reed"), a HJMC human resources specialist, sent the Appellant a letter on September 30, 2011, which reiterated the terms of the

July 6, 2011 agreement. Specifically, the letter stated that it was mandatory the Appellant pass the exam on her second attempt. Further, the letter stated that the Appellant would be removed from the floor and her position with HJMC would not be guaranteed if she failed the certification exam a second time. Although the letter stated the Appellant was to retake the exam on October 22, 2011, there was some confusion regarding the Appellant's name due to her change in marital status. As a result, the Appellant signed a subsequent agreement on November 8, 2011, which confirmed she would be sitting for the exam on November 19, 2011 and reiterated the requirement that she pass the exam in order to guarantee her current position with HJMC.

The Appellant failed her second attempt at the certification exam. On November 21, 2011, Reed provided the Appellant a letter notifying her that HJMC was terminating her employment effective December 9, 2011 based upon her failure to pass the medical assistant certification exam. On that same day, the Appellant, Reed, and Sheri Brown, HJMC's Director of Clinical Services, met to discuss the Appellant's role at HJMC. Afterward, Reed made a note to the file to summarize the meeting. According to Reed's note, Brown encouraged the Appellant to apply for the Appointment Scheduler or receptionist positions, which were posted on the board in the lunch room. However, Reed's note stated that the Appellant was not

interested in another position at HJMC. Further, Reed's note stated that the Appellant inquired about the receipt of unemployment benefits but that Reed had replied she could not answer the Appellant's question.

On November 22, 2011, the Appellant emailed Brown regarding a possible misunderstanding that may have occurred during the meeting with the Appellant, Reed, and Brown. Specifically, the Appellant stated she wanted to clarify that she did not resign from her duties at HJMC. Instead, the Appellant believed she was reaffirming her understanding that she would be removed from the floor after failing her exam a second time and that she would be terminated three weeks after her removal. Brown responded to the Appellant, acknowledging that she did not view the meeting as a resignation. However, Brown stated that "[she] did hear [the Appellant] say [she was] not interested in working in any other position within the organization."<sup>1</sup> Although the Appellant responded to thank Brown for clarifying the matter, the Appellant did not refute Brown's statement regarding a lack of interest in other positions within HJMC. Subsequently, HJMC terminated the Appellant on December 9, 2011.

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<sup>1</sup> R. at 22.

## PROCEDURAL BACKGROUND

The Appellant filed a claim for unemployment benefits effective December 11, 2011. The Claims Deputy approved the claim on December 29, 2011, finding that the Appellant was entitled to the receipt of unemployment benefits under 19 *Del. C.* § 3314(2) because she was discharged from her employer without just cause. HJMC subsequently appealed. A hearing took place before the Appeals Referee on January 30, 2012, at which the Appellant appeared on her own behalf and Reed testified on behalf of the employer, HJMC. In a decision mailed January 31, 2012, the Appeals Referee modified and reversed the Claims Deputy's authorization of benefits, finding that the Appellant was disqualified from receiving benefits under 19 *Del. C.* § 3314(1) because she voluntarily quit her employment without good cause.

The Appellant then appealed to the UIAB, which held a hearing on March 28, 2012. At each stage of the administrative proceedings, the Appellant has insisted that she did not voluntarily quit her employment at HJMC. The Appellant testified on her own behalf before the UIAB that she was aware that she would be discharged from her employment if she failed her certification test a second time. Additionally, the Appellant testified that she failed her test a second time and knew that she needed to be certified to

guarantee her position with HJMC. Insisting that she did not quit her position, the Appellant testified that she received a termination letter indicating that no other positions were available within HJMC.

Reed testified before the UIAB on behalf of HJMC and stated that the Appellant failed her certification exam a second time and, therefore, her position with HJMC was not guaranteed. Reed acknowledged that there were no other positions available at the time the Appellant received her termination letter. However, Reed testified that two other positions later became available within HJMC. According to Reed, the Appellant was encouraged to apply for the other positions, but the Appellant stated she was not interested in applying. The UIAB modified and affirmed the Appeals Referee's denial of benefits on May 2, 2012, finding that HJMC had just cause to discharge the Appellant pursuant to 19 *Del. C.* § 3314(2).

The Appellant filed a *pro se* appeal in this Court on May 5, 2012. Neither HJMC 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.<sup>2</sup> On appeal, the Court's review of the UIAB's

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<sup>2</sup> *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).

decision is limited to determining whether the UIAB’s findings and conclusions are supported by substantial evidence and free of legal error.<sup>3</sup> Substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”<sup>4</sup> Stated alternatively, substantial evidence is “that evidence from which an agency fairly and reasonably could reach the conclusion it did.”<sup>5</sup> Specifically, “[i]t is more than a scintilla of evidence, but less than a preponderance.”<sup>6</sup>

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.”<sup>7</sup> It is well established that it is the role of the UIAB—not this Court—to resolve conflicts in testimony and issues of credibility.<sup>8</sup> The UIAB’s findings are conclusive and will be affirmed if supported by “competent evidence having probative value.”<sup>9</sup> Further, the Court must give deference to “the experience and specialized competence” of the UIAB.<sup>10</sup> This Court, therefore, “does not sit as the trier of fact, nor

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<sup>3</sup> *Unemployment Ins. Appeals Bd. of the Dept. of Labor v. Duncan*, 337 A.2d 308, 209 (Del. 1975).

<sup>4</sup> *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981).

<sup>5</sup> *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)).

<sup>6</sup> *Olney*, 425 A.2d at 614.

<sup>7</sup> *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)).

<sup>8</sup> 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).

<sup>9</sup> *Geegan v. Unemployment Comp. Comm’n.*, 76 A.2d 116, 117 (Del. Super. 1950).

<sup>10</sup> *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)).



should the Court replace its judgment for that of the [UIAB].”<sup>11</sup> As a result, if substantial evidence exists and there is no error of law, the Court must affirm the UIAB’s decision.<sup>12</sup>

## DISCUSSION

The Appellant contends the following constitute grounds to appeal the UIAB’s decision: 1) she did not voluntarily quit her position; 2) the employer did not prove that other positions were available; 3) she did not have access to view open positions nor did she receive emails about posted positions; and 4) no other positions were offered to her.<sup>13</sup> Conversely, HJMC argues that Reid was not fired but was, instead, let go after she failed to pass a certification exam, which was required in order to guarantee her continued employment as a medical assistant. 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 the Appellant was discharged for just cause in connection with her employment.

Under Delaware law, an individual is ineligible for unemployment benefits when terminated for “just cause.”<sup>14</sup> In a termination case, the

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<sup>11</sup> *Id.* at \*3 (citing *Johnson*, 213 A.2d at 66).

<sup>12</sup> *Stevens v. State*, 802 A.2d 939, 944 (Del. Super. 2002).

<sup>13</sup> *R.* at 92.

<sup>14</sup> *See* 19 *Del. C.* § 3314(2). The Court notes that the statute does not define “just cause.” Although “just cause” is *generally* interpreted 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,” the Court believes that this definition does not accurately reflect what transpired here. Here, Reid was required to obtain a certification to ensure her continued employment with HJMC and when she failed to do so—despite being given reasonable time and assistance—she was terminated for just cause.

employer has the burden of proving “just cause” by a preponderance of the evidence.<sup>15</sup> Although “just cause” does not necessarily require the employee to act with bad motive or malice in order to warrant termination, “[e]mployee performance and conduct is highly relevant in assessing just cause.”<sup>16</sup> Typically, this evaluation is highly fact-specific because, “[a]bsent evidence to the contrary, an employer necessarily sets the standard for acceptable workplace performance.”<sup>17</sup> However, an employee’s behavior is not the only factor; an employer’s behavior is also evaluated because “just cause includes notice to the employee in the form of a final warning that further poor behavior or performance may lead to termination.”<sup>18</sup>

Here, the UIAB’s decision is based upon substantial evidence in the record. At the hearing, Reed presented evidence that HJMC decided to become a federally qualified health center and, as a result, required all medical assistants to become certified within a specified period. Further, Reed testified that all medical assistants were aware of the certification requirement, as evidenced by a written agreement; the Appellant signed the agreement, acknowledging that her current position with HJMC would not be guaranteed if she did not successfully pass the certification exam after

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<sup>15</sup> *Barton v. Innolink Sys., Inc.*, 2004 WL 1284203, at \*1 (Del. Super. May 28, 2004).

<sup>16</sup> *Pinghera v. Creative Home Solutions, Inc.*, 2002 WL 31814887, at \*2 (Del. Super. Nov. 14, 2002) (citations omitted); *see also MRPC Fin. Mgmt. LLC v. Carter*, 2003 WL 21517977 (Del. Super. June 20, 2003).

<sup>17</sup> *Pinghera*, 2002 WL 31814887, at \*2.

<sup>18</sup> R. at 84 (quoting *Pinghera*, 2002 WL 31814887, at \*2).

two attempts. Moreover, the Appellant not only failed to successfully pass the certification exam, as required by HJMC, but also indicated she was not interested in applying for other positions that became available prior to her termination date. Although the Appellant denies knowledge that other positions were available and that she was uninterested in applying for them, the UIAB is free to determine “the credibility of witnesses, the weight to be given their testimony, and the inferences to be drawn therefrom . . . .”<sup>19</sup> Here, the UIAB was not persuaded by the Appellant’s testimony; the UIAB found Reed’s testimony as well as the corroborative evidence supplied by Reed to be more credible. Therefore, the UIAB did not err in basing its decision, in part, on credibility determinations to conclude that the Appellant was discharged for just cause.

Additionally, this Court has previously held that an employee’s failure to procure certification or be properly licensed constitutes just cause for termination. In *Kelly v. Precious Moments Educ. and Comm’n Ctr.*<sup>20</sup>, the employer was a licensed child care facility. Because the state required that child care facilities meet certain qualifications in order to become and remain licensed, an employee in *Kelly* was discharged after failing to complete a training course and obtain the required certification.<sup>21</sup> Although

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<sup>19</sup> *Behr v. Unemployment Ins. Appeal Bd.*, 1995 WL 109026, at \*2 (Del. Super. Feb. 7, 1995).

<sup>20</sup> 2011 WL 6400634 (Del. Super. Nov. 20, 2011).

<sup>21</sup> *Id.*

the certification was not required when the employee was initially hired, the UIAB held there was evidence that the employee needed to become certified after she was hired and that she had been warned that her job would be in jeopardy if she did not obtain the required certification.<sup>22</sup> Further, there was evidence that the employee was provided sufficient time to obtain the certification and that her failure to become certified potentially jeopardized the employer's licensure.<sup>23</sup> Reasoning that the employee had notice that certification was a necessary condition of her continued employment and that she failed to become certified after being given a reasonable opportunity to do so, this Court concluded the employer had just cause for the employee's termination.<sup>24</sup>

Similarly, in *Brown v. Schaeffer*<sup>25</sup>, an employee was discharged after she failed to obtain x-ray certification.<sup>26</sup> Because the state required that all individuals involved in taking x-rays undergo certification testing, the employee in *Schaeffer* was discharged because she could no longer perform her duties as a dental assistant without the certification.<sup>27</sup> Like the employee in *Kelly*, the dental assistant in *Schaeffer* did not possess the certification when she was initially hired; however, the employer made it clear that her

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<sup>22</sup> *Id.* at \*2.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> 1993 WL 390497 (Sept. 16, 1993).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

continued employment was contingent upon passing the certification exam.<sup>28</sup>

Further, evidence was presented that the employee failed the certification exam multiple times, refused tutorial assistance from her employer, and failed to enroll in a review course for the exam.<sup>29</sup> Reasoning that the dental assistant's failure to procure her state-required certification constituted willful misconduct, this Court found that she was discharged for just cause and, therefore, was not entitled to receipt of unemployment benefits.<sup>30</sup>

Similar to the employees in *Kelly* and *Schaeffer*, the Appellant here failed her certification exam despite being given reasonable time and assistance by her employer to do so. Further, the Appellant was aware that passing the certification exam was "essential" in order to guarantee her current position with HJMC.<sup>31</sup> Moreover, no evidence was presented that the Appellant made a good faith effort to pass the exam; in fact, the Appellant testified that she received the same failing score on both attempts.<sup>32</sup> Additionally, as previously discussed, the UIAB did not err in apportioning greater weight to Reed's testimony regarding the Appellant's lack of interest in applying for other open positions at HJMC. Therefore, the Court finds there was substantial evidence to support the UIAB's finding

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<sup>28</sup> *Id.* at \*1.

<sup>29</sup> *Id.* at \*2.

<sup>30</sup> *Id.*

<sup>31</sup> R. at 20, 63.

<sup>32</sup> R. at 72.

that HJMC had just cause to discharge the Appellant and that this decision was free of legal error.

### **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.