

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

WILLIAM BROWN,	)	
	)	
Appellant,	)	
	)	
V.	)	C.A. No. N12A-05-013-CEB
	)	
BRANDYWINE SCHOOL	)	
DISTRICT and	)	
The UNEMPLOYMENT	)	
INSURANCE APPEAL BOARD,	)	
	)	
Appellees.	)	

Date Submitted: March 25, 2013  
Date Decided: June 20, 2013

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

**ORDER**

This 20<sup>th</sup> day of June, 2013, upon consideration of the *pro se* appeal of William Brown from the decision of the Unemployment Insurance Appeal Board (the “Board”), disqualifying him from the receipt of unemployment benefits, it appears to the Court that:

1. Mr. Brown was employed as a custodian by the Brandywine School District from August 4, 2008 until he was terminated from employment on December 16, 2011.<sup>1</sup> Mr. Brown was terminated for reportedly falsifying his time sheets.<sup>2</sup>

2. On January 15, 2012 Mr. Brown filed for unemployment benefits with the Delaware Department of Labor (“DOL”).<sup>3</sup> A claims deputy with the DOL determined that the employer had met its burden of showing just cause for termination and disqualified Mr. Brown from unemployment insurance benefits pursuant to 19 *Del. C.* § 3314(2).<sup>4</sup> The claims deputy’s decision was issued on February 2, 2012 and Mr. Brown filed a timely appeal on February 6, 2012.<sup>5</sup>

3. On March 1, 2012 an administrative hearing was held before Appeals Referee Kathleen Smith.<sup>6</sup> Mr. Brown was joined at the hearing by the employer’s

---

<sup>1</sup> Record at 27 (hereinafter “R at\_”).

<sup>2</sup> *Id.* at 17.

<sup>3</sup> *Id.* at 19.

<sup>4</sup> *Id.*; 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.

<sup>5</sup> *Id.* at 19, 20.

<sup>6</sup> *Id.* at 22.

witness, Pamela Gouge, the supervisor of school nutrition and support staff.<sup>7</sup> Ms. Ellen Cooper, Esq. appeared as counsel for the employer.<sup>8</sup> Ms. Gouge addressed the incident that led to Mr. Brown's termination, testifying that Mr. Brown had left his place of employment between 7:00pm and 8:00pm, but had documented a sign out time of 11:00pm.<sup>9</sup> Mr. Brown later admitted to Ms. Gouge's allegation to improperly recording his sign-out time.<sup>10</sup> Ms. Gouge went on to verify exhibits that documented Mr. Brown, prior to falsifying time cards, receiving five or six verbal warnings, a cautionary letter, two formal letters of reprimand, a two day suspension and a three day suspension.<sup>11</sup> Ms. Gouge testified that Mr. Brown had signed two suspension letters addressing instances in which he had failed to follow the employer's policies.<sup>12</sup> When permitted, Mr. Brown testified that his disciplinary record was the result of being singled out by one of his supervisors.<sup>13</sup> The referee affirmed the claims deputy's decision, finding Mr. Brown had been

---

<sup>7</sup> *Id.* at 24, 28.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 30.

<sup>10</sup> *Id.* at 51.

<sup>11</sup> *Id.* at 55, 62-68.

<sup>12</sup> *Id.* at 38-41; These disciplinary documents were admitted into evidence. One of the letters indicated that the document was a final notice and that further non-compliance with District policy may lead to termination.

<sup>13</sup> *Id.* at 48.

discharged for just cause and was disqualified from the receipt of unemployment benefits.<sup>14</sup>

4. Mr. Brown filed a timely appeal of the referee's decision on March 5, 2012 and the Board heard the appeal on May 9, 2012.<sup>15</sup> Ms. Cooper represented the employer at the hearing and was joined by two witnesses for the employer, Barbara Meredith and Darrell Gold.<sup>16</sup> Mr. Brown claimed Mr. Gold had permitted him to leave early from work to attend a funeral and had further told him to sign out in a manner to "just make it look good."<sup>17</sup> Mr. Gold admitted he permitted Mr. Brown to leave work early but did not admit to telling Mr. Brown to inaccurately record his time.<sup>18</sup> The Board found that Mr. Brown had permission to attend a funeral, but was not convinced he had been told to falsify time sheets or that he need not return to work on the day in question.<sup>19</sup> The Board concluded that Mr. Brown's conduct constituted theft of time, justifying his termination from employment.<sup>20</sup> Additionally, in reviewing Mr. Brown's past conduct, the board

---

<sup>14</sup> *Id.* at 54.

<sup>15</sup> *Id.* at 90, 98.

<sup>16</sup> *Id.* at 98; Mrs. Meredith is the executive director of the employer's support services and Mr. Gold was Mr. Brown's supervisor.

<sup>17</sup> *Id.* at 104.

<sup>18</sup> *Id.* at 108.

<sup>19</sup> *Id.* at 113.

noted numerous prior infractions in direct conflict with the Custodial Handbook, which had triggered the employer's progressive discipline system.<sup>21</sup> The Board affirmed the referee's decision disqualifying Mr. Brown from receipt of unemployment benefits.<sup>22</sup> Mr. Brown appealed the Board's decision.<sup>23</sup>

5. The Court's review of Mr. Brown's appeal is limited to determining whether the Board's decision was supported by substantial evidence and free from legal error.<sup>24</sup> Substantial evidence "means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion".<sup>25</sup> Errors of law will be reviewed *de novo*, when lacking legal error, the Board's decisions are reviewed for an abuse of discretion.<sup>26</sup> The Court will find an abuse of discretion when the Board "exceeds the bounds of reason in view of the circumstances and has ignored recognized rules of law or practice so as to produce injustice."<sup>27</sup> Ultimately, the

---

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 42-44, 112.

<sup>22</sup> *Id.* at 113; The relevant portions of the Custodial Handbook were admitted into evidence. *Id.* at 69-71.

<sup>23</sup> *Id.* at 118-121.

<sup>24</sup> 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).

<sup>25</sup> *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981).

<sup>26</sup> *Miller v. Garda CL Atl., Inc.*, 2011 WL 1344900 at \*1 (Del. Super. Apr. 7, 2011).

<sup>27</sup> *McIntyre v. Unemployment Ins. Appeal Bd.*, 2008 WL 1886342 (Del. Super. Apr. 29, 2008) aff'd, 962 A.2d 917 (Del. 2008).

Court “will not intrude on the [Board’s] role as trier of fact by disturbing the [Board’s] credibility determinations or factual findings.”<sup>28</sup>

6. In his opening brief, Mr. Brown argues he was treated unfairly by a previous supervisor resulting in multiple disciplinary “write ups”.<sup>29</sup> Mr. Brown further asserts that he was transferred so that he could “start new” at a different school which he interpreted (incorrectly) as erasing his disciplinary history. Mr. Brown then asserts he did not have any more disciplinary issues until the offense that resulted in his termination which he characterizes as “not right” and “unjust.”<sup>30</sup> The Board found that the employer’s conduct was justifiable, and the Court tends to agree. Regarding that event, the Board determined that Mr. Brown had been given permission to leave, but had committed theft of time by not returning to work and falsifying his time sheet.<sup>31</sup> The Board found that the employer utilized a progressive disciplinary policy, Mr. Brown had received a final notice pursuant to that policy and that Mr. Brown’s subsequent theft of time was a violation sufficient to trigger termination.<sup>32</sup> The Court agrees that theft of time is a

---

<sup>28</sup> *Toribio v. Peninsula United Methodist Homes, Inc.*, 2009 WL 153871 (Del. Super. Jan. 23, 2009).

<sup>29</sup> Appellant’s Opening Brief at 1.

<sup>30</sup> *Id.* at 2.

<sup>31</sup> *Id.* at 113.

<sup>32</sup> *Id.*

terminable offense, finding the law in Delaware to support this conclusion.<sup>33</sup> Further, as indicated in the employer's brief, this final act was part of a well-documented pattern of conduct by Mr. Brown in violation of the employer's expected standard of conduct. The employer utilized its progressive discipline system, terminating Mr. Brown's employment when he violated the employer's policies after receiving of a "final notice."

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 Mr. Brown must be **AFFIRMED**.

**IT IS SO ORDERED.**

**/s/ Charles E. Butler**  
Charles E. Butler, Judge

Original to Prothonotary

---

<sup>33</sup>*See, McKoy v. Delaware Dep't of Labor, Div. of Unemployment Ins.*, 1997 WL 819135 at \*3 (Del. Super. Oct. 16, 1997)(finding employee's falsification of his time card constituted just cause for termination); *Husfelt v. Mary Campbell Ctr.*, 2008 WL 2943395 at \*3 (Del. Super. June 25, 2008)(affirming the Board's decision disqualifying a claimant from unemployment benefits where claimant altered a timecard in violation of the employer's policies).