

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

DIANE ROVETTO,)	
)	
Appellant,)	
)	
V.)	C.A. No. N12A-08-012 CEB
)	
GREENVILLE RETIREMENT)	
and The UNEMPLOYMENT)	
INSURANCE APPEAL BOARD,)	
)	
Appellees.)	

Date Submitted: January 15, 2013
Date Decided: April 11, 2013

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

This 11th day of April, 2013, upon consideration of the *pro se* appeal of Diane Rovetto 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. Rovetto was employed by Greenville Retirement (“the employer”) as an accounts receivable assistant from July 15, 2009 until her

employment was terminated on March 28, 2012.¹ She filed for unemployment insurance benefits on March 29, 2012.

2. On April 18, 2012, a claims deputy with the Delaware Department of Labor (“DOL”) found that Ms. Rovetto was terminated for insubordination and disqualified from the receipt of benefits pursuant to 19 *Del. C.* § 3314(2).² Ms. Rovetto timely appealed the claims deputy’s determination on April 23, 2012.

3. A referee’s hearing was scheduled for May 21, 2012.³ Ms. Rovetto appeared in person and Michelle Jatko and Suzanne Taylor represented the employer via telephone.⁴ Ms. Jatko testified that on March 28, 2012 Ms. Rovetto’s supervisor, Ms. Taylor approached Ms. Rovetto about an error in a claim Ms. Rovetto had handled. Ms. Rovetto responded by stating “if you do not like how I do things then do them yourself.”⁵ Ms. Jatko further testified that Ms. Taylor then consulted with the facility’s executive director who recommended termination as the employee handbook states insubordination or refusal to accept a reasonable

¹**Error! Main Document Only.** Record at 1, 10 (hereinafter “R at _”).

² *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.

³*Id.* at 5.

⁴ *Id.* at 8.

⁵ *Id.* at 9-10.

directive is a terminable offense.⁶ The appeals referee held that the employer failed to establish by a preponderance of the evidence that Ms. Rovetto was discharged from employment for just cause in connection to her work as required in a discharge case.⁷ The referee reversed the claims deputy's decision and found that Ms. Rovetto was not disqualified from receiving benefits.⁸ The employer appealed the referee's decision.⁹

4. A hearing before the Board was scheduled for August 8, 2012.¹⁰ Ms. Rovetto, Ms. Jatko, and Ms. Taylor were all in attendance.¹¹ Ms. Jatko testified that the employer has an employee handbook that addresses insubordination as a terminable offense and then admitted the relevant pages of the handbook into evidence.¹² Ms. Rovetto responded that she had gone over the handbook when she was first hired, but did not have a copy of it.¹³ Ms. Jatko testified that employees

⁶ *Id.* at 10-11. Ms. Taylor's testimony echoed that of Ms. Jatko.

⁷ *Id.* at 19-20. According to the referee's decision, Delaware Courts have established a two-pronged test to determine if termination for failure to follow a policy constitutes just cause in a discharge case. First, it must be determined that a policy existed and second that the employee knew about the policy. *See e.g., McCoy v. Occidental Chem. Corp.*, 1996 WL 111126 (Del. Super. Feb. 7, 1996).

⁸ *Id.*

⁹ *Id.* at 29.

¹⁰ *Id.* at 30.

¹¹ *Id.* at 33.

¹² *Id.* at 34-36 and 49-50.

are asked to sign an acknowledgment sheet once they have reviewed the employer's policies, but Ms. Jatko did not find the document in Ms. Rovetto's file.¹⁴ Ms. Jatko further testified that she is in charge of organizing the packets and was "certain" Ms. Rovetto's packet included all required documents including the handbook.¹⁵ Upon considering Ms. Jatko's testimony on this matter and Ms. Rovetto's admission that she had seen the handbook, the Board was satisfied that Ms. Rovetto was on notice of the employer's policy regarding insubordination and termination.¹⁶ The Board found that the employer met its burden by showing the handbook set forth the policy that "Insubordination- refusal to accept a reasonable directive from a superior" was grounds for termination.¹⁷ The Board further agreed that Ms. Rovetto's comment, "if you do not like how I do things then do them yourself" constituted insubordination.¹⁸ The Board reversed the referee's decision and found Ms. Rovetto to be disqualified from the receipt of

¹³ *Id.* at 36-37.

¹⁴ *Id.* at 37-38.

¹⁵ *Id.* at 40-42.

¹⁶ *Id.* at 55-56.

¹⁷ *Id.*

¹⁸ *Id.*

unemployment benefits.¹⁹ Ms. Rovetto appealed the Board's decision to this court.²⁰

5. The Court's review of Ms. Rovetto's appeal is limited to determining whether the Board's decision was supported by substantial evidence and free from legal error.²¹ Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."²² 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*.²³ 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."²⁴ 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."²⁵

¹⁹ *Id.*

²⁰ *Id.*

²¹ *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).

²² *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981).

²³ *Miller v. Garda CL Atl., Inc.*, 2011 WL 1344900 at *1 (Del. Super. Apr. 7, 2011).

²⁴ *McIntyre v. Unemployment Ins. Appeal Bd.*, 2008 WL 1886342 (Del. Super. Apr. 29, 2008) aff'd, 962 A.2d 917 (Del. 2008).

²⁵ *Toribio v. Peninsula United Methodist Homes, Inc.*, 2009 WL 153871 (Del. Super. Jan. 23, 2009).

6. In her opening brief, Ms. Rovetto first argues that she was never given a disciplinary warning, but the Court has not heard any evidence that suggests a warning was required in this situation.²⁶ Ms. Rovetto next argues that she did not recall receiving a Policy and Procedure Manual from her employer.²⁷ The Court acknowledges that Ms. Rovetto testified at the Board's hearing that she had reviewed the employee handbook when she was hired and this testimony was found by the Board to be credible. Finally Ms. Rovetto retells her version of the interaction that ultimately led to her termination.²⁸ In considering the events that transpired on March 28, 2012, the Board found that the employer established that Ms. Rovetto was on notice of the employer's insubordination/termination policy and that Ms. Rovetto's conduct constituted insubordination. The Court tends to agree.

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. Rovetto must be **AFFIRMED**.

IT IS SO ORDERED.

²⁶Appellant's Brief at page 1. Neither an answering brief nor a reply brief were filed.

²⁷ *Id.*

²⁸ *Id.*

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

Original to Prothonotary