

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

TAMRA ROBINSON,)
)
)
Appellant,)
)
v.)
)
)
FIRST STATE COMMUNITY ACTION)
and UNEMPLOYMENT INSURANCE)
APPEALS BOARD)
)
)
Appellees.)
)

C.A. No. N12A-10-008 MJB

Submitted: April 25, 2013
Decided: July 30, 2013

Upon Appellant's Appeal from the Unemployment Insurance Appeal Board's Decision.
AFFIRMED.

OPINION AND ORDER

Tamra Robinson, 7221 Shearwater Place, Philadelphia, PA, *pro se*, Appellant.

Tasha Marie Stevens, Esquire, Fuqua, Yori and Williard, P.A., Georgetown, Delaware, Attorney for Appellee First State Community Action.

Caroline L. Cross, Esquire, Deputy Attorney General, Wilmington, Delaware, Attorney for Appellee Unemployment Insurance Appeal Board.

BRADY, J.

I. Introduction

Tamra Robinson (“Robinson”) filed this appeal from a decision of the Unemployment Insurance Appeals Board (“UIAB”) on October 11, 2012. The parties were placed on a briefing schedule, the final brief was submitted on April 12, 2013, and the matter was assigned to the Court on April 25, 2013.¹ On appeal, the Court must determine whether the UIAB’s conclusion that Robinson was ineligible for benefits because she was discharged with just cause is supported by substantial evidence in the record and is free from legal error.² Upon consideration of the pleadings before the Court and the record below, the Court finds that the Board’s ruling is supported by substantial evidence and that there is no legal error. Accordingly, the matter is **AFFIRMED**.

II. Background

Tamra Robinson (“Robinson”) was employed as a Housing Counselor for First State Community Action (“First State”) from October 19, 2009 until her termination on February 3, 2012.³ Robinson was terminated because she refused to sign a Code of Ethics Form. First State’s eligibility for grant funding is dependent on its Housing Counselors executing this form to agree to perform their duties in accordance with the Code of Ethics. Robinson was required to sign this form.⁴ The form states:

Instructions:

The Code of Ethics and Conduct is an essential component of the National Industry Standards for Homeownership Education and Counseling. It is required that a signed copy be kept on file within your office for each counselor listed in your organization profile, and made available upon request. It is important that counselors read, sign and agree to abide by the

¹ In a letter dated March 18, 2013, counsel for the Board informed the Court that they did not intend to file an answering brief. Transaction ID 51191031 (Mar. 18, 2013).

² *Unemployment Ins. Appeal Bd. of Dept. of Labor v. Duncan*, 337 A.2d 308, 309 (Del. 1975).

³ R. at 1, 7, 8.

⁴ R. at 367.

Code of Ethics and Conduct and the guidelines set forth in the National Industry Standards for Homeownership Education and Counseling.

By checking this box (or signing below), I acknowledge that I have received and read the National Industry Standards Code of Ethics and Conduct for Homeownership Professionals and agree to adopt and adhere to the guidelines as outlined.⁵

Instead of signing, Robinson wrote on the signature line “I will not be signing this until the recommended training is complete [and] strong knowledge referenced in the guide is reached.”⁶

This occurred on February 1, 2012.⁷

Robinson was terminated two days later by a letter from Bernice Edwards, Executive Director of First State.⁸ In the termination letter, Edwards stated that Robinson’s “termination [was] predicated on her written refusal to cooperate in providing paramount information required by your employer and unsatisfactory job performance.”⁹ The letter went on to state that during the week of January 24, 2012, Robinson “failed to perform [her] job responsibilities” which nearly had an “irreparable” effect on a housing client’s case.¹⁰ Finally, the letter stated that Robinson “openly display[ed] a disdain disgruntled behavior toward management.”¹¹

Robinson filed for unemployment benefits effective January 29, 2012.¹² On March 6, 2012, the Claims Deputy found that Robinson was terminated without just cause.¹³ Specifically, the Deputy found that First State did not meet its burden of proof that Robinson’s misconduct was connected with her work.¹⁴ First State appealed the Deputy’s decision. Robinson failed to

⁵ R. at 13.

⁶ *Id.*

⁷ *Id.*

⁸ R. at 12.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² R. at 89.

¹³ *Id.*

¹⁴ *Id.* The Deputy also found that First State “did not attempt to provide additional separation information as requested.” *Id.*

attend the hearing which took place on April 11, 2012.¹⁵ The Appeals Referee found that Robinson was terminated for just cause.¹⁶ The Referee found that Robinson's refusal to sign the Code of Ethics form "amount[ed] to willful insubordination in violation of the employer's expected standard of conduct."¹⁷ The Referee reversed the decision of the Claims Deputy and disqualified Robinson from benefits.¹⁸

Robinson appealed the Referee's decision to the Board on May 23, 2012.¹⁹ On June 6, 2012, the Board remanded to the Referee for a hearing with both parties present.²⁰ A hearing before a second Appeals Referee took place on June 28, 2012.²¹ The second Appeals Referee found there was insufficient evidence of insubordination.²² With regard to Robinson's improvement plan, the second Referee found that First State "did not unequivocally warn [Robinson] of the plan for improvement and consequences of continued alleged poor work performance."²³ The second Referee affirmed the Claims Deputy's decision and held that Robinson was qualified for benefits.²⁴ On July 21, 2012, First State appealed the second Referee's decision.²⁵ A hearing was held before the Board on September 26, 2012.

During the Referee and Board Level Hearings, David Bull, First State's Human Resources Officer, and Karen Garrett, Robinson's supervisor, testified on behalf of First State.

¹⁵ R. at 153.

¹⁶ *Id.*

¹⁷ R. at 154.

¹⁸ R. at 155.

¹⁹ R. at 225.

²⁰ R. at 226.

²¹ R. at 310.

²² R. at 312-13.

²³ R. at 313.

²⁴ *Id.*

²⁵ R. at 350.

Each offered evidence of Robinson's insubordination, poor job performance and also, issues of Robinson's trustworthiness.²⁶ At the hearings, Robinson testified on her own behalf.

On July 12, 2011 Robinson was issued an Employee Warning Report.²⁷ The Warning Report states: "[o]n Thursday 7/7/11 you were directed to follow up on a list of clients. You displayed an uncooperative behavior and failed to comply to [sic] the directive. This is tantamount to refusal to perform your job. For this misconduct you are being issued a written warning."²⁸ On August 8, 2011, Robinson was notified via email from Bernice Edwards that she was suspended for three days for refusing to work at First State's Georgetown office, a violation of the employee handbook.²⁹ One of the clients First State assigned to Robinson faced sheriff sale and foreclosure of their home because Robinson allowed their case to remain dormant for one year.³⁰ Robinson also failed to follow up on issued money orders which expired.³¹

On January 12, 2012, Robinson was placed on an Individual Development Plan.³² The plan, intended to improve Robinson's job performance, was to be completed with a final review on March 16, 2012.³³ Robinson was terminated before a final review occurred.

It has been Robinson's position that the training she received while employed by First State was not sufficient for her to sign the Code of Ethics form.³⁴ Robinson testified that the

²⁶ As to the trustworthiness issue, Robinson was scheduled to attend an eight hour training class on June 11, 2011 in Dover. Robinson submitted to First State expense receipts for reimbursement. Her toll receipts place her at the Delaware Turnpike tolls at 7:27a.m. and 11:09a.m. and other receipt places her at a Dunkin Donuts in Dover at 7:57a.m. First State contends that these receipts show it is unlikely that Robinson attended any substantial portion of the class. First State contends that Robinson, nevertheless, submitted a requisition for mileage and did not report to work the following day, claiming flex time from the eight hour seminar. See R. at 64. The Appeals Referee found this activity to be "suspicious" and created a "lack of trust issue." R. at 154-55.

²⁷ R. at 15, 358.

²⁸ R. at 15, 358-59.

²⁹ R. at 14, 358-60.

³⁰ R. at 16, 359-60.

³¹ R. at 17-26, 360.

³² R. 72-73.

³³ *Id.*

Code of Ethics was not provided to her, that a booklet was provided to her on February 1, after she initially refused to sign the form, but this booklet was not in her training materials.³⁵ Robinson testified that she was told to “Google” the Code of Ethics, but did not feel comfortable signing the form and refused.³⁶

Karen Garrett testified that she sent an email to all of the First State staff with the Code of Ethics form attached and that when Robinson responded, stating she was not properly trained, Garrett informed Robinson that the booklet was on the internet and could also be downloaded.³⁷ Garrett testified that this was a serious issue because it prevented her from being able to move forward with a grant application.³⁸

At the Board hearing, David Bull testified that Robinson was properly trained, that the Code of Ethics booklet was previously provided to her and offered the training institute manual from the seminar Robinson attended into evidence.³⁹ Bull testified that Robinson attended a three day seminar that took place from August 16-20, 2010.⁴⁰

Bull further testified that he disagreed with the Referee’s decision that First State failed to use due diligence regarding the time period during which Robinson was placed the Individual Development Plan.⁴¹ Bull contended that First State did perform due diligence because Robinson was subject to bi-weekly reviews, and that at the conclusion of the Plan, on March 16, First State would “take another look at everything that ha[d] transpired from January 12th

³⁴ Robinson’s Opening Br., at 3.

³⁵ R. at 368.

³⁶ *Id.*

³⁷ R. at 367.

³⁸ *Id.*

³⁹ R. at 362

⁴⁰ R. at 362, 364.

⁴¹ R. at 360.

through March 16th.”⁴² Bull stated that the Plan was designed to address Robinson’s performance issues and that the Code of Ethics was not part of the Plan.⁴³

In its decision, the Board found that First State did not provide sufficient notice to Robinson that her poor performance may lead to her termination, because she was terminated before the completion of the Plan.⁴⁴ However, the Board did find that First State met its burden in establishing that Robinson was terminated for just cause.⁴⁵ The Board found that Bull and Garrett testified credibly that Robinson attended a training program required by First State; that “[i]n order to address [Robinson’s] stated concerns that she was not properly trained, [First State] directed [Robinson] to review the matter online;” that Robinson refused to review the booklet online; and that “Ms. Garrett testified credibly that this refusal presented a hardship to” First State.⁴⁶

The Board found that Robinson’s “refusal to perform a reasonable, legal act amounted to insubordination.”⁴⁷ Also, “[t]he Board did not find [Robinson]’s testimony as to why she refused to comply with Ms. Garrett’s instructions to be credible.”⁴⁸ The Board found that First State had met its burden of establishing just cause for Robinson’s termination, reversed the decision of the Referee and disqualified Robinson from receiving unemployment benefits pursuant to 19 Del. C. 3314(2).⁴⁹ Robinson appealed the Board’s decision to the Superior Court on October 17, 2012.

A. Parties Contentions

⁴² R. at 360.

⁴³ R. at 366.

⁴⁴ R. at 373.

⁴⁵ R. at 373-74.

⁴⁶ R. at 374.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

Robinson contends that, in reaching its decision, the Board “erred as a matter of law” in the following respects: that the Board (1) failed to consider all relevant evidence; (2) imposed an “improper legal requirement upon [Robinson] when reviewing the evidence;” and (3) that the Board’s decision “was not supported by substantial evidence.”⁵⁰ First State contends that the Board’s decision “is supported by substantial evidence and rooted in law.”⁵¹

III. Standard of Review

The standard under which the Court reviews the Board’s decision is very deferential.⁵² The Board’s decision is only to be disturbed in very limited circumstances.⁵³ In reviewing a decision on appeal from the Board, the Court must determine whether the decision is supported by substantial evidence and is free from legal error.⁵⁴ Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.⁵⁵ Further, a showing of substantial evidence requires less than a preponderance of the evidence, but “more than a mere scintilla.”⁵⁶ If there is substantial evidence supporting the Board’s decision and no error of law exists, the Court must affirm.⁵⁷ The Court does not weigh evidence, determine questions of credibility, or make its own factual findings.⁵⁸ The Court’s role is merely to determine if the evidence is legally adequate to support the Board’s findings.⁵⁹

IV. Discussion

⁵⁰ Opening Br., at 7.

⁵¹ Answ. Br., at 5.

⁵² 29 *Del.C.* § 10142(d).

⁵³ *Delaware Transit Corp. v. Roane*, 2011 WL 3793450, *6 (Del. Super. Aug. 24, 2011).

⁵⁴ *Unemployment Ins. Appeal Bd. of Dept. of Labor v. Duncan*, 337 A.2d 308, 309 (Del. 1975).

⁵⁵ *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. Super. 1994) (citing *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981)); see also *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 477 (1951).

⁵⁶ *Breeding v. Contractors-One-Inc.*, 549 A.2d 1102, 1104 (Del. 1988); *Universal*, 340 U.S. at 477 (“Accordingly, it must do more than create a suspicion of the existence of the fact to be established. . . . [I]t must be enough to justify, if the trial were to a jury, a refusal of a directed verdict when the conclusion sought to be drawn is one of fact for the jury.”).

⁵⁷ *City of Newark v. Unemployment Ins. Appeal Bd.*, 802 A.2d 318, 323 (Del. Super. 2002).

⁵⁸ *Id.* at *2 (citing *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. Super. 1986)).

⁵⁹ *Keim v. Greenhurst Farms*, 2001 WL 1490060, *2 (Del. Super. Nov. 19, 2001) (citing 19 *Del. C.* § 3323(a)).

The issue in this case is to determine whether the Board's decision that Robinson was terminated for just cause is supported by substantial evidence in the record, and is free from legal error. Under 19 *Del. C.* § 3314(2), an individual shall be disqualified from receiving unemployment insurance benefits if the individual is discharged for “just cause.”⁶⁰ Just cause is 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.”⁶¹ Willful and wanton conduct is “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.”⁶² Just cause includes warning the employee that further poor behavior or performance may lead to termination.⁶³ The employer bears the burden to show that an employee was discharged for just cause.⁶⁴ A termination for insubordination may constitute just cause if the insubordination “consists of a willful refusal to follow the reasonable directions or instructions of the employer.”⁶⁵

Robinson’s first argument, that the Board failed to consider all relevant evidence, fails. Robinson contends that the Board’s decision was based solely on First State’s representative’s testimonies and that the Board did not allow her to fully testify.⁶⁶ At the Board hearing, Robinson’s testimony was stopped by the Chairman. Her testimony was:

⁶⁰ 19 *Del. C.* §3314(2) states that an individual shall be disqualified from benefits:

[f]or 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.

⁶¹ *Avon Products, Inc.*, 513 A.2d at 1317 (Del. 1986) (citing *Abex Corp. v. Todd*, 235 A.2d 271, 272 (Del. Super. Ct. 1967)).

⁶² *MRPC Financial Management LLC v. Carter*, 2003 WL 21517977, *4 (Del. Super. Ct. June 20, 2003).

⁶³ *Id.*

⁶⁴ *Edmonds v. Kelly Services*, 53 A.3d 301 (TABLE) (Del. 2012) (citing *Avon Products, Inc. v. Wilson*, 513 A.2d 1315, 1317 (Del. 1986)).

⁶⁵ *Scott v. Unemployment Ins. Appeal Bd.*, 1993 WL 390365, *4 (Del. Super. Sept. 22, 1993).

⁶⁶ Opening Br., at 8.

Ms. Robinson: . . . Just real quickly as far as the code of ethics that booklet there that they presented was not in my book. Originally I was actually told to Google it by Karen Garrett. The signature page was all that was sent to me in the e-mail. I was told to sign it and return it. I didn't have a copy of it. I hadn't read it prior to. So I went on-line that read it. And because I was not up to the standards and the code of ethics that is why is signed at the bottom that until I get the training –

The Chairman: Ma'am, you already stated that the referees.

Ms. Robinson: Okay.

The Chairman: Is there anything new that you wish to tell us?

Ms. Robinson: Nothing new that the booklet was not in my training. That's it. Pretty much everything else is the same.⁶⁷

By her own statement, Robinson acknowledged that her testimony would have been consistent with her testimony before the second Appeals Referee, thus consistent with the information before the Board.

Robinson argues, because the Board found the testimonies of Bull and Garrett to be credible, that this somehow imposed an improper burden upon her. Such an argument is without merit. Robinson bases this argument on the fact that the Board found the testimony of Bull and Garrett to be credible; that there was no documentation to support Bull's and Garrett's testimonies that Robinson was properly trained; and that when she attempted to refute this, the Board cut off her testimony.⁶⁸ This Court does not independently determine questions of the credibility of witnesses.⁶⁹ “[T]he credibility of witnesses, the weight to be given their testimony, and the inferences to be drawn therefrom are for the Board's determination.”⁷⁰ Accordingly, this Court will not disturb the Board's findings that Bull and Garrett testified credibly that Robinson attended a training program and that Robinson's refusal to sign the form presented a hardship to First State. Furthermore, the Court will not disturb the Board's findings that Robinson's testimony as to why she refused to comply with Garrett's instruction was not credible.

⁶⁷ R. at 368-69.

⁶⁸ Opening Br., at 9-10. As is discussed previously, Robinson acknowledged that her testimony would have been consistent with the information already before the Board.

⁶⁹ *Tears*, 2013 WL 1908688 at *2(citing *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

⁷⁰ *Behr v. Unemployment Ins. Appeal Bd.*, 1995 WL 109026, *2 (Del. Super. Feb. 7, 1995).

Robinson's final argument, that the Board's decision was not supported by substantial evidence, also fails. Robinson, again, bases this contention on a lack of documentary evidence and that the Board did not allow her to fully testify.⁷¹ "Substantial evidence' means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."⁷² Substantial evidence can either be verbal or documentary.⁷³ Despite Robinson's contentions to the contrary, the testimonies of Bull and Garrett are supported by documentary evidence.⁷⁴ Bull offered into evidence the training institute manual from the seminar Robinson attended and testified that Robinson attended the training for the code of ethics in 2010.⁷⁵ Garrett similarly testified that Robinson underwent training in 2010.⁷⁶ The authority to weigh the evidence, determine the credibility of Bull and Garrett, and make factual determinations lies solely with the Board.⁷⁷ Additionally, as noted previously, Robinson's testimony would have been consistent with information already before the Board. This Court will not weigh the evidence that was presented to the Board, nor distinguish between documentary or verbal evidence.

It is undisputed that Robinson refused to sign the Code of Ethics form as First State requested her to do. The Board found that First State requested Robinson to perform a reasonable legal act and that Robinson's refusal amounted to insubordination. The Board's finding is supported by substantial evidence. Insubordination is the "[r]efusal to obey some order which a superior officer is entitled to give and have obeyed."⁷⁸ Garrett was entitled to request First State's employees sign the Code of Ethics forms because it was necessary to receive

⁷¹ Opening Br., at 11.

⁷² *Tears v. Unemployment Ins. Appeal Bd.*, 2013 WL 1908688, *2 (Del. May 7, 2013)(citing *Oceanport Indus., Inc. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del. 1994)).

⁷³ *Hanley v. City of Wilmington Zoning Bd. of Adjustment*, 2000 WL 1211173, *4 (Del. Super. Aug. 3, 2000).

⁷⁴ R. at 372.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Tears*, 2013 WL 1908688 at *2.

⁷⁸ *Scott*, 1993 WL 390365, n. 2; see also BLACK'S LAW DICTIONARY 801 (6th ed. 1990).

grant money. The Board's conclusion that the request was to perform a reasonable, legal act, and that Robinson's refusal amounted to insubordination is supported by the evidence and consistent with Delaware law. Accordingly, this Court finds there to be sufficient relevant evidence a reasonable mind might accept as adequate to support the conclusion that Robinson was terminated with just cause.

V. Conclusion

For the reasons stated above, the UIAB's conclusion is supported by substantial evidence and is free from legal error. Therefore, the judgment below is be **AFFIRMED**.

IT IS SO ORDERED.

/s/
M. Jane Brady
Superior Court Judge