

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

WESLEY COLLEGE, a Delaware corporation, )  
 )  
 ) C.A. No. 09A-02-007 (JTV)  
 Appellant, )  
 )  
 v. )  
 )  
 UNEMPLOYMENT INSURANCE )  
 APPEAL BOARD and CHRISTINE )  
 SPADY, )  
 )  
 Appellees. )

*Submitted: September 22, 2009*

*Decided: December 31, 2009*

Thad J. Bracegirdle, Esq., Wilks, Lukoff, Bracegirdle, LLC, Wilmington, Delaware. Attorney for Appellant.

Philip G. Johnson, Esq., Department of Justice, Wilmington, Delaware. Attorney for Appellee Unemployment Insurance Appeal Board.

Jeffrey K. Martin, Esq., Martin & Wilson, P.A., Wilmington, Delaware. Attorney for Appellee Christine M. Spady.

*Upon Consideration of Appellant's  
Appeal From Decision of The  
Unemployment Insurance Appeal Board*

**REMANDED**

**VAUGHN, President Judge**

## **OPINION**

The appellant, Wesley College, appeals from a decision of the Unemployment Insurance Appeal Board that affirmed an appeals referee's decision awarding benefits to the claimant, Christine Spady. Wesley takes issue with the Board's determination that Spady was not fired for just cause and was therefore entitled to receive unemployment benefits. Wesley asks this Court to reverse the Board's decision and disqualify Spady from unemployment benefits.

### **FACTS AND PROCEDURAL HISTORY <sup>1</sup>**

#### **A. Background and Procedural History**

Spady became a security officer at Dover's Wesley College in January 2007. She was assigned to the security department's third shift which is responsible for campus security each night between 11 p.m. and 7 a.m. She was fired from that position in February 2008. Later that month, Spady filed a claim for unemployment benefits with the Department of Labor. Wesley objected to her claim, and a claims deputy found that Spady was disqualified from receiving benefits because she had been fired for just cause. Spady appealed that decision to an appeals referee.

The appeal began with an evidentiary hearing held on April 16, 2008. Based on the evidence presented at that hearing, the appeals referee reversed the claims deputy's decision, finding that Spady was entitled to unemployment benefits because she had not been fired for just cause. Wesley appealed the referee's decision to the

---

<sup>1</sup> The evidence presented by the parties at each stage of the litigation is recounted as a whole record and not chronologically, hearing-by-hearing.

*Wesley College v. UIAB , et al.,*  
C.A. No. 09A-02-007 (JTV)  
December 31, 2009

Board, and asked that it be allowed to supplement the record. Due to the large volume of evidence Wesley sought to present, the Board remanded the case to an appeals referee for further proceedings. A hearing took place on October 10, 2008, and the appeals referee affirmed the prior decision; namely, that Spady was eligible for benefits because she had not been fired for just cause. Wesley appealed again, and after a January 21, 2009 hearing, the Board affirmed the referee's decision. Wesley appealed the Board's decision, presenting the case to this Court.

**B. The Incident and Investigation that Resulted in the Termination of the Entire Third Shift, Including Spady**

On February 7, 2008, Wesley security was informed by a staff member that significant damage had occurred in the Zimmerman Hall dormitory.<sup>2</sup> A colleague of Spady's who worked on another shift investigated the complaint and referred the matter to the chief of Wesley security, Walter Beaupre ("Beaupre").<sup>3</sup> Beaupre discovered in the second floor hallway a series of five "fist sized" holes, one large hole measuring twelve inches by twenty-four inches, and at least two more "small holes."<sup>4</sup> Based upon an interview of a hall resident, Beaupre concluded that the damage had occurred around 11:30 p.m. the night before, February 6, 2008.<sup>5</sup> Alarmed that this damage was not reported to him by the third shift, Beaupre decided

---

<sup>2</sup> A 107-112.

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

<sup>4</sup> A 61-68.

<sup>5</sup> *Id.*; A 132.

to investigate the third shift’s activities for the night of February 6-7.<sup>6</sup>

Beaupre started his investigation by looking at the security log to determine who was working that night, who had checked Zimmerman Hall, and what log entries had been made.<sup>7</sup> The log entries for the morning of February 7 at 2:33 a.m. and 5:10 a.m. both showed: Zimmerman Hall “[f]oot patrol throughout the building; all secure.”<sup>8</sup> Beaupre then reviewed the access card report which showed who had scanned an access card at Zimmerman Hall in the early morning of February 7.<sup>9</sup> Next, he reviewed a surveillance video from the third shift to “see how long they were in the building,”<sup>10</sup> and he was “surprised [and] astonished” that “the officer did not even go into the building during the entire shift . . . the officer walked up to the card reader, swiped his card, and walked away.”<sup>11</sup> This troubling discovery led him to include the whole department in an expanded investigation.<sup>12</sup>

The department wide investigation led Beaupre to conclude that the entire third

---

<sup>6</sup> A 133.

<sup>7</sup> A 133.

<sup>8</sup> A 72.

<sup>9</sup> A 133. Like many colleges and universities, Wesley's dorms have a security system that requires the scanning of an access card before the door can be opened. Wesley's access card system records details about each scan. A 114-115, 812-813; *see* A 279-776.

<sup>10</sup> A 114-116; A 133.

<sup>11</sup> A 133.

<sup>12</sup> *Id.*

shift was engaging in this behavior.<sup>13</sup> Regarding Spady, Wesley presented evidence of log entries, access card reports, and surveillance videos from four days in early February 2008. The access card reports showed that Spady had swiped her access card at Zimmerman Hall, and the security log entries contained reports bearing her initials (CS) that stated a foot patrol had been conducted “throughout.”<sup>14</sup> The surveillance video shot on days corresponding with the logs and access card reports showed Spady and other officers either walking or driving up to the Zimmerman Hall garage entrance, scanning their cards, not entering the building, and leaving the area.<sup>15</sup> Based on that evidence, Beaupre determined that Spady’s entries in the security log, that indicated that she had done a “foot patrol throughout” Zimmerman Hall, were inconsistent with the surveillance video footage.<sup>16</sup>

Beaupre decided to fire the entire third shift, including Spady, for falsification of records.<sup>17</sup> Beaupre met with Spady on February 13, 2008, and informed her of the results of his investigation and the reason why she was being fired.<sup>18</sup> Beaupre did not ask for Spady’s side of the story, and he informed her that she was fired, effective

---

<sup>13</sup> A 133.

<sup>14</sup> A 73-92.

<sup>15</sup> A 119-124. Wesley had similar evidence regarding other third shift members. A 133.

<sup>16</sup> A 125, 134.

<sup>17</sup> A 126, 133, 843.

<sup>18</sup> A 134.

***Wesley College v. UIAB , et al.,***  
C.A. No. 09A-02-007 (JTV)  
December 31, 2009

immediately, for “falsifying official college records by indicating that she was conducting a complete walk through of the building when, in fact, she was not.”<sup>19</sup> Finally, Beaupre handed Spady a termination letter that memorialized the end of her employment.<sup>20</sup>

### **C. Spady’s Responsibilities as a Wesley Security Officer**

The parties presented evidence to the referees and the Board regarding two issues: one, what policies and procedures Spady was supposed to follow as a security officer; and two, whether she had been informed of those policies and procedures. In general, Spady and her fellow officers were responsible for all security operations and safety checks around the Wesley campus.<sup>21</sup> The parties concentrated most of their efforts on determining whether policies existed regarding; one, the proper way to fill out the daily security log, and two, the inspection of residence halls -- and whether Spady knew about these policies.

Wesley presented evidence that Spady knew of a policy that prohibited the falsification of records. When Spady was hired she signed a “Statement of Ethics and Confidentiality” in which she agreed, among other things, to “prepare and maintain *all* academic, student, and business records with diligence and honesty.”<sup>22</sup> The

---

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

<sup>20</sup> A 93.

<sup>21</sup> A 51; Ans. Brief at 2; A 792.

<sup>22</sup> A 18, 780, 911 (emphasis in original).

***Wesley College v. UIAB , et al.,***  
C.A. No. 09A-02-007 (JTV)  
December 31, 2009

security officer job description, which Spady admitted she may have received, but did not read,<sup>23</sup> described one of her duties as “[c]omplet[ing] security blotter daily and submit[ting] to Chief or supervisor for distribution . . . .”<sup>24</sup> In the first paragraph of the offer letter that Spady signed, she was invited to review the Wesley College Staff Handbook which “sets forth the College’s policies and procedures.”<sup>25</sup> This handbook was available online.<sup>26</sup> Spady testified that she had received the handbook at some point during her employment.<sup>27</sup> The handbook provided possible reasons for termination, including “[f]alsification of work records.”<sup>28</sup> Further, Wesley’s Campus Safety and Security Manual, which was made available in the main security office and on Wesley’s web page,<sup>29</sup> stated that one responsibility of security officers is to “[keep] track of their patrols in a log which [sic] available for public viewing in the Safety and Security Office.”<sup>30</sup> Finally, Beaupre testified that Spady was present at a staff meeting where he discussed the importance of accurate record keeping in the

---

<sup>23</sup> A 31, 817-818.

<sup>24</sup> A 51.

<sup>25</sup> A 17.

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

<sup>27</sup> A 911.

<sup>28</sup> A 54-55.

<sup>29</sup> A 102-103.

<sup>30</sup> A 41.

***Wesley College v. UIAB , et al.,***  
C.A. No. 09A-02-007 (JTV)  
December 31, 2009

security log and emphasized that each officer was responsible for his or her own entries.<sup>31</sup>

In response, Spady presented evidence to show that she was not aware of any policy regarding the proper way to fill out the security log, and, in the alternative, that she had performed that task properly. Spady testified that she did not receive any training from Beaupre.<sup>32</sup> She initially testified that Beaupre had only given her one document which told her what buildings to unlock in the mornings; though she later acknowledged signing the ethics document and receiving a handbook.<sup>33</sup> Regarding the handbook, she testified that it did not contain any procedures describing how to maintain the security log.<sup>34</sup> Ronald Tate (“Tate”), Spady’s shift supervisor who had been fired with the rest of the third shift, testified that Beaupre did not discuss any policies or procedures at the staff meetings.<sup>35</sup> Tate also testified that Beaupre never responded to his requests for an updated set of procedures.<sup>36</sup> Further, Spady testified

---

<sup>31</sup> A 781, 794, 819-20. Sam Crawford, another shift’s supervisor, also testified that the security log entry policy was discussed at the staff meeting. A 795-796. In addition, Beaupre corroborated his testimony with an agenda that he had prepared for the full staff meeting, which shows check marks next to each topic, including the topic “Reports/Log (Blotter) Entries (makes it official). Each officer responsible for their entries! Shift supervisor reviews.” A 781.

<sup>32</sup> A 138, 911.

<sup>33</sup> A 911.

<sup>34</sup> *Id.*

<sup>35</sup> A 841, 917-918.

<sup>36</sup> A 834.



***Wesley College v. UIAB , et al.,***  
C.A. No. 09A-02-007 (JTV)  
December 31, 2009

that it was her understanding that generic language was to be used when filling out the security logs,<sup>37</sup> and both Spady and Tate testified that Tate did most of the entries in the security log.<sup>38</sup> Finally, Spady testified that any training she did receive came from Tate, and that she followed his directions and guidance.<sup>39</sup>

Regarding the inspection of residence halls, Wesley presented evidence that Spady knew that it was school policy for security officers to inspect the interior of dorm halls. The security officer job description lists as one of her duties: “[p]erforms security patrol of all buildings and grounds.”<sup>40</sup> Wesley also pointed to the Campus Safety and Security Manual,<sup>41</sup> which states that “[c]ampus facilities are routinely patrolled by security officers . . . . Building checks are conducted by security officers on a regular basis. The officers are responsible for conducting interior and exterior patrols of the buildings and residence halls once per shift.”<sup>42</sup> Sam Crawford

---

<sup>37</sup> A 916. Tate testified that it was understood that generic statements were to be copied from prior security logs to keep the wording of the entries consistent. A 836-837, 919-920. Tate stated that they would only write specific and detailed entries when there was an incident to report. A 836-837.

<sup>38</sup> A 141, 146-147, 836, 916, 919. Wesley did put forth evidence which showed that, on at least one occasion, Spady worked the third shift on her own, therefore she had to have been the officer who filled out that night’s security log. A 815.

<sup>39</sup> A 912.

<sup>40</sup> A 51.

<sup>41</sup> A 102.

<sup>42</sup> A 20.

(“Crawford”), the second shift supervisor, testified that the residence hall inspection policy requires security officers to go “floor by floor” within the interior of the building.<sup>43</sup> Both Crawford and Beaupre testified that Tate was present at a supervisors’ meeting where the details of the inspection policy were discussed.<sup>44</sup> Notably, however, neither witness testified that the inspection procedures were discussed at the full-staff meeting that Spady attended.<sup>45</sup>

Spady presented evidence that she was not informed of a specific procedure for dorm inspection, and that she instead followed Tate’s directions. Spady testified that the security officers were never told exactly what was required of them when they inspected the residence halls.<sup>46</sup> Spady stated that she received all of her training regarding dorm inspections from Tate.<sup>47</sup> Spady testified that Tate instructed them on how many officers needed to do the inspections, insisted they check the garages, and

---

<sup>43</sup> A 795.

<sup>44</sup> A 794-797 (Crawford); A 819-822 (Beaupre). Beaupre corroborated his testimony with an agenda that he had prepared for the supervisors’ meeting which shows check marks next to each topic, including the topic “Building check procedures (minimum of 1 per shift),” which is accompanied by a handwritten notation “Interior/Exterior.” A 782. In contrast, Tate testified that the inspection of buildings was not discussed at the supervisors’ meeting. A 841.

<sup>45</sup> An agenda similar to the one referenced in the prior footnote was prepared for the full staff meeting; however, it contains no reference to dorm inspection procedures. A 781.

<sup>46</sup> A 138.

<sup>47</sup> A 912.

*Wesley College v. UIAB , et al.,*  
C.A. No. 09A-02-007 (JTV)  
December 31, 2009

told them which buildings had the most problems.<sup>48</sup> When asked by a board member whether Tate’s instructions included entering and inspecting the interior of buildings, Spady responded “[s]ometimes they, sometime he would tell us to go in and make different checks of different things in buildings . . . . Whatever he instructed us to do is what we did on a daily basis.”<sup>49</sup>

In addition, Spady takes issue with the conclusion of Beaupre’s Zimmerman Hall investigation. Regarding the video evidence that was presented, Spady testified that the third shift security officers scanned the door in the garage to show that they had inspected the garage area for anything out of the ordinary.<sup>50</sup> She stated that the security officers did in fact enter Zimmerman Hall using other doors which were often propped open, thereby obviating the need to scan a card to enter the building.<sup>51</sup> Tate testified that, as their supervisor, he had instructed the third shift officers to do exactly what they were shown to be doing on the camera; inspect the garage and then swipe their access cards.<sup>52</sup>

---

<sup>48</sup> A 913-914.

<sup>49</sup> A 914.

<sup>50</sup> A 137-138, 147.

<sup>51</sup> A 138, 143, 144. Tate also testified that the doors throughout the dorm hall buildings were frequently propped open, which allowed the officers to enter without needing to scan their cards. A 837.

<sup>52</sup> A 148. Tate characterized what was seen on the video as “normal third shift procedure.” *Id.*

**D. Further Evidence of Spady's Alleged Misconduct**

Wesley also presented evidence of further misconduct by Spady not related to the Zimmerman Hall investigation. Specifically, Wesley presented testimony and documentary evidence which showed that Spady had made untruthful log entries regarding the inspection of another dormitory, Malmberg Hall.

First, Wesley had the resident director of Malmberg Hall testify about that building's unique security system. While most dorms only require the scanning of an access card at the exterior doors, each floor of Malmberg Hall also has a scanner.<sup>53</sup> Someone taking the stairs would not be able to enter each floor without scanning his or her access card on that floor.<sup>54</sup> The only exception was if someone took the elevator, which could only be used with the scan of an access card.<sup>55</sup> If someone swiped an access card at the basement level, he or she would only be able to access that floor.<sup>56</sup> The minimum number of scans that would allow someone to access the entire building is two - once at an entrance, and once at the elevator.<sup>57</sup> The resident director did acknowledge that doors were sometimes propped open, but she insisted that she and her assistants checked for that and closed any open doors.<sup>58</sup>

---

<sup>53</sup> A 789.

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

<sup>55</sup> *Id.*

<sup>56</sup> A 790.

<sup>57</sup> A 789-790; A 803.

<sup>58</sup> A 790-791.

Next, Beaupre discussed his post-termination inquiry into Spady’s inspections of Malmberg Hall. Beaupre put together an Excel spreadsheet that summarized his findings,<sup>59</sup> wherein he compiled Spady’s log entries<sup>60</sup> and access card reports<sup>61</sup> spanning from January 1, 2008 to the middle of February 2008. First, Beaupre noted that, in all of the security logs he had collected, Spady had used the identical phrase regarding Malmberg Hall forty-nine times: “foot patrol throughout.”<sup>62</sup> Beaupre ran the scan history for Spady’s access card, generating a list of every occasion Spady’s access card was scanned at Malmberg Hall in the previously mentioned time frame.<sup>63</sup> He then compared the security logs to the computer generated scan history in order to determine how many times Spady scanned her card upon each inspection, and if she had even visited the hall.<sup>64</sup> With the unique security system of Malmberg Hall in mind, Beaupre developed the following methodology: if Spady had only scanned her card once upon an inspection, she could not have accessed the whole building, therefore she could not have gone “throughout” the building; if, however, she had scanned her card at either the elevator or on every floor she could have gone

---

<sup>59</sup> A 803; A 166-167 (Spreadsheet).

<sup>60</sup> A 171-278.

<sup>61</sup> A 279- 776.

<sup>62</sup> A 804; A166-167 (Spreadsheet). Beaupre also generated a scan history of *all* access card scans at Malmberg Hall from January 1, 2008 to February 14, 2008.

<sup>63</sup> A 168-170.

<sup>64</sup> A 803-807.

***Wesley College v. UIAB , et al.,***  
C.A. No. 09A-02-007 (JTV)  
December 31, 2009

“throughout” the building.<sup>65</sup>

Beaupre gave two examples to demonstrate the application of his methodology. First, he focused on the early morning of January 2, 2008. Spady’s security log entry stated that she had conducted a foot patrol “throughout” the building at 2:08 a.m. and again at 5:33 a.m., but the scan history for that date showed that she had only scanned her card at the entrance of the building at 3:45 a.m.<sup>66</sup> Beaupre concluded that Spady’s log entry was untruthful for two reasons: one, she had stated that she had conducted a foot patrol throughout the building twice, when in fact she had only scanned her card once, at a time between her supposed patrols; and two, she only scanned an outside door, therefore she could not have gone “throughout” the building.<sup>67</sup> Next, Beaupre discussed the early morning of January 8, 2008. Spady’s security log entry stated that she had gone “throughout” the building at 12:47 a.m., and the scan history showed that she had scanned her card at the elevator at 12:56 a.m.<sup>68</sup> Beaupre concluded that this log entry could be truthful because, by scanning her card at the elevator, Spady would have been able to access the entire building.<sup>69</sup> In summary,

---

<sup>65</sup> A 804.

<sup>66</sup> A 804 (Beaupre Testimony); A 173 (Security Log- January 1, 2008); A 279 (Access Card Report- January 2, 2008.).

<sup>67</sup> A 804; A 166-167 (Spreadsheet).

<sup>68</sup> A 805 (Beaupre Testimony); A 181 (Security Log- January 7, 2008); A 286 (Access Card Report- January 8, 2008.).

<sup>69</sup> A 805; A 166-167 (Spreadsheet).

*Wesley College v. UIAB , et al.,*  
C.A. No. 09A-02-007 (JTV)  
December 31, 2009

using this methodology, Beaupre concluded that 40 out of 49 of Spady's log entries regarding Malmberg Hall in the months of January and February 2008 had been untruthful.<sup>70</sup>

Spady herself did not testify about the allegations in Beaupre's Malmberg Hall report, but Tate did tangentially comment upon it in his testimony by calling into question the credibility of both Beaupre and his report. First, Tate testified that Beaupre had made substantive changes to the security logs previously, contrary to Beaupre's earlier testimony that he had only made grammatical and formatting changes.<sup>71</sup> Tate also testified that he believed the videos and access card reports could have been altered, but he conceded that he "didn't know for sure" if that was possible.<sup>72</sup> Tate, however, did acknowledge that Malmberg Hall's unique security system requires either scanning a card on each floor or scanning a card to use the elevator.<sup>73</sup>

#### **E. The Board's Findings of Fact and Conclusions of Law**

After considering the evidence presented to it and the two referees, the Board made the following findings of fact. First, it found that Spady had been fired for

---

<sup>70</sup> A 166-167 (Spreadsheet); A 806 (Beaupre Testimony).

<sup>71</sup> A 828-833; A 920. Tate testified that sometimes Beaupre would change entries regarding lapses by security officers so that the security staff would not look bad, and that twice Beaupre made up an entire day's worth of entries because an officer had mistakenly deleted the log. A 832-833.

<sup>72</sup> A 845-846.

<sup>73</sup> A 921.

***Wesley College v. UIAB , et al.,***  
C.A. No. 09A-02-007 (JTV)  
December 31, 2009

“failing to properly conduct security checks of residence halls and for falsely representing that she had.”<sup>74</sup> The Board also found that Spady had signed the ethics document commanding her to maintain records honestly.<sup>75</sup> Next, the Board found that “it is undisputed that no written policy exists regarding the security procedures for residence hall checks or for the appropriate language to use in a security log.”<sup>76</sup> Further, the Board found that Spady had attended staff meetings, but, relying on Tate’s “very credible” testimony as well as Spady’s statements, it found that no policies or procedures were discussed at those meetings regarding dorm inspection or the proper language to use in the security log.<sup>77</sup> Next, the Board found that Tate was responsible for Spady’s training, and Spady was “reasonably obeying [Tate’s] directions and policy” regarding how to conduct inspections and enter generic statements in the security log.<sup>78</sup> Finally, the Board found that “no policy, written or otherwise, was actually in place and properly made known to [Spady].”<sup>79</sup>

The Board also made a number of conclusions of law. The Board framed the issue as whether Wesley had proven, by a preponderance of the evidence, that

---

<sup>74</sup> A 864 (Board Decision pg. 3).

<sup>75</sup> *Id.*

<sup>76</sup> A 865 (Board Decision pg. 4).

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*



Spady's actions were willful or wanton violations of Wesley's interests, duties, or expected standard of conduct.<sup>80</sup> The Board analyzed the facts of the case using a two-pronged test: one, whether there were policies in existence; and two, whether Spady knew of them.<sup>81</sup> The Board, relying upon its factual findings, held that Wesley failed to prove both prongs. Moreover, the Board held that even if Spady knew of "the proper residence hall procedure," she was following her supervisor's instructions, so therefore "her actions did not rise to the level of willful and wanton misconduct."<sup>82</sup>

Based upon its factual findings and conclusions of law, the Board decided that Wesley had failed to prove by a preponderance of the evidence that Spady was fired for just cause. Consequently, the Board ruled that Spady was entitled to benefits.<sup>83</sup>

#### **F. Parties' Contentions**

Turning to the parties' arguments on appeal, Wesley contends that the Board's decision that Wesley did not have just cause to fire Spady was incorrect. Wesley raises multiple points of error. First, it contends that the Board committed factual error by finding that there were no policies in place concerning an officer's duty to fully inspect the interior of dorm halls or how to properly fill out the security log. Second, Wesley contends that the Board committed both factual and legal error by

---

<sup>80</sup> A 864 (Board Decision pg. 3).

<sup>81</sup> A 865 (Board Decision pg. 4).

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

*Wesley College v. UIAB , et al.,*  
C.A. No. 09A-02-007 (JTV)  
December 31, 2009

finding that Spady had no notice of either above-mentioned policies. Third, Wesley contends that the Board committed legal error by holding that even if Spady had engaged in misconduct, her actions were excused because she was following her supervisor's instructions regarding dorm hall inspections and the proper language to use in the security log. Finally, Wesley argues that the Board's conclusion that "no policy, written or otherwise, was actually in place," is not supported by substantial evidence because uncontradicted evidence shows that Spady was aware, and violated, Wesley's honest record-keeping policy. In response, Spady defends the Board's decision by arguing that the Board's factual findings were supported by substantial evidence and that its legal conclusions were free from error.

#### **STANDARD OF REVIEW**

In reviewing the decisions of the Unemployment Insurance Appeal Board, the court must determine whether the Board's findings and conclusions are free from legal error and supported by substantial evidence in the record.<sup>84</sup> Substantial evidence means such relevant evidence that a reasonable mind might accept as adequate to support a conclusion.<sup>85</sup> The appellate court does not weigh the evidence,

---

<sup>84</sup> *Unemployment Ins. Appeal Bd. v. Martin*, 431 A.2d 1265, 1266 (Del. 1981); *Prof'l Ambulance Serv., Inc. v. Unemployment Ins. Appeal Bd.*, 1991 WL 68965, at \*1 (Del. Super.); 19 Del. C. § 3323(a) ("In any judicial proceeding under this section, the findings of the [UIAB] as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the Court shall be confined to questions of law.").

<sup>85</sup> *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super. 1986), *appeal dismissed*, 515 A.2d 397 (Del. 1986).

*Wesley College v. UIAB , et al.,*  
C.A. No. 09A-02-007 (JTV)  
December 31, 2009

determine questions of credibility, or make its own factual findings.<sup>86</sup> It is within the exclusive purview of the Board to judge witness credibility and resolve conflicts in testimony.<sup>87</sup> The reviewing court merely determines if the evidence is legally adequate to support the agency's factual findings.<sup>88</sup> The court considers the record in the light most favorable to the party prevailing below.<sup>89</sup>

### DISCUSSION

Employees discharged for just cause are disqualified from receiving unemployment insurance benefits.<sup>90</sup> Just cause is a “willful or wanton act in violation of either the employer’s interests, or of the employee’s duties, or of the employer’s expected standard of conduct.”<sup>91</sup> “Willful and wanton conduct is that which is evidenced by either conscious action, or reckless indifference leading to a deviation from established and acceptable workplace performance; it is unnecessary that it be

---

<sup>86</sup> *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

<sup>87</sup> *Starkey v. Unemployment Ins. Appeal Bd.*, 340 A.2d 165, 166 (Del. Super. 1975), *aff'd*, 364 A.2d 651 (Del. 1976) (TABLE); *Coleman v. Dep't of Labor*, 288 A.2d 285, 287 (Del. Super. 1972).

<sup>88</sup> *Majaya v. Sojourners' Place*, 2003 WL 21350542, at \*4 (Del. Super.); 19 *Del. C.* § 3323(a).

<sup>89</sup> *Pochvatilla v. U.S. Postal Serv.*, 1997 WL 524062, at \*2 (Del. Super.).

<sup>90</sup> 19 *Del. C.* § 3314(2) states, in relevant part, “An individual shall be disqualified for benefits . . . [f]or the week in which the individual was discharged from the individual’s work for just cause . . . .”

<sup>91</sup> *Krouse v. Cape Henlopen Sch. Dist.*, 1997 WL 817846, at \*3 (Del. Super.); *Avon Products, Inc. v. Wilson*, 513 A.2d 1315, 1317 (Del. 1986); *Starkey*, 340 A.2d at 167.

*Wesley College v. UIAB , et al.*,  
C.A. No. 09A-02-007 (JTV)  
December 31, 2009

founded in bad motive or malice.”<sup>92</sup> The employer has the burden to show that the employee acted willfully or wantonly in non-compliance with the employer’s policy.<sup>93</sup> The employer must also show that the employee received notice of the policy and the possibility that the employee’s deviation may lead to termination.<sup>94</sup>

Violation of a reasonable company rule may constitute just cause for discharge if the employee is aware of the rule and the possible subsequent termination.<sup>95</sup> A two-step analysis is used to evaluate just cause: “1) whether a policy existed, and if so, what conduct was prohibited, and 2) whether the employee was apprised of the policy and if so, how was he made aware.”<sup>96</sup> Knowledge of a company policy may be established by evidence of a written policy, such as an employer’s handbook.<sup>97</sup> Written policies are sufficient, though not necessary, to show that an employee was aware of the employer’s expectations.<sup>98</sup> A key question is whether the employer

---

<sup>92</sup> *Barton v. Innolink Sys., Inc.*, 2004 WL 1284203, at \*1 (Del. Super.) (quoting *MRPC Fin. Mgmt. LLC v. Carter*, 2003 WL 21517977, at \*4 (Del. Super.)).

<sup>93</sup> *Barton*, 2004 WL 128423, at \*1.

<sup>94</sup> *Id.* (“[J]ust cause does include notice to the employee that further poor behavior or performance may lead to termination.”).

<sup>95</sup> *McCoy v. Occidental Chem. Corp.*, 1996 WL 111126, at \*3 (Del. Super.).

<sup>96</sup> *Id.* See *Pavusa v. Tipton Trucking Co.*, 1993 WL 562196, at \*4 (Del. Super.).

<sup>97</sup> *McCoy*, 1996 WL 111126, at \*3 (citing *Honore v. Unemployment Ins. Appeal Bd.*, 1993 WL 485918 (Del. Super.)).

<sup>98</sup> *McCoy*, 1996 WL 111126, at \*3 (“Knowledge of a company policy *may* be established where there is evidence of a written policy . . . .”) (emphasis added).

clearly communicated to the employee what was expected of him or her.<sup>99</sup>

**A. Dorm Inspection and Security Log Language Policy**

The Board's findings that Wesley failed to show that policies existed regarding the particulars of dorm hall inspections and the proper language to use in the security log must be affirmed. Wesley argues that it presented an abundance of evidence that shows that there was a policy concerning what was expected of security officers when they inspected the dorm halls and made entries in the security log. In particular, Wesley points to: documentary evidence such as the ethics statement, job description, staff handbook, and Campus Safety and Security Manual; and the testimony of Beaupre and Crawford that they were aware of such policies and that those policies were discussed at staff meetings. Spady, however, presented evidence in opposition to Wesley's; in particular Tate's and Spady's testimony that very little training was provided, that Beaupre failed to respond to requests for updated procedures, that security officers were never told what was required to properly inspect a dorm, and that no policies were discussed at the staff meetings.

The court does not make factual findings, weigh the evidence, or resolve conflicts in the evidence - that is solely the province of the Board. The evidence presented by Spady provides a factual basis that a reasonable mind might accept as adequate to support the Board's conclusion. The Board's findings on these points is supported by substantial evidence and will not be upset on appeal.

---

<sup>99</sup> See *Smoot v. Comcast Cablevision*, 2004 WL 2914287, at \*4 (Del. Super.).

**B. Was Spady Aware of Wesley’s Security Officer Policies?**

The Board’s finding that Spady was unaware of the two policies considered in the prior section - dorm inspection and security log language - is affirmed on two grounds. First, since the Board had substantial evidence to support its finding that no policies existed regarding the inspection of dorm halls and the proper language to use in the security log, it must follow that Spady was not aware of those policies. Second, regardless of the Board’s finding that those policies did not exist, the Board had substantial evidence to support an independent finding that Spady was unaware of those policies. Both Spady and Tate testified that they were not made aware of policies regarding the particulars of dorm inspection or security log language.<sup>100</sup> That testimonial evidence provides a factual basis legally adequate to support the Board’s conclusion.

**C. If Spady Did Violate a Wesley Policy, Did Following Tate’s Instructions Excuse That Misconduct?**

The Board provided an alternative justification for its decision that Spady had not been fired for just cause. It stated that even if it were to assume that Spady had knowledge of “the proper residence hall procedure,” Spady was “reasonably obeying the direction and policies set forth” by Tate, and her actions “did not rise to the level of willful or wanton conduct.”<sup>101</sup> This statement consists of both findings of fact and conclusions of law.

Wesley argues that the Board’s findings are contrary to both the factual record

---

<sup>100</sup> Moreover, the Board, exercising its powers as fact-finder, found Tate’s testimony to be “very credible.”

<sup>101</sup> A 865 (Board Decision pg. 4).

*Wesley College v. UIAB , et al.,*  
C.A. No. 09A-02-007 (JTV)  
December 31, 2009

and Delaware law. In particular, Wesley takes issue with the Board’s implied holding that Tate had the authority to modify security officer policy. That holding excused any actions by Spady which may have been contrary to any known dorm inspection policy if they were done pursuant to Tate’s instructions.

However, if Spady was reasonably obeying the directions and policies set forth by her supervisor, as found by the Board, the conclusion that her actions did not rise to the level of willful or wanton misconduct is justified.

**D. Was There Sufficient Evidence to Conclude That There Were No Policies In Place?**

Wesley’s final point of error, however, does have merit. The Board found that “no policy, written or otherwise, was actually in place and properly made known to [Spady].” I conclude, however, that this finding does not adequately address Spady’s obligation to be honest and truthful in logging her activities, if there was such an obligation, in connection with her activities at Malmberg Hall. Spady acknowledged signing the ethics document commanding her to maintain records honestly, and admitted receiving a staff handbook which stated that falsification of work records could result in termination.<sup>102</sup> Spady did not contradict this evidence; and, in fact, implicitly recognized the existence of this policy by testifying twice that she did not falsify records.<sup>103</sup>

---

<sup>102</sup> Notably, Spady’s termination letter stated that she had been fired for “falsification of official records.” A 7.

<sup>103</sup> A 137; A 915.

*Wesley College v. UIAB , et al.,*  
C.A. No. 09A-02-007 (JTV)  
December 31, 2009

In its summary of evidence, the Board briefly summarizes the evidence of data from the Malmberg Hall security system that Spady would have had to scan entry into the residence hall and upon each floor to complete a search of the building, i.e. at least two scans. On numerous occasions, the data shows that not all floors had been scanned. However, in its findings of fact and conclusions of law, the Board does not seem to have returned to a consideration of this evidence as it pertained to Spady's alleged duty to be truthful in reporting.

A theory of Wesley's case was that Spady's repeated statement in the security log that she had done a "foot patrol throughout" Malmberg Hall was contradicted by testimonial and documentary evidence that showed: one, that Spady had rarely scanned her access card enough times to go "throughout" Malmberg Hall's uniquely secure floors; and two, Spady was inflating how many times she had actually visited Malmberg Hall. Stated differently, Wesley presented hundreds of pages of documents and lengthy testimony that, in its view, showed that Spady was untruthful when she stated in the security log that she had gone "throughout" (or even visited) Malmberg Hall. Other than Tate's accusation that Beaupre and his report were not credible, it appears that Spady presented no evidence to contradict Wesley's contentions. If the Board accepted Wesley's evidence that Spady had been untruthful about the extent, or number, of her visits to Malmberg Hall, she may have violated Wesley's honest record keeping policy. This could provide just cause for Spady's termination independent of the other allegations.

"The Board's decision should provide the reviewing court with the Board's



***Wesley College v. UIAB , et al.,***  
C.A. No. 09A-02-007 (JTV)  
December 31, 2009

holding and reasoning.”<sup>104</sup> While the Board need not comment on every piece of evidence,<sup>105</sup> it must not “fail to address material allegations”<sup>106</sup> or largely ignore a party’s evidence.<sup>107</sup> “Some cases, containing more disputed or ambiguous facts, require greater attention to the factual findings.”<sup>108</sup> After three hearings - which produced over 150 pages of testimony and many hundreds more pages of documentary evidence - it is fair to say that this may be such a case. A substantial amount of evidence was presented at the hearing before the second referee concerning Wesley’s Malmberg Hall investigation, yet that evidence received little attention from both the second referee<sup>109</sup> and the Board.<sup>110</sup>

For these reasons, I conclude that a remand is necessary. Upon remand, the Board should consider whether Wesley has proven, by a preponderance of the evidence, that: one, there was a policy requiring honest record keeping; two, that

---

<sup>104</sup> *Atlantis Communications v. Webb*, 2004 WL 1284213, at \*2 (Del. Super.).

<sup>105</sup> *R.C. Nehi Corp. v. Dillmore*, 1986 WL 4570, at \*3 (Del. Super.).

<sup>106</sup> *Atlantis*, 2004 WL 1284213, at \*3.

<sup>107</sup> *New Colony North Apartments Co. v. Vaught*, 1995 WL 109050, at \*3 (Del. Super.).

<sup>108</sup> *R.C. Nehi Corp.*, 1986 WL 4570, at \*3.

<sup>109</sup> Two sentences in the second referee’s summary of evidence could be read to reference the Malmberg Hall evidence, and there was no reference to that evidence in the referee’s findings of fact - a section which, in its entirety, was only four sentences long. A 164-165.

<sup>110</sup> Three sentences in the Board’s summary of evidence reference the Malmberg Hall evidence, and there was no reference to that evidence in the Board’s findings of fact. A 862-865.

*Wesley College v. UIAB , et al.,*  
C.A. No. 09A-02-007 (JTV)  
December 31, 2009

Spady knew about that policy and that violating it could result in termination; and three, whether that evidence in the record - particularly the Malmberg Hall evidence - shows that Spady violated that policy in a willful or wanton manner justifying her dismissal.

### CONCLUSION

For the foregoing reasons, the Board's decision is *remanded* for further findings of fact and conclusions of law in accordance with this opinion.<sup>111</sup>

**IT IS SO ORDERED.**

---

President Judge

oc: Prothonotary  
cc: Order Distribution  
File

---

<sup>111</sup> Either party may request a new hearing. *Atlantis*, 2004 WL 1284213, at \*3 n.14 (citing *E.I. Dupont De Nemours & Co., v. Downes*, 2003 WL 23274837, at \*3 (Del. Super.)); *Hitchens v. Unemployment Ins. Appeal Bd. of the State of Delaware*, 1987 WL 14872, at \*1 (Del. Super.)).