**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

**IN AND FOR KENT COUNTY**

| | | |
|---|---|---|
| **SHARON HUTCHISON,** | : | |
| | : | |
| **Plaintiff,** | : | **C.A. No: 09A-02-009 (RBY)** |
| **v.** | : | |
| | : | |
| **U.I.A.B. and FREDERICA SENIOR CENTER,** | : | |
| | : | |
| | : | |
| **Defendants.** | : | |

Submitted: August 14, 2009
Decided: November 25, 2009

*Upon Consideration of Appellant's Appeal from the Decision of the IAB*
**AFFIRMED**

**OPINION AND ORDER**

Sharon F. Hutchison, *pro se*
Frederica Senior Center, *pro se*

Young, J.

## SUMMARY

Appellant, Sharon Hutchinson ("Appellant"), appeals from the Unemployment Insurance Appeal Board's decision denying her claim for unemployment benefits against Frederica Senior Center ("FSC"). Because the UIAB's decision was supported with evidence of employee misconduct, warranting immediate dismissal, the UIAB decision is **AFFIRMED**.

## FACTUAL BACKGROUND

Appellant began working for FSC as its Office Manager on June 20, 2005. Appellant's last day of employment with FSC was Friday, August 1, 2008. She was terminated the morning of Monday, August 4, 2008. Appellant's termination stemmed from an incident that occurred on July 25, 2008.

On July 25, 2008, Appellant arrived at FSC at 7:00 a.m. Appellant was not scheduled to work until 9:00 a.m. During the two-hour interval, Appellant ate breakfast with her co-workers, and played card games. At approximately 8:10 a.m., Frederic Rohn ("Rohn") telephoned FSC. Rohn is the executive director of FSC. He was vacationing, and wanted to provide Appellant with instructions during his absence.

Appellant refused to answer the telephone when summoned by a co-worker. Appellant's refusal was evidently premised on the notion that, since she was not scheduled until 9:00 a.m., she was under no immediate obligation to converse with Rohn. Rohn left a message for Appellant, instructing her to complete various tasks.

Upon receipt of Rohn's message, Appellant allegedly said, "F*** Fred" as well as "Fred can kiss ** ***." These statements were made in front of other employees, volunteers, and FSC members.

Rohn returned from vacation on July 31, 2008. The next day, after being informed of Appellant's purported comments, Rohn questioned Appellant. Appellant initially denied all allegations of profanity.[1] Despite her denial, Rohn terminated Appellant's employment. His termination decision was based on several eye-witness accounts of Appellant's comments. This action was consistent with FSC's Employment Policies and Procedures Manual (the "Manual"). Although the original reason cited on Appellant's termination letter was "insubordination," Rohn later explained that this characterization was erroneous. He terminated Appellant for her use of irreverent language while in the presence of other employees and patrons of the FSC, constituting misconduct as defined by the Manual.

Appellant sought relief from the Claims Deputy of the Unemployment Office. The Claims Deputy determined that Appellant was terminated for cause, as required when making a determination as to the appropriateness of an unemployment award. The Claims Deputy's decision disqualified Appellant from receiving unemployment benefits. Appellant appealed to the Appeals Referee. The Appeals Referee affirmed the Claims Deputy's decision, denying Appellant unemployment benefits. After the Appeals Referee's unfavorable decision, Appellant appealed to the UIAB. The UIAB

[1] Appellant eventually admitted that she said, "Fuck Fred." She maintains, however, that her aspersion was not directed at (Fred) Rohn. She claims the statement was intended for another Fred, a family member.

affirmed the Appeals Referee's decision. The UIAB found that just cause for termination existed, as Appellant acted in a way that was not in the best interests of the employer.

## STANDARD OF REVIEW

An appeal from the Unemployment Insurance Appeal Board is restricted to a determination of whether the Board's decision is free from legal errors and whether the Board's finding of facts and conclusions of law are supported by substantial evidence in the record.[2] Substantial evidence is that which "a reasonable mind might accept as adequate to support a conclusion."[3] It is also defined as more than a scintilla, but less than a preponderance of the evidence.[4] It is a low standard to affirm and a high standard to overturn. If the record contains substantial evidence, then the Court is prohibited from re-weighing the evidence or substituting its judgment for that of the agency.[5]

[2] 19 *Del. C.* § 3323(a).

[3] *Olney v. Cooch*, 425 A.2d 610, 614 (Del. Super. 1981) (citing *Consolo v. Federal Maritime Commission*, 383 U.S. 607, 620 (1966)).

[4] *Breeding v. Contractors-One-Inc.*, 549 A.2d 1102, 1104 (Del. 1988) (citing *DiFilippo v. Beck*, 567 F.Supp 110 (D.Del. 1983)).

[5] *Janaman v. New Castle County Bd. of Adjustment*, 364 A.2d 1241, 1242 (Del. Super. 1976).

## DISCUSSION

Appellant attacks the Board's decision on two grounds. First, Appellant argues that her termination was improper because she was not given an unequivocal warning prior to dismissal. Second, Appellant asserts that the Board misinterpreted the factual information presented. Appellant's position is that the Board did not have substantial evidence to support its factual and legal findings.

It is not within this Court's purview to act as fact-finder in an appeal from an administrative board.[6] The UIAB, as the fact-finder, reviews the testimony and issues an opinion. Unless the Court finds that its opinion cannot be supported, the decision of the Board is affirmed, in as much as that discretion belongs to the Board. On appeal, the Court's responsibility is to assure that the Board's decision did not go against the great weight of the evidence.[7]

Ordinarily, for there to be a finding of willful or wanton misconduct, a prior warning is required. This warning places the employee on clear notice that a repetition or continuation of certain behavior may lead to dismissal. There are, however, certain types of behavior that require no prior warning for a finding of willful or wanton misconduct. Insubordination, absenteeism, and misconduct constitute only a few examples. The term "misconduct" refers to willful or wanton behavior that manifests a reckless disregard for the employer's interests and the

---

[6] *Bernhard v. Phoenix Mental Health*, 2004 WL 304358, at * 1 (Del. Super. Jan. 30, 2004) (internal citations omitted).

[7] *Hall v. City of Wilmington*, 1978 WL 186829, at *2 (Del. Super. Jan. 27, 1978).

workplace standard of conduct. FSC's Manual clearly outlined that an employee could be subject to immediate dismissal for misconduct.[8]

The uncontroverted evidence shows that Appellant publicly uttered a series of profanities on July 25, 2008 while at FSC. Her audience was comprised of other FSC employees and patrons. While Appellant claims her outburst was directed at someone else named Fred, it is, at the very least, entirely possible that a reasonable observer would conclude that Appellant was referring to (Fred) Rohn. The record certainly can be read to reflect that Appellant openly disrespected her employer in front of other staff, challenged her employer's authority, and lied when confronted about her behavior. To permit this type of employee misconduct to go unchecked could diminish an employer's authority to manage its own organization. Appellant's behavior exhibited a reckless disregard for her employer's interests. Since she engaged in conduct which could be considered wanton, there was just cause to terminate her employment immediately.

Furthermore, Appellant's evidentiary claim, that the Board's decision was unsupported by substantial evidence, lacks merit. The record reflects that no less than six people, including two witnesses who testified on behalf of Appellant, heard

---

[8] FSC's Manual reads, in relevant part:

> Dismissal for Cause – Any employee dismissed for due cause (i.e., insubordination, absenteeism, misconduct, or failure to comply with the Center's policies), shall be subject to immediate dismissal without provision of terminal pay for unused time.

Appellant openly use profanity curse while in the workplace. Indeed, Appellant admitted to her use of profanity on the day in question. The eyewitness testimony in conjunction with Appellant's own admission easily satisfies the substantial evidence standard. Accordingly, no reversible error has occurred.

## CONCLUSION

The record does contain substantial evidence to support Appellant's termination for misconduct, which impaired FSC's to maintain a civil working environment and to manage its business effectively. The Board's decision is **AFFIRMED**.

**SO ORDERED.**

/s/ Robert B. Young
J.

RBY/sal
oc: Prothonotary
cc: Opinion Distribution
File