

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

SUSSEX COUNTY COURTHOUSE
1 The Circle, Suite 2
GEORGETOWN, DE 19947

December 2, 2009

Shirley E. Lockwood
31212 Polly Branch Road
Selbyville, DE 19975

Cozy Critters Child Care, Inc.
Attn: Lisa Hudson
35371 Beaver Dam Road
Frankford, DE 19945

RE: Shirley E. Lockwood v. Cozy Critters Child Care, Inc.
C.A.No. S09A-03-003
Letter Opinion

Date Submitted: August 18, 2009

Dear Ms. Lockwood and Ms. Hudson:

This is my decision on Shirley E. Lockwood's appeal of the Unemployment Insurance Appeal Board's denial of her claim for unemployment benefits. Lockwood worked as a pre-kindergarten teacher for one year at the Cozy Critters Child Care. Cozy Critters terminated Lockwood for not adequately comforting the children under her care and for not getting along with her co-workers. Lockwood then filed a claim for unemployment compensation with the Department of Labor. The Board held a hearing on February 11, 2009. Lockwood, Lisa Hudson, the administrator for Cozy Critters, and three teachers for Cozy Critters, Stephanie Highfield, Sara Steen and Lynn McCray, testified at the hearing. Hudson and the three teachers testified about the problems that Cozy Critters had with Lockwood. Lockwood denied that she was a problem at work. The Board accepted the testimony of the witnesses for Cozy Critters and denied Lockwood's claim for unemployment insurance,

reasoning that her failure to adequately comfort the children under her care and her inability to get along with her co-workers constituted just cause for her termination. Lockwood then filed an appeal with this Court. I have affirmed the Board's decision because it is in accordance with the applicable law and supported by substantial evidence in the record.

STANDARD OF REVIEW

The Supreme Court and this Court repeatedly have emphasized the limited appellate review of the factual findings of an administrative agency. On appeal from a decision of the Board, this Court is limited to a determination of whether there is substantial evidence in the record sufficient to support the Board's findings, and that such findings are free from legal error.¹ Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.² The Board's findings are conclusive and will be affirmed if supported by "competent evidence having probative value."³ The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.⁴ It merely determines if the evidence is legally adequate to support the Board's factual findings.⁵ Absent an error of law, the Board's decision will not be disturbed

¹ *Unemployment Ins. Appeals Board of the Dept. of Labor v. Duncan*, 337 A.2d 308, 309 (Del. 1975); *Longobardi v. Unemployment Ins. Appeal Board*, 287 A.2d 690, 692 (Del. Super. 1971), *aff'd* 293 A.2d 295 (Del. 1972).

² *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super. 1986), *app. disp.*, 515 A.2d 397 (Del. 1986).

³ *Geegan v. Unemployment Compensation Commission*, 76 A.2d 116, 117 (Del. Super. 1950).

⁴ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

⁵ 29 Del.C. § 10142(d).

where there is substantial evidence to support its conclusions.⁶

DISCUSSION

The Board found that Lockwood was fired for just cause because she did not adequately comfort the children under her care and did not get along with her co-workers. The Board's finding is in accordance with the applicable law and supported by substantial evidence in the record. An employee may be disqualified from receiving unemployment benefits when discharged for just cause.⁷ "Just cause" has been defined as a "willful or wanton act in violation of either the employer's interests, or of the employee's duties, or of the employee's expected standard of conduct."⁸ "Willful or wanton conduct requires a showing that one was conscious of [her] conduct or recklessly indifferent of its consequences."⁹

Cozy Critters is a daycare. The children that Lockwood and the other teachers were responsible for were very young. The parents wanted to know that their children were being properly cared for during the day. Cozy Critters had an interest in making sure the children were properly cared for and it was Lockwood's duty as a teacher to make sure this was done. Lisa Hudson, the administrator of Cozy Critters, and three teachers at Cozy Critters testified about Lockwood's repeated refusal to adequately comfort the children under her care when they needed it. Hudson repeatedly warned Lockwood about this, but she never

⁶ *Dallachiesa v. General Motors Corp.*, 140 A.2d 137 (Del. Super. 1958).

⁷ 19 Del.C. § 3314(2).

⁸ *Avon Products, Inc., v. Wilson*, 513 A.2d 1315, 1317 (Del. 1987).

⁹ *Coleman v. Dept. of Labor*, 288 A.2d 285, 288 (Del. Super. 1972).

changed her behavior. This led to problems with the children and their parents. Hudson also testified about Lockwood's inability to get along with her co-workers. Hudson's testimony was supported by the testimony of the three teachers. Hudson tried to find a situation at Cozy Critters that would work for Lockwood, moving her from classroom to classroom at least three times. It got so bad, according to Hudson, that no one wanted to work with Lockwood. While Lockwood denied this, the Board decided to accept the testimony of Hudson and the three teachers over the testimony of Lockwood. It is within the province of the Board, not this Court, to weigh the credibility of the witnesses and to resolve the conflicts in their testimony.¹⁰

The evidence presented to the Board indicated that Lockwood did not adequately comfort the children under her care and did not get along with her co-workers. Hudson told Lockwood a number of times to change her behavior, but she never did. This demonstrates that Lockwood was willfully and wantonly indifferent to her duties as a teacher and the interests of Cozy Critters. The Board's finding that Lockwood was terminated for just cause is in accordance with the applicable law and supported by substantial evidence in the record.

CONCLUSION

The decision of the Unemployment Insurance Appeal Board is affirmed.

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley

¹⁰ *Ward v. Unemployment Insurance Appeal Board*, 2009 WL 3297552, at *2 (Del. Super. Aug. 31, 2009).