

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

PAMELA CROOM,)	
)	
Appellant,)	C.A. No. N13A-04-006 RRC
v.)	
)	
SMALLS STEPPING STONE,)	
)	
Appellee.)	

Submitted: August 29, 2013
Decided: November 19, 2013

On Appeal from a Decision of the Unemployment Insurance Appeal Board.
AFFIRMED.

ORDER

Pamela Croom, Wilmington, Delaware, *pro se*, Appellant

Charles Gruver, III, P.A., Esquire, Hockessin, Delaware, Attorney for
Appellee, Smalls Stepping Stone

COOCH, R.J.

This 19th day of November, 2013, on appeal from a decision of the
Unemployment Insurance Appeal Board, it appears to the Court that:

1. Appellant Pamela Croom (“Appellant”) worked for Appellee Smalls Stepping Stone (“Appellee”), a day care provider, on and off from 2003 until January 4, 2013.¹ Appellee was terminated for her failure to acquire or enroll in program to obtain her high school diploma or GED as required by the Delaware Office of Child Care Licensing.²

¹The correct name of the business entity-appellee is unclear from the record.

² Ex. B to Appellee’s Ans. Br. of July 31, 2013.

Appellant filed for unemployment benefits, but a claims deputy disqualified her because her termination was for “just cause.”³ Appellant timely appealed this claim.

2. On February 6, 2013, an Appeals Referee heard Appellant’s appeal. Appellant testified that she tried to enroll in a GED program in prior years. She also stated that when notified in December 2012 that she needed to get her GED she called and made arrangements to begin a program in the new year. Appellant claims this arrangement was approved by Appellee, but she was terminated before that program began. Appellant thinks that she was terminated as a result of an “altercation” she had with Appellee’s owner, Clara Smalls (“Smalls”) and that the GED was an excuse. The Appeals Referee affirmed the claims deputy’s denial of Appellant’s claim, holding “[w]hile the tribunal sympathizes with the unfortunate circumstances faced by the Claimant, it has no choice but to find that the Claimant’s discharge from employment by the employer was with just cause....”⁴ Appellant timely appealed to the Board.
3. At the Board hearing, Appellant’s testimony was similar to the Referee Hearing. She was unable to produce any paperwork to support her testimony that she was currently enrolled in a GED program. She explained that she brought documentation to the Referee Hearing, was told it was not needed, and assumed the Board would not want to see it either. Appellee did not have a representative at the hearing. The Board issued a decision on March 28, 2013 upholding the decision of the Appeals Referee. The Board held her “failure to heed Employer’s warning constitutes a conscious action and willful conduct to establish just cause.”⁵ Appellant timely filed this appeal.⁶

³ 19 Del. C. § 3314(2).

⁴ Division of Unemployment Appeals Referee’s Decision at 3.

⁵ Decision of the Unemployment Insurance Appeal Board on Appeal from the Decision of Andrew Morrison, Appeal Docket No. 10882158 (March 28, 2013) at 2. The Board also held “[d]ue to the continued inability of Claimant to substantiate her enrollment, the Board did not find Claimant’s testimony credible.” *Id.*

⁶ Although Appellant filed an Opening Brief in compliance with the copy of the Court’s briefing schedule provided to her by letter of June 18, 2013, she failed to send a reply brief in response to Appellee’s Answering Brief. On August 19, 2013, this Court issued a “Final Delinquent Brief Notice” and received no response from Appellant.

4. On appeal, the Board advised the Court that it would not file an Answering Brief because “[t]he underlying case is on the merits and the Board does not intend to take a position as to the merits of the case.”⁷
5. Appellant argues her previous attempt at enrollment in a GED program to comply with the regulation was thwarted by her employer. She contends she was told if she did not continue to work her scheduled hours, something Appellant maintains was impossible while in the program, Appellee would hire someone else. Appellant repeated her contention that her termination was really due to a disagreement she had with Smalls. Appellant also attached documentation to her brief that states she enrolled in a GED program beginning January 15, 2013 and at least began the process of enrollment in 2010.⁸
6. Appellee contends Appellant’s arguments are either irrelevant or based on information not available in the record of the administrative proceedings and should not be considered. Appellee argues that Appellant acknowledged on the record that she failed to obtain a diploma or GED in the years since the enacted regulation despite being notified of its necessity by Appellee. Appellee contends this behavior establishes just cause and any other new information attached to the Opening Brief should be disregarded.
7. The Supreme Court and this Court have repeatedly emphasized the limited appellate review of an administrative agency’s factual findings. The reviewing court’s function is to determine whether the agency’s decision is supported by substantial evidence.⁹ “Substantial evidence” means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”¹⁰ The appellate court does not weigh evidence, resolve credibility questions, or make its own factual findings.¹¹ The Court merely determines if the evidence is legally

⁷ Letter dated of July 29, 2013 from James T. Wakley, Esquire, Deputy Attorney General to the Court.

⁸ Appellant’s Br. of July 5, 2013

⁹ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66-67 (Del. 1965); *Gen. Motors Corp. v. Freedman*, 164 A.2d 686, 689 (Del. 1960).

¹⁰ *Oceanport Ind. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del. 1994). See also *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super. 1986), *app. disp.*, 515 A.2d 397 (Del. 1986).

¹¹ *Johnson*, 213 A.2d at 66.

adequate to support the agency's factual findings.¹² The Court must defer to administrative board expertise.¹³ As such, the Court must uphold a Board's decision that is supported by substantial evidence even if, in the first instance, the reviewing judge might have decided the case differently.¹⁴ The record must be viewed in the light most favorable to the prevailing party below.¹⁵

8. This Court finds no legal error and therefore upholds the Board's decision because substantial evidence exists to support the Board's conclusion that Appellant was rightfully disqualified from unemployment benefits. Appellant admitted familiarity with the requirement that she obtain her high school diploma or GED. She also admitted that, for various reasons, she disregarded that requirement for years. Despite the documentation she provided, it is undisputed that she was given a significant period of time before she was terminated to pursue a program and failed to do so. This Court is not unsympathetic to an employee trying to manage both work and education simultaneously; however, it cannot overturn the Board's decision in this case, where the decision is legally sound and otherwise supported by substantial evidence.
9. Appellant was rightfully disqualified from unemployment benefits. The decision of the Board is otherwise supported by substantial evidence and is free from legal error. Therefore, the Board's decision is **AFFIRMED**.

IT IS SO ORDERED.

Richard R. Cooch, R.J.

cc: Prothonotary
Unemployment Insurance Appeal Board

¹² 29 Del. C. § 10142(d).

¹³ *See id.* ("The Court, when factual determinations are at issue, shall take due account of the experience and specialized competence of the agency and of the purposes of the basic law under which the agency has acted.").

¹⁴ *Kreshtool v. Delmarva Power and Light Co.*, 310 A.2d 649, 653 (Del. 1973).

¹⁵ *Thomas v. Christiana Excavating Co.*, 1994 WL 750325, at *4 (Del. Super. Nov. 15, 1994).