

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

HEATHER CAMPBELL,)
)
Appellant,)
)
v.) C.A. No. 09A-08-003 WCC
)
SOJOURNERS PLACE, INC.,)
and)
UNEMPLOYMENT INSURANCE)
APPEAL BOARD,)
)
Appellees.)

Submitted: May 14, 2010
Decided: August 12, 2010

MEMORANDUM OPINION

Appeal from Unemployment Insurance Appeal Board. AFFIRMED.

Heather Campbell, 302 Cobble Creek Curve, Newark, Delaware 19702. *Pro Se* Appellant.

Daniel J. Brown, Esquire, McCarter & English, LLP, Renaissance Centre, 405 N. King Street, Wilmington, Delaware 19801. Counsel for Appellee Sojourners Place, Inc.

Philip G. Johnson, Esquire, Department of Justice, 820 N. French Street, Wilmington, Delaware 19801. Counsel for Unemployment Insurance Appeal Board.

CARPENTER, J.

Before this Court is Heather Campbell's (the "Appellant") appeal of the Unemployment Insurance Appeal Board's (the "Board") decision, which denied Appellant unemployment benefits after concluding Appellant was discharged from her work for just cause. Upon review of the record in this matter, the Court finds substantial evidence to support the Board's decision and affirms the Board's ruling.

Facts

Appellant was employed as a bookkeeper by Sojourners Place Inc. (the "Employer") from November 22, 2008 to March 4, 2009. During this time, Appellant worked part-time at the rate of \$13.00 per hour. Appellant was discharged after failing to report to work from February 10, 2009 through March 4, 2009.¹

Sister Jenna Cashman ("Cashman") is the Executive Director of Sojourners Place Inc. and testified on behalf of the Employer. When Appellant failed to show up to work, Cashman became concerned and began to call the Appellant nearly every day and on one occasion visited the Appellant's residence. However, Appellant never returned the calls, she was not home during the residence visit, nor did she provide an explanation for her absences to her supervisor.

Cashman does acknowledge that on February 18, 2009, Appellant's step-father Anton Luke ("Luke") called around noon and advised that Appellant was sick.

¹ The Appellant did come into work on February 25, 2009 for a short period of time to work on payroll.

However, according to Cashman, Luke did not provide any detailed information as to the nature or extent of the sickness or when the Appellant planned to return to work. The Employer also acknowledges that Appellant made a brief appearance at work on February 25, 2009 but failed to sign in and failed to discuss her absences with her supervisor while she was there. Furthermore, that Appellant only worked for one hour and left thereafter without finishing her duties. Cashman then mailed a discharge letter to Appellant citing her absenteeism and her apparent abandonment of the position as reasons. This letter was dated March 4, 2009 and terminated the Appellant's employment.

Appellant does not dispute that she did not report to work on the dates at issue but argues that the absences related to her acute bronchitis and her son's hospitalization during this time.

The records provided to the Court from the Board had three notes all dated April 23, 2009 from Dr. Badillo of Medical Associates of Bear that reflected the following:

- (a) The Appellant visited Dr. Badillo on February 4, 2009 for "sinusitis nos acute" and was released to return to work the following day on February 5, 2009.

- (b) The Appellant visited Dr. Badillo on February 17, 2009 for “bronchitis acute” and was released to return to work the following day, February 18, 2009.
- (c) The Appellant visited Dr. Badillo on February 26, 2009 for “cystitis acute” and was released to return to work the following day, February 27, 2009.

The Appellant also provided for the first time at the hearing before the Board a handwritten note on a prescription pad of Dr. Badillo that is dated June 22, 2009 that states:

Please excuse fr. work
2/17/09 - 2/23/09
because of bronchitis

The Appellant testified that this note was obtained to clear up confusion of the earlier notes produced before the hearing officer. The Appellant also provided the Board a copy of a progress note from Christiana Care that reflected that her son was hospitalized between February 23 and 25, 2009 and was allowed to return to school on February 26, 2009. In addition, there is a note from Total Care Physicians, PA that reflects that her son was under the care of a doctor from February 23rd to February 27th, 2009 and was able to return to school on Monday, March 2, 2009. It is this documentation that the Appellant argues provides justification for her absenteeism.

Procedural History

Appellant filed for unemployment benefits with the Department of Labor on March 10, 2009.² On March 18, 2009, the Department of Labor Claims Deputy found Appellant disqualified for receipt of benefits because Employer terminated her with just cause.³

Appellant appealed the Claim Deputy's decision to the Appeals Referee.⁴ A hearing was conducted on April 24, 2009⁵, and on April 28, 2009, the Appeals Referee issued a decision affirming the Claims Deputy's decision below⁶.

Appellant then appealed the Referee's decision to the Board on May 1, 2009.⁷ The Board conducted a hearing on June 24, 2009.⁸ On July 29, 2009, the Board issued its opinion and affirmed the Appeals Referee's decision in denying Appellant unemployment benefits.⁹

Appellant's appeal of the Board's decision is now before this Court.

² R. at 1-2.

³ *Id.* at 9-10.

⁴ *Id.* at 12.

⁵ *Id.* at 18.

⁶ *Id.* at 18-21.

⁷ *Id.* at 62.

⁸ *Id.* at 65.

⁹ *Id.* at 67.

Standard of Review

This Court's role in reviewing an appeal from an administrative agency is limited.¹⁰ The Court will only evaluate the record, in the light most favorable to the prevailing party below, to determine if substantial evidence existed to reasonably support the conclusion and to ensure that it is free from legal error.¹¹ "Substantial evidence" is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."¹² Thus, the Court does not address issues of credibility nor does it independently weigh the evidence presented to the Board.¹³ If the record supports the Board's findings, the Court must accept those findings even if the Court might have reached a different conclusion on the facts presented.¹⁴

Discussion

While the Appellant asserts four separate grounds in her appeal petition,¹⁵ they all relate to a single argument. That is, the Appellant believes she has presented sufficient evidence before the hearing officer and the Board to counter the Employer's position that she was absent from work without good cause. As such,

¹⁰ *Hill v. Bumble Bee Transp.*, 2009 WL 3681673, at *1 (Del. Super. Nov. 3, 2009).

¹¹ *Spence v. Furness Elec.*, 2010 WL 424456, at *2 (Del. Super. Feb. 1, 2010) (citing *Morgan v. Anchor Motor Freight, Inc.*, 506 A.2d 185, 188 (Del. Super. 1986)).

¹² *Id.* (citing *Oceanport Indus. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994)).

¹³ *Id.* (citing *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965)).

¹⁴ *Johnson v. TMSI*, 2008 WL 3271162, at *1 (Del. Super. July 30, 2008) (citing *H&H Poultry Co. v. Whaley*, 408 A.2d 289, 291 (Del. 1979)).

¹⁵ Appellant's four arguments include: (1) Appellant produced doctor notes for all days in absence; (2) Appellant provided phone records showing contact with the Employer on the days in absence; (3) Luke's testimony supported her assertion that he contacted the Employer and indicated Appellant would not be in the rest of the week due to illness; and (4) Appellant proved that she was not absent fifteen days in a row without notification.

Appellant asserts the Board's decision is not supported by substantial evidence and should be overturned. Unfortunately for the Appellant the same evidence she relies upon to make this argument is so inconsistent, inconclusive and confusing that the Board simply could not rely upon it.

First, it is important to note that it appears that at no time did the Appellant provide any documentation as to her illness to her Employer at the critical time when her employment status was in question, that is February of 2009. In fact, the record would support that numerous (almost daily) attempts by her supervisor both by phone and in person by going to the Appellant's home to obtain information of her well-being were ignored by the Appellant. This behavior is simply inconsistent with an individual who believes they are appropriately sick and cannot work. A rational individual with documented medical support would have responded to these reasonable inquiries, particularly when it became clear that her employment was in jeopardy. Her failure to do so raises an issue of credibility regarding all other evidence she attempts to produce to support her position.

Secondly, even if the Board and Court could find her testimony credible, the evidence doesn't support her position. The Employer testified that the Appellant stopped reporting to work on February 10, 2009.¹⁶ So when the Court considers the

¹⁶ R. at 41.

original notes introduced into evidence before the hearing officer it would appear that the Appellant had no medical evidence excusing her from work from February 10th to February 13th, February 18th to February 20th, and on March 3rd. And even when the Court considers the prescription pad note written nearly four months later, on June 22, 2009, there are still four days of unexcused absences.

Finally, the Appellant's argument is further undermined by her attempt during the hearing to argue that even if there were days which were not covered by the medical notes, she had sufficient vacation, sick or holiday time to cover any unexplained absences. However, when asked about these items the Employer said:

She had accrued three vacation and used seven. She had accrued two and a half sick days and used seven and a half because they're accrued by the month. And she had accrued two holidays and used three.¹⁷

The Appellant's response to this calculation by the Employer was simply that she did not believe she was required to accrue them.¹⁸

When the above circumstances are taken into consideration, the Court finds that it was reasonable for the Board to find that the testimony of the Employer was more credible and supported by the evidence, and this Court has no good faith basis to question that decision. This appears to be a case where reasonable opportunities

¹⁷ *Id.* at 44.

¹⁸ *Id.* at 51.

were given to the Appellant to justify her conduct and to explain her absences, and she simply ignored them. Her after-the-fact attempts to justify her conduct are simply not persuasive. The Appellant has no one to blame but herself for being put in this position and for failing to provide clear and precise medical documentation and testimony to support her position. There is substantial evidence to find that the Appellant's reckless indifference to her work obligations was a deviation from established and acceptable workplace performance.

While this is an unfortunate situation, the Court finds there was sufficient evidence to reasonably support the conclusions of the Board that their decision was rational and appropriate and the decision was free from legal error. As such, it must affirm the decision.

Conclusion

For the foregoing reasons, the decision of the Board is AFFIRMED.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.

Judge William C. Carpenter, Jr.