

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

AIDA L. ORONA,)
Claimant/Appellant,)
)
v.)
) C.A. No. 02A-05-004 CHT
LITTLE SISTERS OF THE POOR,)
Employer/Appellee, and)
UNEMPLOYMENT INSURANCE)
APPEAL BOARD.)
)

OPINION AND ORDER

_____ **On the Employee's Appeal from the Decision
of the Unemployment Insurance Appeal Board**

Date Assigned: October 16, 2002

Date Decided: December 9, 2002

Aida L. Orona, *pro se*, 300 Westwind Road, Bear, DE 19701.

Jennifer Gimler Brady, Esquire, POTTER, ANDERSON & CORROON
LLP, 1313 North Market Street, Hercules Plaza, Sixth Floor,
P.O. Box 951, Wilmington, DE 19899-0951, Attorney for the
Defendant.

Michael N. Petkovich, Esquire, and Daria E. Neal, Esquire,
JACKSON LEWIS LLP, 1156 5th Street N.W., Suite 250, Washington,
D.C. 20005, Of Counsel.

Stephani J. Ballard, Esquire, Deputy Attorney General,
Department of Justice, Carvel State Office Building, 820 North
French Street, Wilmington, DE 19801.

TOLIVER, Judge

STATEMENT OF FACTS AND NATURE OF THE PROCEEDINGS

Aida Orona was employed as a housekeeper by the Little Sisters of the Poor ("LSOP") at that organization's Jeanne Jugan Residence, a long term care facility for the elderly. She had been so employed since 1995. The instant controversy arises out of the performance of her duties on December 10, 2001.

On that day, Ms. Orona entered the room of one of the facility's residents, William Clark, in order to clean it. Mr. Clark departed the room to allow her to facilitate that effort. However, before he left and because of his suspicions that Ms. Orona previously stole small items of personalty from his room, Mr. Clark intentionally left a "toothpaste squeezer" out on a sink. His stated rationale for doing so was to resolve his suspicions regarding Ms. Orona. When he returned a few minutes later, the aforementioned item was missing. Mr. Clark then confronted Ms. Orona, who by that time was no

longer in his room but was down the hall performing other duties. She denied knowing what he was talking about and told him she thought that he was drunk.

Ultimately, the human resources director, Mr. Andy Rodriguez, was notified and discussed the incident with Ms. Orona. Ms. Orona apparently admitted that she had made the comments attributed to her by Mr. Clark. Those comments were deemed to be in direct violation of the facility rules as set forth in the employee handbook which specifically stated that any infraction could result in discipline up to and including termination. Ms. Orona was subsequently discharged on December 17, 2001 as a result.

A report of the incident was submitted to the Delaware Department of Health and Social Services ("DHSS") on December 12, 2001, as required by law.¹ A DHSS representative investigator conducted an investigation of the incident and determined that sufficient evidence had been developed to

¹ Long term care facilities are required to report incidents of abuse towards residents pursuant to 29 Del. C. §7971.

warrant further action. As a result, the matter was referred to the Medicaid Fraud Control Unit within the Attorney General's office.²

Within one week of her termination, Ms. Orona filed a petition seeking unemployment benefits. The claim was denied by the claims deputy pursuant to 19 Del. C. §3315, because it was determined that Ms. Orona had been discharged for just cause.³ Ms. Orona appealed the decision, and a hearing occurred on February 19, 2002 before an appeals referee. The appeals referee determined that Ms. Orona had been discharged without just cause and was entitled to unemployment benefits. LSOP appealed to the UIAB.

A hearing was held before the UIAB on April 17, 2002.

² The matter was referred to the Medicaid Fraud Unit since the incident involved theft and abuse in a long term care facility. It is not clear from the record what, if anything, happened as a result of that referral.

³ Ms. Orona was placed on the Adult Abuse Registry for a period of two years starting January 3, 2002 as a result of the DHSS investigation. She claims that this registration has severely impeded her ability to gain future employment given her limited skills and language difficulties. However, the decision to do so was not a part of the decision rendered by the UIAB and is therefore not within the scope of Ms. Orona's appeal to this Court.

The UIAB reversed the referee's decision, finding that Ms. Orona had in fact been discharged from her employment with LSOP for just cause. As a result, she was, as the claims deputy had initially determined, disqualified from the receipt of unemployment compensation benefits.

The saga was continued, when Ms. Orona, as might be expected, appealed that decision to the Superior Court on July 15, 2002. She appears to argue that her termination was not for just cause in that it was based on the "here say" [sic] testimony of a ninety-four year old man which she deemed to be highly unreliable. Ms. Orona goes on to argue that the UIAB committed legal error by proceeding with the hearing on August 17, 2002 in her absence and after it had refused a continuance that she had timely requested. LSOP responded on August 7, 2002, contending that the UIAB's decision was supported by substantial evidence and that Ms. Orona was terminated for just cause.⁴ That which follows in the Court's response to

⁴ LSOP's answer does not address the portion of Ms. Orona's appeal that alleges that the Board committed legal error.

the issues so presented.

DISCUSSION

In reviewing a decision of the Unemployment Insurance Appeal Board, this Court is bound by its findings if supported by substantial evidence and absent abuse of discretion or error of law.⁵ "Substantial evidence is defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."⁶ It "is more than a scintilla and less than a preponderance" of the evidence.⁷

The first issue to be addressed is Ms. Orona's contention that the UIAB erred as a matter of law by conducting the April 17, 2002 hearing in her absence after having denied her request for a continuance.⁸ In this regard, UIAB Rule B states in relevant part:

[a]ll parties are required to be present for a hearing at the scheduled time. Any party who is not present within 10 minutes

⁵ Ohrt v. Kentmore Home, Del. Super., C.A. No. 96A-01-005, Cooch, J. (Aug. 9, 1996) (Mem. Op. at 8).

⁶ Anchor Motor Freight v. Ciabattoni, 716 A.2d 154, 156 (1998); and Streett v. State, 669 A.2d 9, 11 (1995).

⁷ City of Wilmington v. Clark, Del. Super., C.A. No. 90A-FE-2, Barron, J. (March 20, 1991) (Mem.Op. at 6).

⁸ The resolution of this issue would obviously impact on whether the decision of the UIAB was supported by substantial evidence in the record and/or constituted an abuse of discretion.

after the scheduled time for hearing shall be deemed to waive his right to participate in said hearing and the hearing shall commence without the presence of the party.⁹

It is clear from a reading of this rule that there is no requirement that all parties be present for the hearing to commence. The Board is in fact required to start the hearing despite the absence of one or more of the parties after waiting ten minutes. However, the resolution of this issue is not quite that simple.

On April 12, 2002, Ms. Orona requested a postponement of the April 17 hearing. The reason given was that she had moved permanently from Delaware to Florida and did not have sufficient time or financial resources to return to Delaware for the April 17 hearing. Ms. Orona's request was sent by facsimile transmission to Helen McClure, a secretary employed

⁹ Del. Dept. of Labor, U.I.A.B. Rules and Regulations, Rule B (1979). These rules and regulations were promulgated pursuant to the authority of 19 Del. C. §3321(a).

by the UIAB, on April 12, 2002.¹⁰

On April 17, when Ms. Orona failed to appear within ten minutes of the time scheduled for her hearing, Stephani J. Ballard, Esquire, counsel for the UIAB noted that Ms. Orona had requested a postponement due to her inability to return to Delaware in time for the hearing and that the request had been denied. No reason for the denial was given at that time nor is there any indication that any rationale was provided directly to Ms. Orona. Ms. Ballard then indicated that the hearing would proceed in Ms. Orona's absence.

The question of whether to grant a rehearing is a matter within an administrative agency's sound discretion.¹¹ A discretionary ruling by a trial court or administrative body on a motion for a continuance will not be set aside unless

¹⁰ Ms. Orona attached to her Case Information Statement a copy of the letter and fax confirmation sheet used to request the postponement. Although Ms. Orona admits that the UIAB responded and denied her request, there is no mention in the record by either party of why the request was summarily denied. Ms. McClure was present at the April 17 hearing, but did not give testimony regarding this matter.

¹¹ Schultz v. Pritts, 432 A.2d 1319 (1981).

that decision is unreasonable or capricious.¹² In this case, the UIAB denied Ms. Orona's request to postpone the hearing without providing any basis for its decision. Refusing a request for a continuance under such circumstances without providing a basis for that refusal constitutes an abuse of discretion.¹³ It is also noteworthy that the hearing before the appeals referee was originally scheduled to begin on February 15, 2002. However, that hearing was continued at the request of LSOP until February 19, 2002. The record does not disclose why that request was granted or what distinguished it from the request by Ms. Orona.

If the UIAB did have cause to deny Ms. Orona's request for a continuance (e.g., the request was not timely, or the party seeking the continuance has been responsible for unnecessary delays, etc.), those reasons should be made a part

¹² In Re Kennedy, 472 A.2d 1317 (1984), cert. denied, Kennedy v. Board on Professional Responsibility of Supreme Court of Delaware, 467 U.S. 1205 (1984).

¹³ Curry v. St. Joe Container, Co., Del. Super., C.A. No. 86A-AU-11, Babiarz, J. (Dec. 23, 1987) (Mem. Op. at 2).

of the record. A reviewing court may then determine whether the agency has properly exercised its discretion.¹⁴ The failure to do so in these circumstances renders it impossible to carry out the aforementioned review. The matter must therefore be returned to the UIAB for a determination why the request for a continuance was denied.¹⁵ Once the record is supplemented in that regard, the case should be returned to this Court for resolution of the issues originally presented.

¹⁴ Id. at 2-3; See also Rose v. Tri-State D.C.P. and U.I.A.B., Del. Super., C.A. No. 86A-NO-1, Balick, Judge (June 23, 1987).

¹⁵ See Sturgis v. Wilgus Glamorama and Unemployment Insurance Appeal Board, 1993 Del. Super. LEXIS 320.

CONCLUSION

Based upon the foregoing, the decision of the Unemployment Insurance Appeal Board is hereby **remanded** to that body for further proceedings consistent with this opinion. Upon completion of those proceedings, the matter should be returned to this Court to complete the review contemplated when the appeal was originally initiated.

IT IS SO ORDERED.

Toliver, Judge