IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

ANDREA PATTERSON,	)	
	)	
Appellant,	)	
	)	
V.	)	C.A. No. N10A-01-002 JRS
	)	
BRANDYWINE COUNSELING INC. and the UNEMPLOYMENT INSURANCE APPEAL BOARD,	)	
	)	
Appellees.	)	

Date Submitted: August 3, 2010
Date Decided: November 3, 2010

Upon Consideration of
Appeal From the Unemployment Insurance Appeal Board.
AFFIRMED.

O R D E R

This 3rd day of November, 2010, upon consideration of the *pro se* appeal of Andrea Patterson from the decision of the Unemployment Insurance Appeal Board (the "Board") denying her claim for unemployment benefits against her former employer, Brandywine Counseling, Inc. ("BCI"), it appears to the Court that:

1. Ms. Patterson was employed as an intake supervisor for BCI from May,

2007 until January 30, 2009, earning approximately $39,000.00 per year.[1] BCI clients have substance abuse problems and come to the facility for treatment on a walk-in basis. Ms. Patterson would interview the clients and send them to the appropriate source for further treatment.[2]

2. According to BCI, Ms. Patterson was discharged primarily because she closed the intake unit without authorization on January 21, 2009.[3] As a result of the early closure, three clients had to be turned away.[4] Further, BCI complains that Ms. Patterson continually made errors in reports and records, failed to follow directions, took excessive sick days, and failed to pass a necessary test.[5] Ms. Patterson was given numerous warnings in regards to her misconduct and was ultimately terminated on January 30, 2009.[6]

3. Ms. Patterson filed for unemployment compensation with the Delaware Department of Labor ("DOL") on July 8, 2009.[7] On July 28, 2009, a claims deputy

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[1]Record ("R." at __) R. at 9.

[2]*Id*.

[3]R. at 31

[4]R. at 9.

[5]*Id.*

[6]R. at 12 - 19.

[7]R. at 4.

determined that BCI terminated Ms. Patterson for wanton and wilful misconduct constituting just cause.[8] Pursuant to 19 *Del. C.* § 3314(2), this finding disqualified Ms. Patterson from receiving unemployment compensation.[9]

4. On July 31, 2009, Ms. Patterson appealed the Claims Deputy's decision to the Appeals Referee.[10] After a hearing, the Appeals Referee issued a decision on September 1, 2009, reversing the Claims Deputy's decision.[11] The Referee explained that the burden is on the employer to show by a preponderance of the evidence that the claimant was discharged for just cause and that BCI failed to meet that burden.[12] In support of his finding, the Referee noted that "the basic reason for discharge in this case was that [Ms. Patterson] turned clients away without authorization."[13] Ms. Patterson testified that she was told by Valerie Brown, her supervisor, to close the

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[8]R. at 5.

[9]19 *Del. C.* §3314(2) states that: "An individual shall be disqualified for benefits: For the week in which the individual was discharged from the individual's work for just cause in connection with the individual's work and for each week thereafter until the individual has been employed each of 4 subsequent weeks ...."

[10]R. at 6.

[11]R. at 10.

[12]*Id.*

[13]*Id.*

intake unit on the day in question.[14] Ms. Brown did not testify.[15] Given Ms. Patterson's unrebutted testimony that she was simply following her supervisor's directions, the Appeals Referee determined that BCI had failed to establish that Ms. Patterson was discharged for just cause.[16]

5. On September 9, 2009, BCI appealed the Referee's decision to the Board and a hearing was held on November 10, 2009.[17] The Board issued its decision on December 29, 2009, reversing the decision of the Appeals Referee upon concluding that BCI terminated Ms. Patterson for just cause.[18] In making that determination, the Board considered the Appeals Referee's record and the testimony of two additional BCI employees: Luther Whiting (Human Relations Director) and Valerie Brown (Ms. Patterson's supervisor).[19] Ms. Brown's testimony differed substantially from the testimony Ms. Patterson gave to the Appeals Referee.[20] Specifically, Ms. Brown testified that she never told Ms. Patterson to turn clients away and that, in fact, she

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[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] R. at 30

[18] *Id.*

[19] *Id.*

[20] *Id.*

does not possess the authority to give such an instruction.[21] Mr. Whiting's testimony supported Ms. Brown's testimony, affirming that Ms. Brown did not have the authority to close the intake unit or to direct others to do so.[22] The Board rejected Ms. Patterson's testimony and determined that both Mr. Whiting's and Ms. Brown's testimony was more credible.[23]

6. On appeal to this Court, Ms. Patterson challenges the Board's findings that she was discharged with just cause because, she argues, Ms. Brown did, in fact, tell her to close the intake unit on the day in question.[24] Further, Ms. Patterson contends that the only reason the Board reversed the Appeals Referee's decision was because she was absent from the hearing.[25]

7. The Court's standard of review of the Board's decision is well settled. The Court must determine whether the Board's factual findings are supported by substantial evidence and free from legal error.[26] Substantial evidence is "relevant

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[21]R. at 31.

[22]*Id.*

[23]*Id.*

[24]Appellant's Opening Br. pg. 1.

[25]Appellant's Reply Br. pg. 2. The Court rejects this contention out of hand because the record reveals that the Board considered Ms. Patterson's testimony from prior proceedings. R. at 30.

[26]*Morgan v. Anchor Motor Freight, Inc.*, 506 A.2d 185, 188 (Del. Super. 1986).

evidence as a reasonable mind might accept as adequate to support a conclusion."[27] It requires "more than a scintilla but less than a preponderance" of the evidence.[28] The Court does not weigh evidence, assess credibility, or make independent factual findings.[29] And legal determinations by the Board are reviewed for abuse of discretion.[30]

8. Pursuant to 19 *Del. C.* § 3314, an employee is disqualified from receiving unemployment compensation if she is discharged for just cause. Just cause is defined as "a willful or wanton act or pattern of conduct in violation of the employer's interest, the employee's duties, or the employee's expected standard of conduct."[31] "Willful and wanton conduct is that which is evidenced by either conscious action, or reckless indifference leading to a deviation from established and acceptable workplace performance."[32] There is no requirement that the conduct be performed with bad motive or malice.[33]

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[27] *Oceanport Indus. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994).

[28] *Hundley v. Riverside Hosp.*, 1993 WL 542026, at *5 (Del. Super. Sept. 27, 1993).

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

[30] *Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991).

[31] *Avon Products, Inc. v. Wilson*, 513 A.2d 1315 (Del. 1986).

[32] *MRPC Financial Management, LLC v. Carter*, 2003 WL 21517977, *4 (Del. Super. 2003).

[33] *Coleman v. Department of Labor*, 288 A.2d 285, 288 (Del. Super. 1972).

9. The record before the Court shows that Ms. Patterson had a well-documented history of violating BCI policies.[34] As early as January 16, 2008, Ms. Patterson was reprimanded, through a "Corrective Action Notification"(hereinafter "CAN"), for excessive absenteeism, failure to perform her assigned duties, dishonesty, and negligent or wilful inattention to client care.[35] Ms. Patterson received another CAN on November 11, 2008, for continued errors and missing information in treatment records.[36] Further, this same CAN notes that BCI spoke to Ms. Patterson "numerous times and there continue[d] to be a lack of consistency .... "[37] On August 6, 2008, Ms. Patterson was again reprimanded with a CAN for failure to perform assigned duties and taking an excessive amount a leave, resulting in the intake unit being unsupervised and short-staffed.[38] It appears to the Court that Ms. Patterson's closing of the intake unit without authorization on January 21, 2009, was the final

[34]*See* "Employee Rules of Conduct," R. 18.

[35]R. at 18-19.

[36]R. at 16.

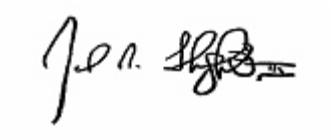
[37]*Id.*

[38]R. at 15.

straw in a long history of problems with Ms. Patterson's work performance.[39]

10. Based on the foregoing, the Court is satisfied that the Board applied the correct legal standards and that its decision is supported by substantial evidence. Accordingly, the decision of the Board denying Ms. Patterson's application for unemployment compensation must be **AFFIRMED.**

IT IS SO ORDERED.



Judge Joseph R. Slights, III

Original to Prothonotary

[39] The Court will not second-guess the Board's determination that the testimony of Ms. Brown and Mr. Whiting was more credible than Ms. Patterson's testimony with respect to the circumstances surrounding Ms. Patterson's decision to close the intake unit on January 21, 2009. Such credibility determinations are uniquely within the province of the Board. *See Johnson*, 213 A.2d at 66.