

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

VINCENT L. SMALLWOOD, SR.,)
) C.A. No. K09A-12-001 (JTV)
Appellant,)
)
v.)
)
ALLIED WASTE NORTH)
AMERICA, INC.,)
)
Appellee.)

Submitted: September 1, 2010

Decided: December 30, 2010

Vincent L. Smallwood, Sr., Maryland. *Pro Se.*

Allied Waste North America, Inc., St. Louis, Missouri. *Pro Se.*

*Upon Consideration of Appellant's Appeal of
Decision of Unemployment Insurance Appeal Board*

AFFIRMED

VAUGHN, President Judge

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ORDER

Upon consideration of the appellant's brief and the record of the case, it appears that:¹

1. Vincent L. Smallwood, Sr. appeals an Unemployment Insurance Appeal Board decision that found just cause for his discharge from employment at Allied Waste North America, Inc., and held that he was therefore disqualified from receiving unemployment benefits. Based on the appellant's submissions and the record of the case, the Court affirms the Board's decision.

2. The appellant began working as a mechanic for Allied Waste on January 27, 1997. The employer, Allied Waste, contends that the appellant was terminated after two employees, Clayton and Karen Byerly, watched him take tires from the employer's shed, place them in a service truck and unload them at a tire yard. To support this contention, Allied Waste presented the testimony of the Byerlys', as eyewitnesses, and introduced a video showing the appellant removing tires from a shed.

3. The appellant was terminated on August 27, 2008. He filed for unemployment in Maryland and received benefits for twenty six weeks. In order to receive his remaining benefits, the appellant applied for an extension in Delaware on March 1, 2009. He received benefits for approximately one month before they were stopped. A Claims Deputy found that Allied Waste proved that the appellant was guilty of wilful and wanton misconduct, and thus disqualified the appellant from

¹ The appellee declined to file a brief.

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receiving unemployment benefits. An Appeals Referee affirmed, holding that the appellant was terminated for just cause in connection with his work. The appellant appealed to the Unemployment Insurance Appeal Board. A hearing was held on August 12, 2009, and the Board issued its opinion on December 10, 2009. The Board affirmed the decisions below and concluded that the appellant was terminated for just cause and was therefore ineligible for unemployment benefits. The instant appeal followed.

4. The appellant argues that Mr. Byerly manufactured his story in order to cause the appellant's termination. He contends that Allied Waste and the Byerly's story is rife with inconsistencies, and that Allied Waste failed to meet its burden of proof during the hearing. During the Board's hearing, the appellant questioned the accuracy of the employer's video. He contended that it merely showed him removing tires from the employer's shed, an activity he does regularly as part of his employment. The appellant also argues that a favorable decision he received in a criminal trial based on the same facts should exonerate him.

5. In reviewing decisions from the Board, the court is limited to consideration of the record which was before the administrative agency.² The court must determine whether the findings and conclusions of the Board are free from legal error and are supported by substantial evidence in the record.³ Substantial evidence

² *Hubbard v. Unemployment Ins. Appeal Bd.*, 352 A.2d 761, 763 (Del. 1976).

³ *Unemployment Ins. Appeal Bd. v. Martin*, 431 A.2d 1265, 1266 (Del. 1981); *Pochvatilla v. United States Postal Serv.*, 1997 WL 524062, at *2 (Del. Super.); 19 *Del. C.* § 3323(a) ("In any judicial proceeding under this section, the findings of the [UIAB] as to the facts,

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means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.⁴ The court does not weigh the evidence, determine questions of credibility, or make its own factual findings.⁵ The reviewing court merely determines if the evidence is legally adequate to support the agency's factual findings.⁶

6. The Board's decision to deny unemployment benefits to the appellant was premised on its finding that the appellant was discharged for just cause under 19 *Del. C.* § 3314.⁷ The term "just cause" denotes a wilful or wanton act in violation of either the employer's interest, or the employee's expected standard of conduct.⁸ Wilful or wanton conduct is "that which is evidenced by either conscious action, or reckless indifference leading to a deviation from established and acceptable

if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the Court shall be confined to questions of law.").

⁴ *Oceanport Ind. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del. 1994); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super. 1986).

⁵ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

⁶ *Majaya v. Sojourners' Place*, 2003 WL 21350542, at *4 (Del. Super.); see 19 *Del. C.* § 3323(a) (providing that, absent fraud, the factual findings of the Board shall be conclusive and the jurisdiction of a reviewing court shall be confined to questions of law).

⁷ The statute provides: "An individual shall be disqualified for benefits ... [f]or 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 in each of 4 subsequent weeks" 19 *Del. C.* § 3314(2).

⁸ *Moeller v. Wilmington Sav. Fund Soc'y*, 723 A.2d 1177, 1179 (Del. 1999); *Tuttle v. Mellon Bank of Del.*, 659 A.2d 786, 789 (Del. Super. 1995); *Abex Corp. v. Todd*, 235 A.2d 271, 271 (Del. Super. 1967).

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workplace performance.”⁹ In a termination case, the employer has the burden of proving just cause.¹⁰

7. Violation of a reasonable company rule may constitute just cause for discharge, if the employee is aware of the policy and the possible subsequent termination.¹¹ This Court uses a two-step analysis to evaluate just cause: (1) whether a policy existed, and if so, what conduct was prohibited; and (2) whether the employee was apprised of the policy, and if so, how was he made aware.¹² Knowledge of a company policy may be established by evidence of a written policy, such as an employer’s handbook¹³ or by previous warnings of objectionable conduct.¹⁴

8. The appellant contends that the Board reached an erroneous decision due to false pretense and an incorrect explanation of the incident. He believes that in light of being found not guilty of criminal charges arising from the same facts, the Board’s

⁹ *MRPC Fin. Mgmt. LLC v. Carter*, 2003 WL 21517977, at *4 (Del. Super. June 20, 2003).

¹⁰ *Country Life Homes, Inc. v. Unemployment Ins. Appeal Bd.*, 2007 WL 1519520, at *3 (Del. Super. May 8, 2007); *Carter*, 2003 WL 21517977, at *4.

¹¹ *McCoy v. Occidental Chem. Corp.*, 1996 WL 111126, at *3 (Del. Super. Feb. 7, 1996).

¹² *Id.*; see *Parvusa v. Tipton Trucking Co. Inc.*, C.A. No. 92A-12-009 (Del. Super. Dec. 1, 1993).

¹³ *Id.* (citing *Honore v. Unemployment Ins. Appeal*, C.A. No. 92A-12-007 (Del. Super. Oct. 5, 1993)(Steele, R.J.)).

¹⁴ *Id.*

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decision should be overturned.

9. However, the appellant's alleged theft of Allied Waste's tires clearly violated the employer's standard of conduct. The appellant signed the company's policy and procedures manual in 2004, and an acknowledgment of handbook guidelines in 1997. The Board found that "removal of the tires without the prior approval of the owner, at least, violates the employer's known and reasonable policy."¹⁵ I am persuaded that the Board's conclusion that the appellant was discharged for just cause is reasonable, supported by substantial evidence, and free of legal error. The Board arrived at its conclusion after considering witness testimony, the Appeals Referee's hearing transcript and evidence, as well as additional information submitted by the appellant. The appellant's contentions reach beyond the Court's standard of review. Since the Board's decision is supported by substantial evidence and is free of legal error, its decision is ***affirmed***.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.
President Judge

oc: Prothonotary
cc: Order Distribution
File

¹⁵ *Smallwood v. Allied Waste North America, Inc.*, No. 92953, at 3 (Del. U.I.A.B Aug. 12, 2009).