IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

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| CONSTANCE DEXTER, | ) | |
| | ) | C.A. No. 09A-08-002 JTV |
| Appellant, | ) | |
| | ) | |
| v. | ) | |
| | ) | |
| PERDUE FARMS, INC., and the UNEMPLOYMENT INSURANCE APPEAL BOARD, | ) | |
| | ) | |
| | ) | |
| Appellees. | ) | |

*Submitted: September 1, 2010*
*Decided: December 30, 2010*

Constance Dexter, Felton, Delaware. *Pro Se.*

Laurence V. Cronin, Esq., Smith, Katzenstein & Furlow, Wilmington, Delaware. Attorney for Appellee Perdue Farms.

*Upon Consideration of Appellant's Appeal of*
*Decision by the Unemployment Insurance Appeals Board*
**AFFIRMED**

**VAUGHN, President Judge**

***Dexter v. Perdue Farms, et al.***
C.A. No. 09A-08-002 (JTV)
December 30, 2010

**ORDER**

Upon consideration of the parties' briefs and the record of the case, it appears that:

1. Appellant Constance Dexter appeals the Unemployment Insurance Appeal Board's denial of unemployment benefits. She contends that she was wrongfully terminated from Perdue Farms, and is eligible for benefits. Based on the parties' submissions and the record of the case, the Court affirms the Board's decision denying benefits to Ms. Dexter.

2. On January 14, 2009, the appellant was terminated from her position at Perdue Farms for failing to report to work for three consecutive days. She worked at Perdue's labeling department, boxing and labeling chicken. She reported to work on January 2, 3, 5, 6, and 7 of 2009. However, she never returned to work after January 7, 2009 and, the employer contends, did not notify her supervisor of any explanation for her absence. In accordance with its attendance policy, Perdue terminated the claimant's employment on January 14, 2009.

3. When the claimant was hired on August 1, 2008 and began working on August 4, 2008, she signed a form indicating that she received Perdue's attendance policy. The attendance policy states:

> • If you are going to be absent from work, it is your responsibility to notify your supervisor in advance.
>
> • In cases of unforeseen absence, such as car trouble or sickness, you are required to telephone or send a message before your workday begins on each day of absence.

- Additionally, associates who are absent three consecutive days due to sickness/ injury will be required to provide a note from their attending physician before returning to work.

- Associates who are off their job for three consecutive work days without contacting their supervisor or Human Resources Department during that time will be dropped from the payroll and terminated.

4. On March 25, 2009, an Appeals Referee heard the claimant's appeal of a Claims Deputy's decision. The Claims Deputy had determined that the claimant quit her job for personal reasons and was ineligible to receive unemployment benefits. The Appeals Referee affirmed the Claims Deputy's decision finding that: "The claimant left her work voluntarily without good cause attributable to such work."

5. The claimant testified at the Board hearing that her absences from work were due to personal illness. She contends that she called her supervisor, Mark Wiley, multiple times the days she knew she would not be able to attend work due to illness. A witness testified that she saw the claimant call Mr. Wiley, and that she, the witness, sometimes called on the claimant's behalf. The claimant testified that she was hospitalized in November of 2008 due to kidney failure, and provided documentation of that to Perdue, in order to arrange a leave of absence until January of 2009.

6. The claimant's supervisor Mark Wiley, testified that the claimant did not

call or submit a doctor's note as required by the attendance policy when she missed three consecutive days of work. He testified that he did not have any documentation regarding the claimant's hospitalization or stating that medication the claimant was taking would prevent her from being able to work. He indicated that any such documentation would be with Perdue's human resources department and treated as confidential. Another Perdue representative, Christopher DelCastillo, testified that Perdue did not have any hospital records pertaining to the claimant, and does not require or have need for such records. He testified that a note from a physician verifying the illness was all that Perdue required.

7. The Board did not conclude that the claimant had left her employment voluntarily without just cause. It concluded, instead, that the claimant had been terminated from her employment by the employer. In doing so, the Board stated: "[T]he Board finds that the Claimant more likely than not was discharged by the Employer and that such discharge was for just cause, resulting from the Claimant's violation of the Employer's attendance policy."[1]

8. On August 11, 2009, the claimant filed this appeal listing four reasons as her basis for the appeal: (1) she sent hospital records to the employer; (2) phone numbers that she called which were provided by the employer; (3) a substantial deviation in working conditions from those originally agreed upon; and (4) evidence

[1] Before the Board were two issues: whether the claimant was terminated or left work voluntarily and; (2) whether the claimant was terminated for misconduct rising to the level of just cause. The Board found that although it appeared that the claimant had abandoned her job, there was no evidence that she intended to do so, which is required for the Board to find that an employee quit their job.

that two people witnessed calls she made to her employer. She contends that she was wrongfully discharged from her employment at Perdue Farms without just cause and that the Board erred in denying her unemployment benefits. Furthermore, she argues that Perdue Farms improperly represented that she quit her job and that she turned in the necessary medical paperwork to excuse her absence from work.

9. The appellee contends that the Board had substantial evidence to support its decision. The Board denied the appellant's claim for unemployment benefits based on its finding that the appellant was terminated for just cause.

10. The scope of review for findings of the Unemployment Insurance Appeal Board is limited to a determination of whether there was substantial evidence sufficient to support the Board's findings.[2] Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[3] On appeal, the court does not weigh evidence, determine questions of credibility, or make its own factual findings.[4] If there is substantial evidence and no mistake of law, the Board's decision must be affirmed.[5]

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[2] *Unemployment Ins. Appeal Bd. of Dep't of Labor v. Duncan*, 337 A.2d 308, 308-09 (Del. 1975).

[3] *Majaya v. Sojourners' Place*, 2003 WL 21350542, at *4 (Del. Super. June 6, 2003).

[4] *Id*.

[5] *City of Newark v. Unemployment Ins. Appeal Bd.*, 802 A.2d 318, 323 (Del. Super. 2002).

11. Pursuant to 19 *Del. C.* § 3314(2)[6], an employee is ineligible to receive unemployment benefits if he or she has been terminated for just cause.[7] The term "just cause" is defined as a "willful or wanton act in violation of either the employer's interests, or of the employee's duties, or of the employer's expected standard of conduct."[8] Willful or wanton conduct is "that which is evidenced by either conscious action, or reckless indifference leading to a deviation from established and acceptable workplace performance."[9] Just cause exists where "an employee has violated an employer's policy or rule, particularly where the employee received prior notice of the rule through a company handbook or other documentation."[10]

12. This Court uses a two prong test in determining whether termination for failing to follow a policy constitutes just cause. First, whether a policy existed, and if so, what conduct was prohibited under the policy. Second, whether the employee

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[6] 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..."

[7] *See also Jackson*, 2008 WL 555918, at *2 (citing 19 *Del. C.* § 3314(2)).

[8] *Jackson*, 2008 WL 555918, at *2 (*quoting Krouse v. Cape Henlopen Sch. Dist.*, 1997 WL 817846, at *3 (Del. Super. Oct. 28, 1997)).

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

[10] *Toribio*, 2009 WL 153871, at *2 (*citing Mosley v. Initial Sec.*, 2002 WL 31236207, at *2 (Del. Super. Ct. Oct. 2, 2002)).

was apprised of the policy and if so, how was he made aware.[11] Knowledge of a company policy can be established by evidence of a written policy, such as an employer's handbook or by previous warning of objectionable conduct.[12]

13. The Board found that Perdue had an attendance policy of which the claimant was aware. The claimant signed an acknowledgment form in 2008, when she began her employment, indicating that she was aware of the attendance policy. It appears that the reason that the claimant was unsuccessful in her hearing before the Board was because the Board resolved the conflicts in the evidence adversely to the claimant. In doing so it acted within its discretion. I find that the Board did not err in denying the claimant's unemployment benefits and that the decision is supported by substantial evidence. I hereby affirm the Board's decision denying unemployment benefits.

**IT IS SO ORDERED**.

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

oc: Prothonotary
cc: Unemployment Insurance Appeal Board
Counsel
File

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

[12] *Id.*