

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

TYRONN CLARK,	:	
	:	C.A. No: K10A-01-003(RBY)
Appellant,	:	
	:	
v.	:	
	:	
PERDUE FARMS, INC., and the	:	
UNEMPLOYMENT INSURANCE	:	
APPEAL BOARD,	:	
	:	
Appellees.	:	

Submitted: January 7, 2011
Decided: January 27, 2011

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

OPINION AND ORDER

Tyronn Clark, *pro se*, Appellant.

Laurence V. Cronin, Esq., and Stephanie S. Habelow, Esq., Smith, Katzenstein & Furlow, LLP., Wilmington, Delaware for Appellees.

Young, J.

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SUMMARY

Appellant Tyronn Clark (“Clark”) appeals the Unemployment Insurance Appeal Board’s (“UIAB or the Board”) denial of his unemployment benefits alleging a wrongful termination from Perdue Farms. For the reasons set forth below, the Board’s decision is **AFFIRMED**.

FACTS

On November 11, 2008, Clark was hired by Perdue as an employee in Perdue’s chicken de-boning department. Clark was notified of Perdue’s policy on December 3, 2008. Perdue’s attendance policy prohibits employees from leaving the assembly line or the plant’s premises without permission from a supervisor. On December 31, 2008, Clark testified that he reported to work, experienced great pain his hands, which included cramping and sharp pains shooting through both of them. Clark asked his supervisor if he could go to the plant’s on-site medical office for treatment. He was escorted to the medical office where he received vitamins and aspirin.

Clark testified that this treatment was ineffective, the sharp pains in his hands continuing. Clark asked the supervisor if he could visit the medical office. However, it was closed. Clark clocked-out, and went home instead of notifying his supervisor. He did not return to the product line that evening.

On January 2, 2009, Clark returned to work with a note from his physician excusing him from work until January 5. He then presented a subsequent note excusing him from work until January 9, when he was scheduled to see a specialist. Perdue did not accept either note as excusing Clark’s previous conduct of walking off

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the production without notifying the supervisor. The appellant was terminated from his position at Perdue Farms for leaving the job site without explanation.

In accordance with Perdue's policy, Clark was employed at Perdue on a probationary basis, due to his recent November 2008 start. He was not permitted to have any policy violations during this probationary period. Before a Perdue employee can be terminated, a three day suspension must ensue to permit an investigation to occur. Once Clark left work on December 31, Perdue's representative testified that he was suspended pending termination. Following that, Perdue terminated Clark in accordance with the plant's above-described policy.

On July 14, 2009, an Appeals Referee for the Labor's Division of Unemployment Insurance Appeals reversed the claims deputy's decision, which previously found that, although Perdue had properly terminated Clark, he was entitled to unemployment benefits. The Appeals Referee found that Clark left work without notifying a supervisor, which he admitted during the hearing. Therefore, the Appeals Referee found that Perdue had just cause to terminate him.

On November 17, 2009 the UIAB considered Clark's appeal of the Appeals Referee's decision, affirming the denial of Clark's claim for unemployment benefits. The Board found that Perdue presented evidence that Clark's conduct was wanton and willful and satisfied the burden of proving that just cause existed to terminate Clark. The Board noted that Clark did not dispute that he walked off the assembly line without notifying a supervisor. This appeal followed.

STANDARD OF REVIEW

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The scope of review of 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.¹ Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."² On appeal, the court does not weigh evidence, determine questions of credibility, or make its own factual findings.³ If there is substantial evidence and no mistake of law, the Board's decision must be affirmed.⁴

Pursuant to 19 *Del. C.* § 3314(2)⁵, an employee is ineligible to receive unemployment benefits if he or she has been terminated for just cause.⁶ 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

¹ *Unemployment Ins. Appeal Bd. of Dep't of Labor v. Duncan*, 337 A.2d 308, 308-09 (Del. 1975).

² *Majaya v. Sojourners' Place*, 2003 WL 21350542, at *4 (Del. Super. June 6, 2003).

³ *Id.*

⁴ *City of Newark v. Unemployment Ins. Appeal Bd.*, 802 A.2d 318, 323 (Del. Super. 2002).

⁵ 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..."

⁶ See also *Jackson*, 2008 WL 555918, at *2 (citing 19 *Del. C.* § 3314(2)).

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conduct.”⁷ 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.”⁸ 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.”⁹

DISCUSSION

On March 16, 2010, Clark, *pro se*, filed this appeal listing four reasons as his basis for the appeal: (1) Perdue lied about why he was terminated; (2) Perdue refused to accept his doctor’s notes explaining his absence; (3) he was dismissed while on medical leave; and (4) the decision was improperly overturned after he was receiving benefits with no evidence from Perdue Farms.

In his opening brief, Clark contends that the Board did not have substantial evidence to deny his claim for unemployment benefits, and, that Perdue lacked just cause for the termination. Clark argues that he did notify his supervisor, who has since been terminated merely not at the specific time, before he left the assembly line on December 31. Furthermore, Clark argues that his doctor’s notes were sufficient

⁷ *Jackson*, 2008 WL 555918, at *2 (quoting *Krouse v. Cape Henlopen Sch. Dist.*, 1997 WL 817846, at *3 (Del. Super. Oct. 28, 1997)).

⁸ *MRPC Fin. Mgmt. LLC v. Carter*, 2003 WL 21517977, at *4 (Del. Super. Jun. 20, 2003).

⁹ *Toribio*, 2009 WL 153871, at *2 (citing *Mosley v. Initial Sec.*, 2002 WL 31236207, at *2 (Del. Super. Ct. Oct. 2, 2002)).

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justification to support his absence. Finally, Clark contends that the Board did not fairly consider all of the evidence. Perdue Farms contends that the UIAB had substantial evidence to support its decision denying Clark's claim for unemployment benefits based upon the finding that Clark was terminated for just cause.

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 was apprised of the policy, and, if so, how was he made aware.¹⁰ 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.¹¹

CONCLUSION

In the case at hand, the Board found that Perdue had an attendance policy of which Clark was aware. This attendance policy included a clause that an employee was not permitted to walk off the premises or the assembly line without permission. The Board based its decision on the finding that Clark did, in fact, walk off the assembly line and the premises without notifying his supervisor. The record supports this finding. In fact, it is supported by the testimony of the Appellant. The issues Clark raises are not sufficient to demonstrate that the Board lacked evidence to deny his unemployment benefits. The UIAB did not err in denying Clark unemployment

¹⁰ *McCoy v. Occidental Chem. Corp.*, 1996 WL 111126, at *3 (Del. Super. Feb. 7, 1996).

¹¹ *Id.*

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benefits, because the decision is supported by substantial evidence.

For the foregoing reasons, the Board's decision is **AFFIRMED**.

SO ORDERED this 27th day of January, 2011.

/s/ Robert B. Young

J.

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