IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

VERA MCNEILL, Appellant, v. UNEMPLOYMENT INSURANCE APPEAL BOARD, Appellee, and DELAWARE PARK, Appellee.	)	C.A. No. 02A-06-003 WCC

Submitted: January 8, 2003
Decided: April 30, 2003

O R D E R

On Appellant's Appeal from a Decision of the Unemployment Insurance Appeal Board. Affirmed.

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Wendy K. Voss, Esq., and Timothy M. Holly, Esq. Potter Anderson & Corroon LLP, 1313 North Market Street, Hercules Plaza, 6th Floor, P.O. Box 951, Wilmington, DE 19899-0951. Attorneys for Appellee Delaware Park.

CARPENTER, J.

This 30th day of April, 2003, after consideration of the appeal of Vera McNeill ("Appellant") from the April 26, 2002 decision of the Unemployment Insurance Appeal Board ("Board"), and upon review of the briefs and the record below, it appears to the Court that:

1. The Appellant was employed by Delaware Park, LLP ("Employer"), as a security officer from September 30, 1997 until January 9, 2002. As a result of expansion of the department, all security officers were expected to be cross-trained to perform the duties of each security post. Included with these duties was driving a patrol vehicle at various security posts within the Delaware Park complex. Beginning in September, 2001, Appellant refused to drive a patrol vehicle, claiming that she had a medical condition that prevented her from driving. Thereafter, over the next four months, she was requested on numerous occasions to provide Employer with documentation relating to her alleged medical condition. On each of these occasions, Appellant agreed to provide specific documentation, but ultimately failed to do so.[1] On one occasion Appellant stated that the documentation was irrelevant as she did not even possess a valid driver's license.

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[1] In early November, Appellant did produce an "electroneurophysiologic test" result from 1996 indicating a "borderline abnormal upper NCV." Employer, however, was dissatisfied with this as an explanation of her inability to drive as it did not specify her restrictions and/or limitations.

While this statement was later recanted, she persisted in failing to supply the requested documentation.

2. A meeting was held on January 7, 2002, at which time the Appellant was requested to schedule a doctor's appointment to obtain documentation which the Security Department needed to determine if the Employer could "reasonably accommodate" Appellant in her current position.[2] When questioned by Director Harer as to whether she had scheduled the doctor's appointment, Appellant responded that she had not because she had been sick with the flu during the past 18 days. Director Harer then set a deadline of January 11, 2002 for Appellant to set up the doctor's appointment. Appellant was then told that her failure to provide this documentation in spite of numerous requests over a four month period was insubordinate conduct. Whereupon the Appellant stood up, stated "this meeting is over" and walked out of the office. Ms. Soysal, the Employee Relations Manager, thereupon called to Appellant, requesting her to return to the meeting, but Appellant did not respond and walked out of the room.[3] Ms. Soysal, Director Harer, and Mr.

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[2] The January 7, 2002 meeting was attended by Appellant, as well as Kathy Harer, Director of Security; Bill Korn, Security Shift Manager; and Sheila Soysal, Employee Relations Manager.

[3] Appellant contends that she merely asked if the meeting was over and when the Director placed her pencil on the desk and there was no response, she interpreted it to mean that the meeting was in fact over, and she left the meeting to return to work.

Korn, the Security Shift Manager, agreed to recommend termination of Appellant's employment for gross insubordination. Subsequently, an Employee Counseling Notice was executed on January 7, 2002, with "suspension pending investigation" listed as the action to be taken. "Gross insubordination" in violation of #11 of Delaware Park's Standards of Conduct was listed as the reason for the suspension.[4] That same day, Appellant made an appointment to see her doctor on January 9, 2002, prior to the January 11th deadline. She contends that she then left a voice mail message for the Director and the Employee Relations Manager informing them of the appointment. On January 8, 2002, Ms. Soysal and Mr. Korn met with Appellant to discuss her insubordinate conduct in the previous day's meeting. Employer contends that Appellant told Ms. Soysal that she left the meeting because she had nothing more to discuss with them, but provided no further explanation. On January 9, 2002, Delaware Park terminated Appellant for gross insubordination following its investigation.

3. Appellant filed a claim with a Claims Deputy of the Department of Labor, who subsequently found that Employer had failed to meet its burden of proof that Appellant was discharged with "just cause." The Claims Deputy found that the

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[4] Violation #11 of Delaware Park's Standards of Conduct provides that "[i]nsubordination or willful disregard of a supervisor's instructions" may be considered cause for immediate dismissal. *See* Appellant's Appendix at A-20.

employer had failed to prove that Appellant was insubordinate for leaving a meeting before it was over and for not making a doctor's appointment within a specified time. As a result, Appellant was eligible for receipt of benefits.

4. The Appellee, Delaware Park, then appealed this decision to an Appeals Referee. The Referee presided over a hearing held on March 12, 2002, which was attended by Employer Representative Shannon DeLucia,[5] as well as Employee Relations Manager Sheila Soysal and Director of Security Kathy Harer. Appellant, however, did not attend. The Referee reversed the decision of the Claims Deputy, and found that Appellant deliberately refused to comply with the instructions of her employer in obtaining the necessary medical documentation and further exhibited gross insubordination by disregarding the instructions of management by walking out during the course of the meeting without authorization.

5. Thereafter, the Appellant appealed the Referee's decision to the Board. Following a hearing, the Board adopted the Referee's findings of fact and conclusions of law and affirmed the decision of the Referee. The Board further found that Appellant had failed to comply with her employer's request for medical documentation and offered no medical evidence to show that she suffered from any disability or restrictions on work. Subsequently, Appellant filed a motion for

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[5] Ms. DeLucia is the Director of Risk Management for Delaware Park.

rehearing asserting that a witness at the Board hearing presented hearsay testimony and that the employer had failed to prove "just cause" by a preponderance of the evidence. Appellant's application for reconsideration before the Board was denied, and Appellant now appeals the Board's decision to this Court pursuant to title 19, section 3323 of the Delaware Code.

6. The function of this Court on review of an Unemployment Insurance Appeal Board decision is to determine whether the decision is supported by substantial evidence[6] and is free from legal error.[7] Substantial evidence is such relevant evidence that a reasonable person might accept as adequate to support a conclusion.[8] This Court does not weigh the evidence, determine questions of credibility, or make factual findings in the first instance.[9] Rather, this Court's role is to determine whether the evidence is legally adequate to support the Board's findings.

7. The Appellant contends that the Board erred in finding that "just cause"

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[6] *General Motors Corp. v. Freeman*, 164 A.2d 686, 688 (Del. 1960); *Attix v. Voshell*, 579 A.2d 1125, 1127 (Del. Super. Ct. 1989).

[7] *Boughton v. Div. of Unemployment Ins. of the Dep't of Labor*, 300 A.2d 25, 26-27 (Del. Super. Ct. 1972); *Ridings v. Unemployment Ins. Appeal Bd.*, 407 A.2d 238, 239 (Del. Super. Ct. 1979).

[8] *Oceanport Ind., Inc. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del. 1994); *Breeding v. Contractors-One-Inc.*, 549 A.2d 1102, 1104 (Del. 1988); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super. Ct. 1986).

[9] *Trotman v. Bayhealth Med. Ctr., Inc.*, 2000 WL 33109616 (Del. Super. Ct.) (quoting *Messina v. Future Ford Sales, Inc.*, 1997 WL 358571 (Del. Super. Ct.)).

existed for her discharge because she complied with Employer's direction to arrange an appointment with her doctor. Appellant fails to recognize that her complying with Employer's request to see a doctor was not the basis for her discharge. Rather, her discharge was premised on the gross insubordination that she displayed through her actions in a meeting involving her superiors at Delaware Park.[10] While the Claims Deputy may have based its decision on Appellant's alleged insubordination for failing to provide a doctor's note, upon appeal the Referee held that the insubordination was in fact her behavior in the January 7th meeting. In fact, the Appeals Referee clearly stated as much when he concluded that:

> insubordination, which is a deliberate refusal of an employee to obey a reasonable and direct work order from a member of management, represents willful or wanton misconduct. The [Appellant's] refusal to remain at the meeting on January 7, 2002 represented a willful disregard of the employer's business interest and rose to the level of willful or wanton misconduct.[11]

The Board subsequently adopted the findings of fact and conclusions of law of the Referee as its findings and conclusions. Thus, they too recognized that just cause existed for her termination premised on her behavior at the meeting. Despite the Board's additional comments on Appellant's failure to provide medical

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[10] The Court would also note that it is difficult to find merit in the Appellant's argument since reasonable requests for documentation over four months has been ignored by her and only when facing suspension does a doctor's appointment magically appear.

[11] *See* Appeal Docket No. 222642, Referee's Decision of March 12, 2002, at 4.

documentation, this simply does not change the fact that Appellant exhibited gross insubordination by walking out of the January 7th meeting and by failing to reply when her superiors called to her.

8. In order for disqualification of unemployment compensation benefits, an employer must establish "just cause."[12] To establish "just cause" an employer must demonstrate "a willful or wanton act in violation of either the employer's interests, or of the employee's duties, or of the employee's expected standard of conduct."[13] The Appeals Referee and the Board found the evidence sufficient to show that Appellant's behavior at the January 7th meeting demonstrated such wilful or wanton conduct. This Court must agree that substantial evidence exists to support such a finding and that the Board's decision was free from legal error. The Appellant's argument that she did not intentionally leave the meeting, but rather believed that the meeting had concluded, was a factual dispute that was within the province of the Board to decide. This Court merely reviews the Board's decision and does not weigh the evidence, determine credibility nor does it make factual findings. The Court finds no merit to Appellant's argument that the Board could not make such a determination because Appellant was not present before the Appeal's Referee.

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[12] *See* DEL. CODE ANN. tit. 19, § 3315 (Supp. 2002).

[13] *Abex Corp. v. Todd*, 235 A.2d 271, 272 (Del. Super. Ct. 1967); *Masanque v. Playtex Apparel, Inc.*, 2002 WL 1352438 (Del. Super. Ct.).

Rather, the Board had a complete record of the proceedings before the Referee, as well as Appellant's live testimony before the Board itself with which to make its determination. The Board stated as much that its decision was "[b]ased upon the testimony heard before the Referee and by the Appeal Board. . . ."[14] Upon review of the record, the Court finds that the evidence is legally adequate to support the Board's findings.

9. Simply put, it is the Appellant's own conduct and attitude that has placed her in the present situation. Under any reasonable review, her conduct was inappropriate and demonstrated an arrogant attitude which is unacceptable in the workplace. She has no one to blame for the present situation other than herself.

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[14] *See* Appeal Docket No. 222642, Decision of the Appeal Board on Appeal From Decision of Rudolph J. Antonini, Jr., April 16, 2002.

10. The Court finds the Board's decision in this matter to be factually and legally supported by the evidence presented. Based upon the foregoing, the decision of the Unemployment Insurance Appeal Board is AFFIRMED.

IT IS SO ORDERED.

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Judge William C. Carpenter, Jr.