IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

TROY A. FORAKER,	)	
	)	
Claimant-Appellant,	)	
	)	
v.	)	C.A. No. 01A-01-010
	)	
DIAMOND STATE RECYCLING,	)	
	)	
Employer-Appellee.	)	

Upon Appeal from the Unemployment Insurance Appeal Board's determination.
AFFIRMED.

Submitted: July 12, 2001
Decided: August 17, 2001

O R D E R

This 17th day of August, 2001, upon consideration of the appeal of Troy Foraker ("Claimant") from the decision of the Unemployment Insurance Appeal Board (the "Board") dated January 5, 2001, rejecting his application for benefits, the parties' briefs and the record below, it appears to the Court that:

1. Diamond State Recycling ("Diamond State") employed Claimant as a driver to haul scrap metal throughout the Wilmington, Delaware area. During the course of that employment, Claimant was frequently assigned to a specific truck which, over time, apparently experienced mechanical difficulties which made it

difficult for Claimant to complete his assigned tasks.[1] On September 25, 2000, Claimant was in the process of hauling materials to and from a scrap yard in Claymont, Delaware, when the truck again began to malfunction causing Claimant to be slower than another driver assigned the identical task. At some point, Claimant was contacted by Scott Sherr ("Sherr"), Diamond State's owner and operator, by way of a two-way radio system to address concerns regarding Claimant's diminished productivity. Claimant demonstrated an irascible disposition which eventually led to Sherr's instruction that he return the truck to Diamond State and retire for the day. Upon his return to Diamond State, Claimant attempted to discuss the situation with Sherr further rather than going home as instructed. Claimant aggressively continued to pursue the matter even though Sherr advised Claimant that he did not want to discuss the issue at that time. Claimant returned the next morning at which time Sherr terminated his employment.

[1]The mechanical difficulties involved the "balancing" of the truck. According to Claimant, the truck was not balanced properly, which made it difficult to unload its contents in a safe manner. Record at 31-32.

2. Claimant sought unemployment benefits following his termination. On October 17, 2000, the Delaware Department of Labor, Division of Unemployment Insurance issued its "Notice of Determination." The Division, after determining that Claimant exhibited "verbally abusive" behavior and "insubordination" during the September 25 incident, rejected Claimant's application for unemployment benefits.[2] This rejection of benefits was based on the statutory mandate that "[a]n individual shall be disqualified for [unemployment compensation] benefits: . . . (2) [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 . . . ."[3]

3. Claimant appealed the Division's determination, and the matter was assigned to an Appeals Referee. The Referee presided over a hearing held on November 14, 2000, where both Claimant and Sherr testified. The Referee found that "claimant admitted to a hot headed spontaneous response [to Sherr's inquiries on September 25 and that he] . . . was then advised to go home for the day . . . [but nevertheless] continued to argue [with Sherr]."[4] In light of these findings, the Referee affirmed the previous determination that Claimant was terminated for "just cause"

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[2]Record at 6.

[3]19 *Del. C.* § 3315 (emphasis added).

[4]Record at 10.

under 19 *Del. C.* § 3315(2), reasoning that:

> [while] an employee can certainly argue with his employer, once that employee is advised to go home for that reason and come back the next day, but instead continues to argue, this amounts to crossing the line as tantamount to insubordination. Such conduct cannot be tolerated in the workplace as it is demeaning of the employer/employee relationship and impairs the orderly and efficient operation of one's business.[5]

4. Claimant appealed the Referee's decision to the Board and a hearing was conducted on January 3, 2001. Claimant again testified at the hearing about the truck's safety issues and the reasons for his outburst. The Board, however, affirmed and adopted the Referee's findings of fact and conclusions of law.[6] Claimant has appealed that determination to this Court.

[5] *Id.* at 11.

[6] *Id.* at 45.

5. In reviewing the decisions and actions of an administrative agency such as the Unemployment Insurance Appeal Board, this Court's role "is limited to determining whether the Board's factual findings are supported by substantial evidence and whether the Board's decision is free from legal error."[7] The Court must refuse to "'weigh the evidence, determine questions of credibility, or make its own factual findings,'" and instead must limit its review of the determination below to "whether the evidence is legally adequate to support the Board's factual findings."[8] The Court's function here, then, is to determine whether the Board's determination that the claimant was terminated for "just cause" is supported by substantial evidence and an error-free application of the law.[9]

6. The Court's review of the Board's factual findings clearly reveals that they were supported by substantial evidence which, in this case, took the form of the testimony of Claimant and Sherr. This testimony established that Claimant deliberately refused to follow a specific order from Sherr and, additionally, that he strenuously argued about the situation with Sherr despite instructions to go home for

[7] *Trotman v. Bayhealth Med. Ctr., Inc.*, Del. Super., C.A. No. 00A-05-001, Ridgely, P.J. (November 6, 2000), Order at 3 (citing *Sann v. Accurate Office Machs.*, Del. Supr., No. 516, 1999, Veasey, C.J. (Mar. 24, 2000)(ORDER)).

[8] *Id.* (quoting *Messina v. Future Ford Sales, Inc.*, Del. Super., C.A. No. 96A-09-004, Alford, J. (May 2, 1997), Order at 2-3).

[9] *Id.* at 6; *Hudon v. English Vill. Apartments*, Del. Super., C.A. No. 95A-05-004, Cooch, J. (Nov. 30, 1995), Order at 5.

the day.[10] Both the Referee and the Board concluded as much.[11] The testimony constitutes more than substantial evidence that Claimant was "verbally abusive" and "insubordinat[e]."

7. The Court must now assess whether the specific factual findings made below support the determination that Claimant was terminated for "just cause."[12] In

[10]Record at 19-22, 31-35, 50-62.

[11]*Id.* at 10, 45.

[12]*Hudon*, *supra*, Order at 5.

the context of 19 *Del. C.* § 3315(2), "just cause" is defined as "a willful or wanton act[13] in violation of either the employer's interest, or of the employee's duties, or of the employee's expected standard of conduct."[14] This definition may be satisfied

[13]"Willful or wanton conduct that constitutes just cause to discharge an employee requires a showing that the employee was conscious of his conduct and recklessly indifferent to its consequences. It does not necessarily mean bad motive, ill design, or malice." *Diamond State Port Auth. v. Morrow*, Del. Super., C.A. No. 00A-09-003, Del Pesco, J. (June 13, 2001), Mem. Op. at 7 (citations omitted). Claimant presently does not dispute (nor did he below) that his conduct was willful or wanton as that term has been defined and, consequently, the appeals referee found that Claimant had engaged in willful or wanton conduct. Record at 12. That determination is supported by substantial evidence and was free of legal error. *See Trotman*, *supra*, Order at 3.

[14]*See Hudon*, *supra*, Order at 5-6 (citation omitted). As an initial consideration, it is clear that the claims referee applied a proper definition of "just cause." *Compare* Record at 11 (Referee defining "just cause," with reference to 19 *Del. C.* § 3315(2), as existing "where the claimant commits a willful or wanton act or engages in a willful or wanton pattern of conduct in violation of the employer's interest, his duties to the employer or his expected standard of conduct.") *with Hudon*, *supra*, Order at 5-6 (employing similar definition and quoting *Abex Corp. v. Todd*, Del. Super., 235 A.2d 271, 272 (1967)).

through a "single instance of insubordination."[15]

[15]*Hudon*, *supra*, Order at 5-6 (citing *Unemployment Ins. Appeal Bd. v. Duncan*, Del. Supr., 337 A.2d 308 (1975); *Coleman v. Dep't of Labor*, Del. Super., 288 A.2d 285 (1972); *Wilmington Trust Co. v. Gaines*, Del. Super., C.A. No. 88A-AU-9, Gebelein, J. (Jan. 25, 1989)(Mem. Op.)).

8. Claimant, a *pro se* litigant, specifically does not address the legal standards of review or whether his behavior constituted "just cause" for his termination under the applicable definition. Claimant's arguments focus exclusively on his attempts to explain the reasons for his outburst and the events and circumstances that followed. As already determined, however, the record clearly supports the classification of Claimant's conduct as insubordinate and verbally abusive. Moreover, the factual findings below are plainly sufficient to support the determination that Claimant's insubordination and verbally abusive behavior provided Sherr and Diamond State with "just cause" for the termination of Claimant's employment.[16] The Court agrees with the Appeal Referee's conclusion that insubordination "cannot be tolerated in the workplace as it is demeaning of the employer/employee relationship and impairs the orderly and efficient operation of one's business."[17]

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[16]*See Trotman*, *supra*, Order at 6; *Hudon*, *supra*, Order at 5.

[17]Record at 11. *See also Unemployment Ins. Appeal Bd. v. Martin*, Del. Supr., 431 A.2d 1265, 1268 (1981)("[W]e agree with the observation of the referee below that the employer's business would be in a chaotic state if each employee could decide for himself which of the employer's reasonable orders he might follow on any given occasion.").

9. The case law which examines the issue of "just cause" supports the Board's determination. Courts of this state frequently have determined that insubordinate behavior exhibited by an employee will give rise to "just cause" for termination, and the Division of Unemployment Insurance and this Court have held that such is a disqualifying event under the statutory scheme providing for unemployment benefits.[18] This Court has repeatedly stated that "'a discharge for insubordination may constitute 'just cause' provided the insubordination consists of a willful refusal to follow the reasonable directions or instructions of the employer.'"[19] In the context of this case, after the argument with Sherr, Claimant specifically was instructed to park his truck and go home. Despite this specific instruction, upon his return to the yard, Claimant continued to pursue his gripe with Sherr in a disrespectful and disruptive tone. An employee's refusal to follow specific instructions or orders from a superior is clearly "just cause" for termination.[20] Consequently, the conclusion that Claimant's failure to obey a direct order from Sherr constituted "just cause" for his termination and disqualification from the receipt of benefits was not legal error.

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[18] *See* 19 *Del. C.* § 3315(2).

[19] *Trotman*, *supra*, Order at 7 (quoting *Dietz v. Wilfong*, Del. Super., C.A. No. 94A-02-004, Toliver, J. (July 15, 1994), Op. and Order at 3 (quoting *Hanna v. Fox Pools of Dover*, Del. Super., C.A. No. 81A-JL-7, O'Hara, J. (March 10, 1982), Letter Op. at 2)).

[20] *See, e.g., Martin*, 431 A.2d at 1267-68 (employees leaving early for personal business despite order to remain at work); *Trotman*, *supra*, Order at 6-9 (nurse refusing to check on patient despite order); *Hudon*, *supra*, Order at 5-6 (employee refusing to shovel snow despite order).

10. The Board's conclusion that Claimant's behavior was verbally abusive and insubordinate was plainly supported by substantial evidence of record. Further, the legal conclusions based on those factual findings was free from legal error. Accordingly, the decision of the Board should be, and is hereby, **AFFIRMED**.

IT IS SO ORDERED.

Judge Joseph R. Slights, III

Original to Prothonotary

cc: Troy A. Foraker
Edward B. Rosenthal, Esq.
Unemployment Insurance Appeal Board