IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

SHEQUALA KEARNEY,	)	
	)	
Appellant,	)	
	)	
v.	)	C.A. No. 02A-08-002 HDR
	)	
NEW ROADS and	)	
UNEMPLOYMENT INSURANCE	)	
APPEAL BOARD,	)	
	)	
Appellees.	)	

Submitted: December 18, 2002
Decided: March 25, 2003

Upon Appeal from a Decision of the
Unemployment Insurance Appeal Board
AFFIRMED

RIDGELY, President Judge

Kearney v. New Roads
02A-08-002 HDR
March 25, 2003

O R D E R

This 25th day of March, 2003, upon consideration of the Appellant's brief and the record below, it appears that:

(1) This is an appeal by Claimant Shequala K. Kearney ("Kearney") from a decision of the Unemployment Insurance Appeal Board (the "Board") that declined to award unemployment benefits. I find that the decision is supported by substantial evidence and free of legal error. Accordingly, it is affirmed.

(2) Kearney was a warehouse returns employee for New Roads when she was discharged for not coming to work and not calling her employer prior to the shift. Company policy provides that after the first incident of "no call no show" an employee is subject to a two day unpaid suspension, and the second occurrence results in termination.

(3) The Board determined that Kearney was absent from work without calling in on February 6, 2002 and received a two day suspension from work without pay. On April 26 and 29, 2002, she again failed to show up for work and did not call her employer. Kearney was terminated effective April 29, 2002, for the second occurrence of a "no call no show." Kearney was found to be disqualified from unemployment benefits pursuant to 19 *Del. C.* § 3315(2)[1] at both the Appeals Referee level and upon hearing before the full Board.

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[1] In pertinent part: "An individual shall be disqualified for benefits...(2) For the week in which the individual was discharged from the individual's work for just cause in connection with the individual's work." 19 *Del. C.* § 3315(2).

(4) This Court's role in appellate review of a decision of the Board is limited by statute to determining whether the Board's decision is supported by substantial evidence and is free from legal error.[2] Substantial evidence is such that "a reasonable mind might accept it as adequate to support a conclusion."[3] This court does not "weigh evidence, determine credibility, or make its own factual findings,"[4] it merely determines if the evidence is legally sufficient to support the agency's factual findings.[5]

(5) Employees terminated for just cause are disqualified from receiving benefits pursuant to 19 *Del. C.* § 3315(2). "Just cause" is defined as a wilful or wanton act in violation of either the employer's interest, the employee's duties, or the employee's expected standard of conduct.[6] The employer bears the burden of proving the employee was conscious of the prohibited conduct and indifferent to its

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[2] "In any judicial proceeding under this section, the findings of the Unemployment Insurance Appeal Board as to the facts, 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." 19 *Del. C.* § 3323(a). *See Unemployment Ins. Appeal Board v. Martin,* 431 A.2d 1265, 1266 (Del. 1981).

[3] *McManus v. Christina Service Co.,* 1997 Del. Super. LEXIS 68 at *4 (Del. Super. Ct. 1997), *citing Oceanport Ind., Inc. v. Wilmington Stevedores, Inc.,* 636 A.2d 892 (Del. 1994).

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

[5] *Id.*

[6] *Martin*, 431 A.2d at 1267, *citing Abex Corp. v. Todd,* 235 A.2d 271, 272 (Del. Super. Ct. 1967).

consequences.[7] Malice or bad motive toward the employer are not required for the conduct to be a wilful or wanton act, thereby justifying a finding of "just cause" for termination.[8]

(6) Kearney testified that she did not recall the February 6, 2002 "no call no show" but recalls that she did not attend work that entire week; she feels that she called her employer each day. Following the week of absence, Kearney returned to New Roads on February 11, 2002 to request a 30 day unpaid leave of absence for personal reasons, which was granted. The record below includes a "No Call No Show Report" signed by a New Roads supervisor on February 7, 2002 and testimony of New Roads supervisor that she did not call prior to her absence on February 6, 2002.

(7) Kearney admits that on April 26, 2002 she did not go to work and did not call her employer to inform a supervisor as required by policy. She also admits that she did not personally call New Roads on April 29, 2002 as policy required, although she did ask her uncle to telephone New Roads to notify her employer of her anticipated absence. New Roads has no record that such call was made, although if made, the call would not have satisfied New Roads' policy. The record also includes contemporaneous documentation of the April "no call no show" occurrences, which amount to two "no call no shows."

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[7] *Evans v. Tansley,* 1987 Del. Super. LEXIS 1250 at *3 (Del. Super. Ct. 1987), *citing Coleman v. Dep't of Labor,* 288 A.2d 285 (Del. Super. Ct. 1972).

[8] *Coleman,* 288 A.2d at 288.

(8) Kearney contends that she did not receive the employee handbook because she was on maternity leave when the handbooks were issued. However, she admits that she was aware of the policy that required an employee call in one hour prior to a scheduled shift if an employee were unable to attend work. The fact that she was unaware of the exact consequences of her acts, as opposed to having notice of their impropriety, does not preclude discharge for wilful misconduct.[9]

(9) In considering the testimony of all parties at both the hearing before the Appeals Referee and the Board hearing, the documents supporting the "no call no show" incidents, and Kearney's own admissions, I find that the Board had substantial evidence to find that Kearney violated New Roads' express attendance policy at least twice. These violations of the employer's policy are clearly adverse to the employer's interest, the employee's duties, and the employee's expected standard of conduct.

Accordingly, the decision of the Unemployment Insurance Appeal Board is ***AFFIRMED***.

IT IS SO ORDERED.

/s/ Henry duPont Ridgely
President Judge

cmh
oc: Prothonotary
xc: Order distribution

[9] *Id.*