IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

CLINTON R. MOSLEY,	)	
	)	
Claimant Below-Appellant,	)	
	)	
v.	)	C.A. No. 02A-03-001 HDR
	)	
INITIAL SECURITY,	)	
	)	
Employer Below-Appellee.	)	

Submitted: July 3, 2002
Decided: October 2, 2002

Clinton R. Mosley, Camden-Wyoming, Delaware, *pro se.*

Upon Claimant's Appeal
from a Decision of the
Unemployment Insurance Appeal Board
AFFIRMED

RIDGELY, President Judge

Mosley v. Initial Security
02A-03-001 HDR
October 2, 2002

O R D E R

This 2nd day of October, 2002, upon consideration of the Appellant's brief and the record below, it appears that:

(1) This is an appeal by the Claimant, Clinton R. Mosley ("Mosley") from a decision of the Unemployment Insurance Appeal Board (the "Board") which 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) Mosley was employed as a site commander by Initial Security ("Initial") from May 1, 2001 through October 1, 2001, when he was discharged for violating company policy. On September 26, 2002, a client reported to Initial that several local and long distance telephone calls had been made by Mosley while on the client's premises. When Mosley was questioned about the calls he admitted that he had made the calls in an attempt to find employment for himself in other areas of the country.

Company policy prohibits the use of clients' phones for personal use. Mosley confirmed that he was aware of and actually signed the employer's phone policy. Initial charged Mosley with violating the phone policy and for this reason discharged him. However, Mosley stated that other employees used the phone for personal calls and did not get disciplined.

Mosley sought unemployment benefits. The appeals referee found Mosley's acts had an adverse effect upon the integrity of the employer in the eyes of the client. The referee also determined that Mosley knew or should have known that the unauthorized use of the client's phone system for his own personal use was

wrong. The referee concluded that Mosley was not entitled to benefits because his misconduct rose to the level of the willfulness or wantonness required to support just cause for his dismissal within 19 *Del. C.* § 3315(2).

Mosley appealed the decision of the referee to the Board. A hearing was held, at which Mosley testified. Based upon the testimony heard and the referee's findings of the facts the Board affirmed the referee's decision. This appeal followed.

(3) This Court has limited appellate review of the decisions of an administrative agency. The Court 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.[1] Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[2] This Court does not "weigh the evidence, determine questions of credibility, or make its own factual findings."[3] It merely determines if the evidence is legally adequate to support the agency's factual findings.[4] The Court then determines if the Board applied the proper legal standard for determining eligibility for

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[1] *Sann v. Accurate Office Machines,* Del. Supr., No. 516, 1999, Veasey, C.J. (Mar. 24, 2000) (ORDER).

[2] *Id.*

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

[4] 29 *Del. C.* § 10142(d).

unemployment insurance.[5] The Court must consider whether or not the Board's factual findings amount to conduct constituting just cause for termination.[6]

(4) Mosley's opening brief consists of an appended copy of the record below and a handwritten letter that states in its entirety, "I Clinton Mosley am writing this statement explaining my reason for appealing my unemployment benefits. My employer Initial Security wrote a letter explaining that I was terminated by no fault of mine, and that I should be entitled to my benefits for the time loss from work." This statement fails to allege that substantial evidence did not exist to support the factual findings of the Board or that it erred as a matter of law. I will proceed under the assumption that Mosley contends the Board lacked substantial evidence to support its findings that his conduct constituted just cause for termination.

(5) In a termination case, an employee who is terminated for "just cause" is not eligible to receive unemployment benefits.[7] Just cause concerns "a wilful or wanton act in violation of either the employer's interest, or of the employee's duties, or of the employee's expected standard of conduct."[8] "[W]ilful or wanton conduct requires a showing that one was conscious of his conduct or recklessly indifferent

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5 *Hudon v. English Village Apartments,* 1995 WL 717627 (Del. Super.).

6 *Id.*

7 19 *Del. C.* § 3315(2).

8 *Abex Corp. v. Todd,* 235 A.2d 271, 272 (Del. Super. Ct. 1967).

of its consequences."[9] The burden is on the employer to show that the employee was terminated for "just cause."[10] "Just cause" exists where an employee violates a company rule or policy, especially where the employee is given notice of the rule, such as in a company handbook.[11]

(6) Based upon my review of the record in this case, I am satisfied that there is substantial evidence to support the Board's determination that Initial had just cause to terminate Mosley. The Board's conclusion that Mosley knew or should have known that making personal calls was wrong is supported by Mosley's signature on the company phone policy and his own admissions. Additionally, Mosley admitted that the long distance calls were for his own personal business not the business of Initial or its client. While Initial submitted a letter to the Board stating that it felt that Mosley did not act with "willful misconduct," the determination of "willful misconduct" is a factual conclusion for the Board to decide.

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[9] *Coleman v. Dept. of Labor,* 288 A.2d 285, 288 (Del. Super. Ct. 1972).

[10] *Evans v. Tansley,* Del. Supr., No. 294, 1987, Horsey, J. (Mar. 29, 1988) (ORDER) at 4-5.

[11] *See Baynard v. Kent County Motors, Inc.,* Del. Supr., No. 119, 1988, Moore, J. (Sept. 7, 1988) (Order); *Tuttle v. Mellon Bank of Delaware,* 659 A.2d 786 (Del. Super. Ct. 1995); *Farmer v. E.I. DuPont de Nemours & Co.,* Del. Super., C.A. No. 94A-06-011, Goldstein, J. (Nov. 9, 1994) (Mem.Op.).

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