

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

LORETTA LITTLE,	:	
	:	C.A. No. K13A-12-002 WLW
Appellant,	:	
	:	
v.	:	
	:	
TRUE PACK, LTD and the	:	
UNEMPLOYMENT INSURANCE	:	
APPEALS BOARD,	:	
	:	
Appellee.	:	

Submitted: June 20, 2014
Decided: September 24, 2014

ORDER

Upon an Appeal from the Decision of the
Unemployment Insurance Appeals Board.
Affirmed.

Loretta Little, *pro se*

Catherine Damavandi, Esquire, Department of Justice, Wilmington, Delaware;
attorney for the Unemployment Insurance Appeals Board.

WITHAM, R.J.

INTRODUCTION

Before the Court is the *pro se* appeal of Appellant Loretta Little (hereinafter “Appellant”) from the decision of the Unemployment Insurance Appeals Board (hereinafter “the Board” or “the UIAB”) disqualifying Appellant from receiving unemployment benefits. The Board overturned a determination by the Appeals Referee (the “Referee”) that Appellant is qualified to receive unemployment benefits. The Board ruled that due to Appellant’s discharge for just cause from True Pack, Ltd. (hereinafter “Employer”), pursuant to 19 *Del. C.* § 3314(2), Appellant is not entitled to unemployment benefits. For the following reasons, the Board’s decision is affirmed.

BACKGROUND

Appellant was employed as a clerk and cashier for Employer from September 5, 2013, until her termination on July 24, 2013. Appellant was ultimately discharged for insubordination after four separate warnings due to insubordination or not following instructions at work. Appellant received her first Employee Warning Notice on January 22, 2013 for insubordination. The warning stated she was written up because she did not follow verbal instructions. Appellant was warned that should the problem continue the amount of hours she could work would be decreased.

Appellant received her second Employee Warning Notice on February 12, 2013, based on her failure to follow instructions and poor work quality. Appellant allegedly also failed to follow proper procedure when handling customer questions and orders. Soon after, on February 26, 2013, Appellant received her third Employee

Warning Notice for failure to follow instructions. She was asked to review proper procedure in the company policy handbook. Appellant signed the policy handbook to acknowledge her reading of Employer's policies, and was notified her hours would be cut back if problems continued.

Employer had a cell phone policy that all cell phones are to be powered off when left in the Employer's office. Company policy allows for one warning to be issued before termination of an employee if they violate the policy. Appellant received permission from her Employer to carry and check her cell phone while a family member was ill, with the understanding that once that family member had passed away, Appellant was required to follow the company cell phone policy once more. However, Appellant continued to carry her cell phone on her person after her family member passed away, because on June 1, 2013, Appellant retrieved her cell phone from her pocket and made a phone call. When questioned, Appellant stated she believed her use of the phone was appropriate so long as it was on the vibrate setting.

On April 25, 2013, a note was written by Employer describing Appellant's non-adherence to company policy. The note describes Appellant failing to perform tasks assigned to employees when business is slow in the store. Lastly, Appellant received her Final Employee Warning Notice on July 11, 2013. The notice states that Appellant defied management's instructions by not following company policy once more. Appellant indicated on the notice that she agreed with the Company Statement, and signed and dated the document. The Final Warning Notice states that "[t]he next deliberate defiance will result in the termination of [Appellant's] employment." The

last and final incident occurred July 19, 2013. Appellant violated company policy and moved a shelf without assistance from any other employees. However, Appellant believes her reporting of what she describes as an offensive touching by a supervisor was the reason for discharge of her employment, not her insubordination.

The Appeals Referee reversed the Claims Deputy, finding the Claimant was discharged from her employment without just cause, however, the Board reversed the Referee, and found the Claimant's employment to be terminated with just cause.

STANDARD OF REVIEW

As with appeals from all administrative agencies, when a decision of the UIAB is appealed, this Court's scope of review is limited to "determining whether the Board's conclusions are supported by substantial evidence and 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 will not weigh the evidence, determine questions of credibility, or make its own factual findings.³ Questions of law are reviewed *de novo* "to determine whether the Board erred in formulating or applying legal concepts."⁴ If there is substantial evidence and no error of law, the

¹ *Nardi v. Lewis*, 2000 WL 303147, at *2 (Del. Super. Ct. Jan. 26, 2000) (citations omitted).

² *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981) (quoting *Consolo v. Fed. Mar. Comm'n*, 383 U.S. 607, 620 (1966)).

³ *Hopkins Const., Inc. v. Unemployment Ins. App. Bd.*, 1998 WL 960713, at *2 (Del. Super. Ct. Dec. 17, 1998) (citing *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66-67 (Del. 1965)).

⁴ *PAL of Wilmington v. Graham*, 2008 WL 2582986, at *4 (Del. Super. Ct. June 18, 2008) (citing *Nardi*, 2000 WL 303147, at *2).

Board's decision will be affirmed, unless the Board committed an abuse of discretion.⁵ An abuse of discretion occurs when the Board "acts arbitrarily or capriciously, or exceeds the bounds of reason in view of the circumstances and has ignored recognized rules of law or practice so as to produce injustice."⁶

DISCUSSION

Pursuant to 19 Del. C. § 3314(2), an employee who is terminated for "just cause" shall be disqualified from receiving unemployment benefits.⁷ "Just cause" refers to a "wilful [sic] 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 When an employee is insubordinate, this is just cause for termination.⁹ Discharge of employment due to insubordination constitutes as just cause if the employee wilfully refuses to follow the reasonable instruction of the employer.¹⁰ Appellant received

⁵ See *PAL of Wilmington*, 2008 WL 2582986, at *4 (citing *Funk v. Unemployment Ins. App. Bd.*, 591 A.2d 222, 225 (Del. 1991)); *Sikorski v. Boscov's Dept. Store*, 1995 WL 656831, at *1 (Del. Super. Ct. Sept. 22, 1995) (citations omitted).

⁶ *PAL of Wilmington*, 2008 WL 2582986, at *1 (citations and internal quotations omitted).

⁷ *Jarrell v. AmeriSpec Home Inspections, Inc.*, 2011 WL 3908162, at *4 (Del. Super. Ct. 2011).

⁸ *Boughton v. Div. of Unemployment Ins. of Dep't of Labor*, 300 A.2d 25, 26 (Del. Super. Ct. 1972), quoting *Abex Corp. v. Todd*, 235 A.2d 271 (Del. Super. Ct. 1967).

⁹ *Jarrell v. AmeriSpec Home Inspections, Inc.*, 2011 WL 3908162, at *4 (Del. Super. Ct. 2011).

¹⁰ *Scott v. Unemployment Ins. Appeal Bd.*, C.A. 1993 WL 390365, at *4 (Del. Super. Ct. 1993).

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repeated written and verbal warnings regarding her lack of adherence to company policies and procedures. Time after time, Appellant failed to follow company policy with regard to the responsibilities required to perform her job. After each indiscretion, Employer explained to Appellant what the proper procedure was and requested that Appellant acknowledge correct policies by signing her name next to text of the relevant policy in the company policy book. Appellant acknowledges her behavior, stating she was unable to comply with Employer's policies because she was "...not able to dummy down the way [Employer] wanted me to, to not be able to make any decisions and not to be able to think for myself..."

Appellant's repeated insubordination presents just cause for the termination of her employment, and any offensive touching by a supervisor is an issue independent of whether Appellant is eligible to receive unemployment benefits. Based on the above facts, it is apparent that Appellant disregarded her employer's policies and acted on her own accord. With each indiscretion, Employer explained to Appellant why she was receiving a warning notice, gave Appellant information to correct the behavior, and told Appellant what the consequences of insubordination would be if the behavior continued. Unfortunately, Appellant continually failed to adhere to company policy, giving Employer just cause to end her employment with the company. The Board's conclusion that Appellant is disqualified from receiving benefits under § 3314(2) is supported by substantial evidence and free from legal error.

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CONCLUSION

In light of the substantial evidence in support of the UIAB's decision, as well as the absence of any error of law, the decision of the UIAB must be, and is, hereby **AFFIRMED.**

/s/ William L. Witham, Jr. _____
Resident Judge

WLW/dmh