

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

**SELBOURNE JOHNSON**            )  
    **Appellant,**                    )  
  )  
    **v.**                                )  
  )  
**UNEMPLOYMENT INSURANCE** )  
**APPEALS BOARD**                )  
    **Appellee**                    )

**C.A. No.: N14A-07-010-ALR**

Submitted: April 8, 2015  
Decided: June 3, 2015

*On Appeal from the Decisions of the Unemployment Insurance Appeals Board*  
**AFFIRMED**

Leo John Ramunno, Esq., for Appellant.

Paige J. Schmittinger, Deputy Attorney General, for the Unemployment Insurance Appeals Board.

This is an appeal by Selbourne Johnson (“Claimant”) from a determination of the Unemployment Insurance Appeals Board (“UIAB”) issued on June 24, 2014 in Case No. 10939076. The UIAB found that Claimant was discharged from his employment for just cause in connection with his work, and therefore was disqualified from the receipt of unemployment benefits. Claimant filed this appeal regarding the UIAB’s decision. For the reasons set forth below, the decision of the UIAB is affirmed.

## **Board's Factual Findings**

Claimant worked for Christiana Care Health Service (“Employer”) from January 16, 1995 to January 27, 2014. On December 20, December 21, December 22, and December 26 of 2013, Claimant’s badge activity report did not indicate the time which he had unlocked the door and started work. Claimant’s supervisor asked him to provide a written account of the times he began working on the four days in question. Claimant’s written account claimed that he arrived at a few minutes prior to the start of his shift on each of the days. Claimant’s employer testified that Claimant was captured on surveillance video arriving later than he claimed in his written account. Claimant and his supervisor later had a meeting about these days and the times on Claimant’s written account, in which Claimant admitted that he was untruthful about his arrival times. As a result, Claimant was discharged on January 27, 2014.

## **Procedural History**

The Department of Labor issued a Notice of Determination on February 24, 2014 disqualifying Claimant from the receipt of unemployment benefits after being discharged for just cause in connection with his work. Claimant appealed the decision. After hearings on March 25, 2014 and April 10, 2014, an Appeals Referee affirmed the decision. The Referee noted that dishonesty and untrustworthiness justify a dismissal for cause. Claimant appealed this decision to

the UIAB, which also affirmed. The UIAB concluded that Claimant had been discharged for just cause in connection with his work, and accordingly was disqualified from the receipt of unemployment benefits.

### **Standard of Review**

The Court's appellate review of decisions of the UIAB is limited. The scope of review for any court considering a decision of the UIAB is whether the UIAB abused its discretion. Absent abuse of discretion, the Court must uphold a decision of the UIAB.<sup>1</sup> An appellate review of a decision by the UIAB is limited to determining whether the UIAB's finding and conclusions are free from legal error and are supported by substantial evidence in the record.<sup>2</sup> Substantial evidence is relevant evidence that a reasonable person could accept as adequate to support a conclusion.<sup>3</sup> The decision of the UIAB must be affirmed if it is supported by substantial evidence.<sup>4</sup>

### **Discussion**

This Court must decide if there is substantial evidence in the record to support the UIAB's decision that Claimant was discharged for just cause in connection with his work such that he should be disqualified from the receipt of

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<sup>1</sup> *Funk v. Unemp't Ins. App. Bd.*, 591 A.2d 222, 225 (Del. 1991); *Dept. of Labor v. Medical Placement Services, Inc.*, 457 A.2d 382, 383 (Del. Super. 1982).

<sup>2</sup> *See PAL of Wilmington v. Graham*, 2008 WL 2582986, \*3 (Del. Super. June 18, 2008).

<sup>3</sup> *Histed v. E.I. DuPont de Nemours & Co.*, 621 A.2d 340, 342 (Del. 1993).

<sup>4</sup> *General Motors Corp. v. Freeman*, 164 A.2d 686 (Del. 1960).

unemployment benefits. The Court is satisfied that there is substantial evidence in the record to support the findings of the UIAB and that such findings are free from legal error. The UIAB heard testimony from the employee relations specialist, representing the employer of Claimant, and Claimant's supervisors. They testified that Claimant had arrived late on the relevant dates in December and that he had provided incorrect arrival times on the sheet given to Claimant's supervisor. They further testified that Claimant admitted to making these false statements in a meeting with his supervisor. The Court is satisfied that this evidence in the record is substantial evidence to support the findings of the UIAB.

Claimant argues that the video evidence showing him arriving late to work which was relied on in the testimony should have been introduced into evidence. He further argues that without the introduction of the video into evidence, the testimony about the video should have been inadmissible hearsay evidence and could not be considered substantial evidence to support the findings of the UIAB. However, the UIAB has the authority to admit and consider hearsay evidence under its own regulations. A decision cannot be made solely based on hearsay evidence, but hearsay may be considered. Furthermore, per Board Regulation 4.7.3, the UIAB has the discretion to determine the admissibility of evidence and the weight to be given to evidence. The Court is satisfied that there is substantial evidence to support the findings of the UIAB.

## **Conclusion**

The Court has examined the record below and determined that substantial evidence supports the UIAB's decision. The decision is free from legal error and the UIAB did not abuse its discretion.

**NOW, THEREFORE this 3<sup>rd</sup> day of June, 2015, the decision of the UIAB hereby is AFFIRMED.**

**IT IS SO ORDERED.**

*Andrea L. Rocanelli*

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**Honorable Andrea L. Rocanelli**