

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

MAKEBA BROWN-MOYENDA,)
Appellant,)

v.)

C.A. No.: N15A-03-006 ALR

REHABILITATION ASSOCIATES,)
P.A./DELAWARE BACK PAIN &)
UNEMPLOYMENT INSURANCE)
APPEAL BOARD,)
Appellees.)

Submitted: November 23, 2015

Decided: December 30, 2015

*On Appeal from Decision of the
Unemployment Insurance Appeal Board*

AFFIRMED

Makeba Brown-Moyenda, Appellant

Victor F. Battaglia Sr., Esq., Biggs and Battaglia, Wilmington, Delaware, Attorney
for Appellee Rehabilitation Associates, P.A.

Paige J. Schmittinger, Esq., Department of Justice, Deputy Attorney General,
Wilmington, Delaware, Attorney for Appellee Unemployment Insurance Appeal
Board

ROCANELLI, J.

This is an appeal by Makeba Brown-Moyenda (“Claimant”) from a determination of the Unemployment Insurance Appeal Board (“UIAB”) issued on March 2, 2015 in Case No. 00966884. The UIAB found that Claimant was discharged from her employment with Delaware Back Pain/Rehabilitation Associates, P.A. (“Employer”) for just cause in connection with her work and, therefore, was disqualified from receiving unemployment benefits. Claimant filed this appeal regarding the UIAB’s decision. For the reasons set forth below, the decision of the UIAB is **AFFIRMED**.

Facts and Procedural History

Claimant worked for Employer as a billing representative from October 2012 until September 29, 2014, when she was discharged. The Department of Labor issued a Notice of Determination on October 21, 2014, qualifying Claimant for unemployment insurance benefits, finding that Claimant was discharged without just cause. Employer filed a timely appeal of the decision.

An Appeals Referee conducted an Unemployment Insurance Appeals Hearing on November 20, 2014. Following the hearing, the Appeals Referee issued an opinion on November 25, 2014, reversing the determination that Claimant was qualified to receive unemployment insurance benefits. The Appeals Referee concluded that Claimant was discharged with just cause because Claimant

was insubordinate when she refused to comply with management's reasonable instruction. Claimant filed a timely appeal of the Appeals Referee's decision.

The UIAB held a hearing on January 14, 2015. In a decision issued on March 2, 2015, the UIAB affirmed the decision of the Appeals Referee. The UIAB held that Claimant was discharged for just cause when Claimant was insubordinate in her refusal to carry out instructions from management and, therefore, Claimant was disqualified from the receipt of unemployment benefits.

Standard of Review

The Court's appellate review of decisions of the UIAB is limited. This Court will not weigh the evidence, determine questions of credibility, or make its own factual findings.¹ Instead, the Court is restricted to a consideration of the record.² The Court considers the record in the light most favorable to the prevailing party before the UIAB.³

The scope of review for any court considering a decision of the UIAB is whether the UIAB abused its discretion.⁴ Absent abuse of discretion, the Court

¹ *Thompson v. Christiana Care Health Sys.*, 25 A.3d 778, 782 (Del. 2011).

² *Hubbard v. Unemployment Ins. Appeal Bd.*, 352 A.2d 761, 763 (Del. 1976); *Brown v. Unemployment Ins. Appeal Bd.*, 2011 WL 863310, at *2 (Del. Super. Feb. 3, 2011); *Lively v. Dover Wipes Co.*, 2003 WL 21213415, at *1 (Del. Super. May 16, 2003); *see Christopher v. Zerefos*, 2001 WL 1729138, at *1 (Del. Super. Nov. 26, 2001).

³ *Thompson*, 25 A.3d at 782.

⁴ *See Funk v. Unemp't Ins. App. Bd.*, 591 A.2d 222, 225 (Del. 1991).

must uphold a decision of the UIAB.⁵ An appellate review of an UIAB decision 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.⁶ Substantial evidence is relevant evidence that a reasonable person could accept as adequate to support a conclusion.⁷ The decision of the UIAB must be affirmed if it is supported by substantial evidence.⁸

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 her work with Employer such that she is disqualified from the receipt of unemployment benefits. Viewing the record in the light most favorable to Employer, the prevailing party before the UIAB,⁹ 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, as the fact finder, has the

⁵ *Funk*, 591 A.2d at 225; *Dept. of Labor v. Medical Placement Services, Inc.*, 457 A.2d 382, 383 (Del. Super. 1982).

⁶ *PAL of Wilmington v. Graham*, 2008 WL 2582986, at *3 (Del. Super. June 18, 2008).

⁷ *Histed v. E.I. DuPont de Nemours & Co.*, 621 A.2d 340, 342 (Del. 1993); *PAL of Wilmington*, 2008 WL 2582986, at *3.

⁸ *General Motors Corp. v. Freeman*, 164 A.2d 686 (Del. 1960); *Lively v. Dover Wipes Co.*, 2003 WL 21213415, at *1 (Del. Super. May 16, 2003).

⁹ *Thompson*, 25 A.3d at 782 (noting that the Court viewed the record in the light most favorable to the Claimant where Claimant was the prevailing party before the UIAB).

exclusive purview to consider “[t]he credibility of witnesses, the weight of their testimony and the reasonable inferences to be drawn therefrom.”¹⁰

The UIAB considered the evidence presented at the January 14, 2015 UIAB hearing. At the UIAB hearing, five witnesses testified, including Claimant, three employees, and Employer’s director of operations (“D.O.”). The UIAB also considered the evidence presented to the Appeals Referee, which included testimony from: (1) Claimant; (2) Employer’s billing office manager and Claimant’s former supervisor (“Manager”); and (3) Employer’s D.O.

Manager testified that during a routine staff meeting on September 12, 2014, Claimant spoke of a conversation she had with Employer’s chief executive officer (“CEO”) in July 2014. Specifically, Claimant explained during the meeting that the CEO asked Claimant to perform a certain work-related task, Claimant refused, and Claimant yelled at the CEO. Manager described Claimant’s behavior as “flaunting her insubordination.” Manager later learned that the conversation between Claimant and the CEO did not occur the way that Claimant had explained during the staff meeting; however, the CEO did request that Claimant perform a specific task and Claimant never performed the task.

On September 26, 2014, Claimant received a written disciplinary warning. Because of prior infractions, this was a final warning. Claimant refused to sign the

¹⁰ *Behr v. Unempl. Ins. Appeal Bd.*, 1995 WL 109026, at *1 (Del. Super. Feb. 7, 1995) *aff’d*, 670 A.2d 1336 (Del. 1995).

warning, said that she did not care about the warning, and explained that if Employer wanted to fire her, it should do so.

Manager subsequently spoke with the D.O. on the telephone on September 26, 2014. Manager asked Claimant to come to Manager's office to speak with the D.O. on speaker phone. While the D.O. was speaking to Claimant about her statements during the September 12th meeting, Claimant received a call on her cell phone. Claimant took the call, exited Manager's office without asking to be excused and only explained "I have to take this," and did not return to Manager's office. When Manager saw Claimant approximately thirty minutes later near Claimant's desk, Claimant did not provide any explanation for leaving and not returning. Claimant testified that the telephone call was an emergency; however, Claimant admitted that she never explained her absence to Manager or the D.O. Later the same day, Claimant was shredding paperwork as part of her daily routine when she was asked to stop shredding by Manager and Manager's assistant supervisor. Claimant ignored this direction and continued to shred paperwork until the Manager told Claimant that the D.O. directed Claimant to stop shredding.

Claimant admitted on the stand and in her Opening Brief to the Court that she refused to complete the CEO's requested task. Specifically, Claimant explained that the task was just "too much." While Claimant argues that Manager also said that the task was "too much," Manager testified that she agreed that "it

was a lot to do[,]” but that Manager was “positive” that she never told Claimant not to complete the task. Instead, the task had to be completed because it was the order of the CEO. Claimant never completed the task.

Claimant argues that the UIAB erred when it found that she was discharged for just cause. Instead, Claimant contends that she was discharged in retaliation for reporting alleged harassment. In Claimant’s opening brief, Claimant attaches e-mails and letters that Claimant purports demonstrate that Employer was aware of alleged harassment against Claimant. To the extent that any of these documents are not included in the record below, they may not be considered in this Court’s determination of whether the evidence supported the decision of the UIAB. The record does not support Claimant’s contention that she was discharged in retaliation and the decisions of Appeals Referee and the UIAB do not reflect that Claimant’s discharge was a result of retaliation. While Employer had no concern for the quality of Claimant’s work, others found Claimant to be “abrasive and offensive,” Claimant had been given prior disciplinary warnings, and Claimant never completed the task assigned to her by the CEO. Accordingly, the decision of the UIAB reflects that Claimant was discharged for just cause and particularly, insubordination.

Conclusion

The Court has examined the record below and determined that substantial evidence supports the decision of the UIAB. The decision is free from legal error and the UIAB did not abuse its discretion. Accordingly, the decision of the UIAB must be and hereby is **AFFIRMED**.

IT IS SO ORDERED this 30th day of December, 2015.

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli