IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

PATRICIA A. LEWIS,	:	
	:	C.A. No. K15A-09-006
Appellant,	:	Kent County
v.	:	
	:	
UNEMPLOYMENT INSURANCE APPEALS BOARD,	:	
	:	
Appellee.	:	

Submitted: January 20, 2016
April 1, 2016

ORDER

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

Patricia A. Lewis, *pro se*

Paige J. Schmittinger, Esquire of Department of Justice, Wilmington, Delaware; attorney for the Unemployment Insurance Appeals Board.

WITHAM, R.J.

Before the Court is Appellant/Claimant Patricia Lewis' ("Lewis") appeal from a decision of the Unemployment Insurance Appeal Board ("UIAB" or "Board") denying unemployment insurance benefits based on a determination that Lewis was terminated for just cause. For the reasons set forth below, the decision of the Board is AFFIRMED.

FACTS AND PROCEDURAL BACKGROUND

Lewis was employed as a full time Hospice Aide by Seasons Hospice and Palliative Care ("Seasons") from January 25, 2012 to May 27, 2015.[1] She was hired to work for Season's Bethany Team and was based out of an office in Milford, Delaware. When Lewis' workload decreased to a point where she was caring for only two patients in the Milford area, she was assigned patients in the Newark, Delaware area. When Lewis was seeing patients in the Newark area, Seasons paid Lewis for travel time and mileage. On May 14, 2015, Lewis arrived at the Newark office, clocked in at 8:59 a.m., and began collecting supplies for the day. She was told by the Human Resources Director that she would need to sign a paper changing her home office from Milford to Newark and that she would no longer be paid travel time and mileage. Lewis lived an hour and a half from the Newark office and did not want to make Newark her home office because she could not afford to travel to Newark without being reimbursed for travel time and mileage. Lewis was told she had until 4:00 p.m. to sign the paper. She then asked if Season's wanted her to see her assigned patients that day, and received no reply.

[1] R-61.

Presumably concerned about her employment status if she refused to sign the paper changing her home office to Newark, Lewis left the Newark office and went to the Department of Labor to obtain information about labor laws. She claims she emailed and called her employer to again ask if she was supposed to see patients and again received no response. An email sent by Lewis to Seasons asking if she was still employed was sent at 12:43 p.m.[2] Seasons responded to this email at 12:48 p.m. and stated "yes you are."[3] Lewis clocked out at 3:03 p.m. On May 27, 2015, Lewis' employment with Seasons was terminated.[4]

Lewis subsequently filed a claim for unemployment insurance benefits.[5] A Claims Deputy found that Lewis was scheduled to work on May 14, 2015,[6] but failed to do so by leaving the work location. The Claims Deputy held that the employer had met its burden of showing there was willful and wonton misconduct by Lewis and determined Lewis was not entitled to unemployment benefits. Lewis filed a timely appeal of the Claims Deputy's determination and a hearing was scheduled before an Appeals Referee.

The Referee noted that willful and wonton conduct requires a showing that the

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[2] R-104.

[3] *Id.*

[4] R-5-6.

[5] The date of filing is unclear. Although the underlying facts indicate that Lewis did not contact the Department of Labor until May 14, 2015, and was not terminated until May 27, 2015, multiple papers relating to Lewis' application for benefits list the effective date of claim as May 10, 2015. *See* R-2, 29, 33.

[6] The Claims Deputy's finding of fact lists the date as May 15, 2015, but the bulk of the evidence shows the correct date to be May 14, 2015.

employee was conscious of his conduct or recklessly indifferent of its consequences. The Referee further noted that fundamental fairness requires that a claimant be given a single unambiguous warning that proscribed conduct will not be tolerated and that discharge would be the consequence. The Referee found that Seasons had not presented any evidence that it had issued a warning to Lewis, and therefore had not met its burden of proving that Lewis was discharged for good cause in connection with her work. Based on this finding, the Referee reversed the Claims Deputy's decision and determined that Lewis was entitled to unemployment insurance benefits.

Seasons filed a timely appeal of the Referee's decision with the Board. The Board noted that "[v]iolation of a reasonable company rule may constitute just cause for discharge if the employee is aware of the policy and the possible subsequent termination,"[7] and that "[w]ritten policies are sufficient, though not necessary, to show that an employee was aware of the employer's expectations."[8] The Board found there was an applicable policy and that Seasons had a zero tolerance policy for falsification of records. The Board further found that Lewis' failure to see patients on the day in question was not only a violation of policy, but was in direct contrast to Season's interests. The Board held that this conduct rose to the level of willful and wonton and Lewis was therefore discharged for just cause. Based on these findings, the Board determined that Lewis was disqualified from the receipt of unemployment

[7] R-93 (quoting *Wilson v. Unemployment Ins. Appeal Bd.*, 2011 WL 3243366, at *2 (Del. Super. July 27, 2011)).

[8] *Id.* (quoting *Wesley College v. Unemployment Ins. Appeal Bd.*, 2009 WL 5191831, at *7 (Del. Super. Dec. 31, 2009)).

insurance benefits pursuant to 19 *Del. C.* § 3314(2).

STANDARD OF REVIEW

This Court reviews decisions by the Board to determine whether they are supported by substantial evidence and free from legal error.[9] "Substantial evidence is 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'"[10] The Court possesses limited review power of the factual findings of an administrative agency. Specifically, "the findings of the Unemployment Insurance Appeal Board as to facts, if supported by the evidence and in absence of fraud, shall be conclusive, and the jurisdiction of the Court shall be confined to the questions of law.[11] The Court does not weigh the evidence, determine questions of credibility, or make its own factual findings.[12] Rather, the Court is restricted to a consideration of the record.[13] It merely determines if the evidence is legally adequate to support the agency's factual findings.[14] In considering an action of the Board, this

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[9] *Mathis v. Del. River and Bay Auth.*, 2012 WL 5288757, at *2 (Del. Super. Aug. 22, 2012).

[10] *Bradfield v. Unemployment Ins. Appeal Bd.*, 2012 WL 5462844, at *1 (Del. Super. Mar. 13, 2012) (quoting *Gorrell v. Div. of Vocational Rehab.*, 1996 WL 453356, at *2 (Del. Super. July 31, 1996)).

[11] 19 *Del. C.* § 3323(a).

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

[13] *Hubbard v. Unemployment Ins. Appeal Bd.*, 352 A.2d 761 (Del. Super. 1976).

[14] 29 *Del. C.* § 10142(d) states:

> The Court, when factual determinations are at issue, shall take due account of the experience and specialized competence of the agency and of the purposes of the basic law under which the agency has acted. The Court's review, in the absence of actual fraud, shall be limited to a determination of whether the agency's decision was supported by substantial evidence on the record before the agency.

Court's scope of review is limited to whether the board abused its discretion.[15] If the record below contains substantial evidence in support of the Board's findings, then that decision will not be disturbed.

DISCUSSION

Title 19, section 3314(2) of the Delaware Code states that an individual shall be disqualified for benefits when that individual has been discharged for "just cause in connection with the individual's work." The burden is on the employer to prove by a preponderance of the evidence that the claimant was terminated for "just cause."[16] "Just cause" is defined as a "willful or wonton act or pattern of conduct in violation of the employer's interest, the employee's duties, or the employee's expected standard of conduct."[17] Willful and wonton conduct is defined as that conduct "which is evidenced by either conscious action, or reckless indifference leading to a deviation from established and acceptable workplace performance; it is unnecessary that it be founded in bad motive or malice."[18]

It is undisputed that Lewis clocked in on May 14, 2015 at 8:59 a.m., left the Newark office to drive to the Department of Labor, and subsequently clocked out at 3:03 p.m. It is also undisputed that Lewis did not see any of the patients she was scheduled to see on that day. Lewis claims she asked if she should see her patients

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[15] *Funk v. Unemployment Ins. Appeal Board*, 591 A.2d 222, 225 (Del. 1991).

[16] *Wilson*, 2011 WL 3243366, at *2.

[17] *Majaya v. Sojourner's Place*, 2003 WL 21350542, at * 4 (Del. Super. June 6, 2003).

[18] *MPRC Fin. Mgmt. LLC v. Carter*, 2003 WL 21517977, at *4 (Del. Super. June 20, 2003).

but did not get an answer. This does not relieve her of the responsibility of obtaining an affirmative response before leaving the work center and not seeing her patients. There is substantial evidence to support the Board's finding that there was a policy in place that apprised Lewis of the companies policies and expectations and of the consequences for failing to comply. Although there may have been no malice, Lewis' falsification of her time sheet and her failure to see patients without ensuring that Seasons was aware of her absence on May 14, 2015 were a "violation of the employer's interest, the employee's duties, or the employee's expected standard of conduct." The Board was therefore correct in holding that her conduct rose to the level of willful and wonton, and that she was terminated for just cause. Because Lewis was terminated for just cause, the Board correctly determined that she was not entitled to unemployment insurance benefits pursuant to 19 *Del. C.* § 3314(2).

CONCLUSION

The Board's decision was supported by substantial evidence and statutory law was properly applied. Therefore, the decision of the Board is **AFFIRMED.**

IT IS SO ORDERED.

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

WLW/dmh