

Date Submitted: September 10, 2001
Date Decided: November 19, 2001

Ms. Lisa G. Keim
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Lacy E. Holly, III, Esquire
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RE: Lisa G. Keim v. Greenhurst Farms and
Unemployment Insurance Appeal Board,
C.A. 01A-04-005

Date Submitted: September 10, 2001
Date Decided: November 15, 2001

Dear Ms. Keim:

This appeal was filed from an Unemployment Insurance Appeal Board (“Board”) decision denying Lisa G. Keim (“Claimant”) unemployment benefits. Claimant sought unemployment benefits after her position at Greenhurst Farms ended in January, 2001. The Claims Deputy found that the Claimant was eligible for benefits notwithstanding 19 Del. C.

§ 3315(2).¹ Greenhurst Farms, the employer, appealed the decision. The Appeals Referee reversed the decision, holding that the Claimant was discharged from work for just cause, making her ineligible for unemployment benefits. The Board affirmed the Referee's decision and the Claimant appealed to this Court, pursuant to 19 *Del. C.* § 3323. After reviewing the record, the Board's decision is affirmed.

I. FACTS²

The Claimant was employed as a driver at Greenhurst Farms from October 12, 2000 to January 9, 2001. She worked full time and earned twenty-five percent of the gross income.

¹The section reads in part: "An individual shall be disqualified for benefits: (2) For the week in which the individual was discharged from the individual's work for just cause in connection with the individual's work and for each week thereafter until the individual has been employed in each of 4 subsequent weeks (whether or not consecutive) and has earned wages in covered employment equal to not less than 4 times the weekly benefit amount."

²This Court cannot consider anything outside the record. Both parties' submissions on appeal contain information that was not contained in the record; the Court ignores them.

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On December 18, 2000, the Claimant requested and received time off. The testimony shows that the Claimant visited Greenhurst Farms on January 2 and informed Mr. Green that she would be available for work on Sunday, January 7. Because drivers leave early Monday

mornings, Greenhurst Farms requires its drivers to call the office every Sunday to obtain their assignments. The Claimant did not call the office on Sunday, January 7. Furthermore, the Claimant did not call the following Monday or Tuesday. The testimony shows that on January 10, the Claimant went to Greenhurst Farms, but Mr. Green was not there. Claimant testified that she informed the dispatcher she was available for work. However, the Claimant did not call later that day or the following day. On January 11, Greenhurst Farms sent a letter to the Claimant informing her that because she had not called in that week, it was assumed that she quit. On Friday, January 12, the Claimant returned to Greenhurst Farms to work, but she was told to leave. At all times during that week, work was available for the Claimant.

II. STANDARD OF REVIEW

The Supreme Court and this Court repeatedly have emphasized the limited appellate review of the factual findings of an administrative agency. The function of the reviewing Court is to determine whether the agency's decision is supported by substantial evidence. *Johnson v. Chrysler Corporation*, Del. Supr. 213 A.2d 64, 66-67 (1965); *General Motors v.*

Freeman, Del. Supr., 164 A.2d 686, 688 (1960). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Oceanport Ind. v. Wilmington Stevedores*, Del. Supr., 636 A.2d 892, 899 (1994); *Battisa v. Chrysler Corp.*, Del. Super., 517 A.2d 295, 297 (1986), *app. disp.*, Del. Supr., 515 A.2d 397 (1986). The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings. *Johnson v. Chrysler*, 213 A.2d at 66. It merely determines if the evidence is legally adequate to support the agency's factual findings. 19 *Del. C.* § 3323(a)

III. DISCUSSION

An individual seeking unemployment benefits is disqualified from receiving such benefits if the individual was discharged for just cause. 19 *Del. C.* § 3315(2). "Just cause" is defined as a "wilful or wanton act in violation of either the employer's interests, or the employee's duties, or of the employee's expected standard of conduct." *Abex Corp. v. Todd*, Del. Super., 235 A.2d 271, 272 (1967). In a case involving a discharge due to misconduct, the employer has the burden of proving by a preponderance of the evidence that just cause existed before the Claimant will be disqualified from unemployment benefits. *Short v. Unemployment Ins. Appeal Bd.*, Del. Super., C.A. No. 85A-MY-1, Chandler, J. (Apr. 2,

1986) Mem. Op. at 2. Thus, the essential issue is whether substantial evidence exists to support the Board's conclusion that Claimant's failure to timely contact her employer constituted just cause for termination.

The Appeals Referee found, and the Board agreed, that the Claimant's failure to call in for her assignment during the week of January 7 was "in violation of the employer's interests" and "in violation of her duty to follow the employer's procedures." (Ref. Dec. at 3.) Substantial evidence exists to support the Referee's conclusion, as adopted by the Board. Greenhurst Farms had a clear policy of requiring its drivers to call the office on Sundays to obtain their assignments for the following Monday. The Claimant informed Greenhurst Farms that she would be available for work on Sunday, January 7. She failed to call in on Sunday, January 7, to obtain her assignment for the following week. Furthermore, Claimant failed to call in for the next two days.

When Claimant returned to Greenhurst Farms on January 10 to inform the dispatcher that she was available for work, she again failed to call in for the next two days. As such, she repeatedly violated a company policy of calling the office to obtain driving assignments. Such conduct violated her duties as a Greenhurst Farms driver. Furthermore, the record

reflects that work was available for the Claimant during the week of January 7. Therefore, her conduct also violated Greenhurst Farms interests. Such violations constituted misconduct sufficient to provide the employer with “just cause” for her discharge.

The Claimant argues that the failure to communicate rests with Greenhurst Farms. Claimant states that Greenhurst Farms was to call the Claimant when work became available. Greenhurst Farms never contacted the Claimant during the week of January 7, therefore, she never knew to report to work. The Claimant’s story directly contradicts the version presented by Greenhurst Farms. If believed, the Claimant’s argument would indicate that “just cause” for her termination does not exist and Claimant would be eligible for unemployment benefits.

However, determining the witnesses’ veracity is not within this Court’s province. “The credibility of witnesses, the weight of their testimony, and the reasonable inferences to be drawn therefrom are for the Board to determine.” *Coleman v. Dep’t of Labor*, Del. Super., 288 A.2d 285, 288 (1972). After conducting hearings at which both parties testified, both the Referee and the Board chose to adopt the Greens’ explanation of the events. Consequently, this Court must defer to the Board’s credibility determinations.

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Considering the foregoing, substantial evidence exists to support the Referee's decision, as affirmed by the Board, that Claimant was discharged from Greenhurst Farms for just cause. Correct legal principles were applied in reaching an adverse credibility finding against the Claimant. Accordingly, the Board's decision is affirmed, and the Claimant is disqualified from receiving unemployment benefits.

IT IS SO ORDERED.

Richard F. Stokes, Judge

cc: Prothonotary
Unemployment Insurance Appeal Board