IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

JOSEPHINE I. RHOADES,	)	
	)	
Appellant,	)	
	)	**C.A. No. 01A-02-001 WCC**
	)	
v.	)	
	)	
INTEGRITY STAFFING SOLUTIONS, INC., and UNEMPLOYMENT INSURANCE APPEAL BOARD,	)	
	)	
Appellees.	)	

Submitted: July 12, 2001
Decided: October 31, 2001

O R D E R

Upon Claimant's Appeal from the Unemployment Insurance Appeal Board. Denied.

Josephine I. Rhoades, 820 Linden Circle, Middletown, Delaware 19709. *Pro se* Claimant.

Barry M. Willoughby, Young Conaway Stargatt & Taylor, LLP, 10th Floor, Rodney Square North, Wilmington, Delaware 19899-0391. Attorney for Integrity Staffing Solutions, Inc.

Stephani Ballard, Department of Justice, 820 N. French Street, Wilmington, Delaware, 19801. Attorney for Unemployment Insurance Appeal Board.

CARPENTER, J.

On this 31st day of October, 2001, upon consideration of Josephine I. Rhoades appeal from the December 15, 2000 decision of the Unemployment Insurance Appeal Board, it appears to this Court that:

1. Josephine I. Rhoades (hereinafter "Claimant") was employed by Integrity Staffing Solutions, Inc. (hereinafter "Integrity Staffing") a temporary employment agency, from September 5, 2000 until November 6, 2000. On September 5, 2000 Claimant was provided a work assignment at Amazon.com. Claimant was informed that Integrity Staffing would adopt and follow Amazon.com's attendance policy, which provided that termination of an employee could result with three "incidents" of absence, including half days for lateness.[1]

[1] An incident of absenteeism could be a full absent day, or two half days. In either situation, if there was an unexcused day, or two unexcused half days, that was the equivalent of one "incident." Three of these "incidents" constituted grounds for termination.

Claimant was absent from work on September 20, September 26, and October 3, 2000. In addition to those days of absenteeism, Claimant was late for work on September 19, October 17, October 18, October 24, and November 5, 2000. Claimant's absence on September 20th was excused because of a medical appointment.[2] Similarly, Claimant's tardiness on October 17, 18, and 24th were excused again due to medical appointments and a Family Court appearance. Claimant was nonetheless warned on October 17th and again on October 24th, that her continuous absences would lead to termination. In spite of these warnings, Claimant was late for work again on November 5, 2000 and was terminated the next day for excessive absenteeism.

2. Claimant filed a claim for unemployment on November 6, 2000, the same day she was terminated, and on November 16, 2000 a Claims Deputy held a hearing and found that:

> the claimant was notified at time of hire that three or more violations of the attendance policy could result in termination. On 10-24-00, she reported late and had an accumulation of 3.5 violations which did not include the approved time off. She had been previously warned about her attendance and offered the option to change her shift to accommodate her doctor's appointments. . . violation of company policy is misconduct. . . misconduct connected with the work is just cause for termination.[3]

[2] Any excused absence days are not included in Integrity Staffing's calculations of three unexcused incidents.

[3] Delaware Department of Labor Notice of Determination at 1.

The Claims Deputy found that Claimant was discharged for just cause and was therefore not entitled to unemployment benefits. That decision was subsequently affirmed by an Appeals Referee and then appealed by the claimant to the Unemployment Insurance Appeals Board (hereinafter "the Board"). A hearing was held by the Board on January 17, 2000 and they subsequently adopted the findings of the Appeals Referee and affirmed his decision.

3. On appeal, Claimant does not assert that the Claims Deputy's findings were erroneous or that the Appeals Referee's determination upon appeal was incorrect. Instead, the Claimant merely reasserts her argument that she was terminated because of her "high risk pregnancy" and because of the numerous medical appointments she was required to attend.

4. Integrity Staffing contends that Claimant's medical appointments were not the cause of her termination. Instead, Integrity Staffing points to Claimant's unexcused absences, which total three, and asserts that their attendance policy allows for termination after three unexcused "incidents. Because Claimant had three unexcused incidents from September 5, 2000 through November 6, 2000, Integrity Staffing argues that Claimant's termination was justified.

5. Upon review of an Unemployment Insurance Appeal Board decision, the function of this Court is to determine whether the Board's decision is supported by substantial evidence[4] and is free from legal error.[5] Substantial evidence is such relevant evidence that a reasonable person might accept as adequate to support a conclusion.[6] This Court does not weigh the evidence, determine questions of

[4] *General Motors Corp. v. Freeman*, Del. Supr., 164 A.2d 686, 688 (1960).

[5] *Boughton v. Div. of Unemployment Ins.,* Del. Super., 300 A.2d 2, 26-27 (1972); *Ridings v. Unemployment Ins. Appeal Bd.*, Del. Super., 407 A.2d 238, 239 (1979).

[6] *Oceanport Ind. v. Wilmington Stevedores*, Del. Supr., 636 A.2d 892, 899 (1994).

credibility, or make factual findings in the first instance.[7] Rather, this Court's role is to determine whether the evidence is legally adequate to support the Board's findings.

6. This Court finds that there is substantial evidence to support the conclusion that Claimant was justifiably terminated, and she is therefore, not entitled to unemployment benefits. The record reveals that Claimant was informed of Integrity Staffing's attendance policy, and was verbally "warned" that her tardiness and excessive absenteeism could lead to her termination. In the face of that warning, Claimant continued to be absent and late for work. While this Court can appreciate the difficulty presented with a high risk pregnancy, it does not provide one with unfettered freedom to chose whether and when to report to work. Here, the employer even offered to switch Claimant's schedule to accommodate her medical appointments but this accommodation was rejected by her. Claimant did provide the Appeals Referee, and hence the Board, with medical notes for some of her absences, but it appears similar documentation was not timely provided to Integrity Staffing. However, even with these documented medical appointments, which would perhaps be excused, Claimant still had a sufficient number of unexcused absences to constitute a violation of the attendance policy, which warranted her termination.

[7] *Johnson v. Chrysler Corp.*, Del. Supr., 231 A.2d 64, 66-67 (196).

7. According to 19 *Del. C.* § 3315(2), any employee who is discharged, or terminated from employment, for just cause, is disqualified from benefits. "Just cause" is defined as "a willful or wanton act or pattern of conduct in violation of the employer's interest, the employee's duties, or the employee's expected standard of conduct."[8] Willful or wanton conduct, which would constitute "just cause" to discharge an employee, requires a showing that the employee was conscious of her conduct and that she was recklessly indifferent to its consequences, it does not necessarily mean bad motive, ill design or malice.[9] Here, Claimant's repetitive absences constitutes conduct in violation of the employee's attendance policy, which the Claimant was aware of and for which she had been warned as to the consequences if it continued. It appears to this Court that Integrity Staffing had "just cause" to terminate Claimant, and as such, Claimant is not entitled to unemployment benefits.

8. For the reasons stated above, Claimant's appeal from the decision of the Unemployment Insurance Appeals Board is **DENIED.** This Court finds that there was

[8] *Avon Products v. Wilson*, Del. Supr., 513 A.2d 1315, 1317 (1986).

[9] *Coleman v. Department of Labor*, Del. Super., 288 A.2d 285 (1972).

substantial evidence supporting the Board's decision, and the decision is free from legal error.

IT IS SO ORDERED.

Judge William C. Carpenter, Jr.