IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

LOUIS A. ISIP,	)
	) C.A. No. 00A-06-002
Appellant,	)
	)
5.	)
	)
UNEMPLOYMENT INSURANCE APPEALS BOARD and BALTIMORE AIRCOIL COMPANY)	)
	)
Appellee.	)

Submitted: January 24, 2001
Decided: April 27, 2001

Mr. Louis Isip, *Pro se.*

Baltimore Aircoil Company, *Pro se.*

Upon Consideration of Appellant's Appeal From
Decision of the Unemployment Industrial Accident Board
DENIED

VAUGHN, Resident Judge

ORDER

Upon consideration of the appellant's briefs and the record of this case, it appears that:

1. The appellant, Luis Isip, ("Isip") appeals from a decision of the Unemployment Insurance Appeal Board ("UIAB") that he was terminated from his employment for just cause and was,

therefore, disqualified from receiving unemployment benefits.

2. Preliminarily, the Court notes that Thomas J. Peterman, assistant general counsel for the employer, has entered an appearance and filed a brief on the employer's behalf. Mr. Peterman is not a member of the bar of this State, and no Delaware lawyer has moved his admission *pro hac vice*. His entry of appearance and brief are, therefore, stricken from the record and are not considered.

3. Mr. Isip gave his testimony at the referee's hearing. His testimony was that he was employed by, Baltimore Aircoil Company, from April 4, 1995 until March 31, 2000. The workplace was noisy and Isip wore a headset to protect his ears. On the day of the incident which led to his discharge, he walked near a coworker named Don Noll. He thought Noll was staring at him and it looked to Isip like Noll may have said something to him. However, Noll then looked away and Isip returned to his work area. A short time later he had to return to Noll's work area. This time he thought he heard someone call his name and again saw Noll staring at him. He approached Noll and asked "what's up Donny." He had to get close to Donny's face because of the noise. Donny reacted angrily, saying "[i]f I had something to say to you, I would tell you right to your face." As a result of this incident, Isip was terminated. The employer did not appear at the referee's hearing. On this record the referee found in favor of the employee.

4. The employer appealed to the UIAB. The claimant was present at the hearing before the board. At that hearing, Mr. Noll testified that he noticed Isip pulling a cart, but didn't pay much attention to it. Then suddenly Isip was "in his face" asking whether he, Noll, had a problem with him. Noll said no and Isip then asked "are you some sort of tough guy." Noll reported the incident to his supervisor. He testified at the hearing that he had never spoken to Isip before and that Isip had no reason to get "into his face." The employer's human resource manager testified that Isip had been cited for two previous personal confrontation, or aggressive, behavior incidents. He testified that Isip had been sent to counseling after the second incident. He also testified that Isip's conduct violated company policy concerning threats of violence in the workplace.

5. On appeal from a decision of the Unemployment Insurance Appeal Board, the scope of

the Court's review is limited to a determination of whether the Board's decision is supported by substantial evidence and free from legal error.[1] Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[2] The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.[3] It is within the exclusive purview of the Board to judge the credibility of witnesses and to resolve conflicts in testimony.[4]

6. In this case, the Board found that the claimant had been dismissed for "just

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[1] 19 *Del.C.* § 3323(a); *Unemployment Ins. Appeal Bd. v. Duncan*, Del. Supr., 337 A.2d 308 (1975); *General Motors v. Freeman*, Del. Supr., 164 A.2d 686, 688 (1960); *Longobardi v. Unemployment Ins. Appeal Bd.*, Del. Super., 287 A.2d 690 (1971).

[2] *Oceanport Ind. v. Wilmington Stevedores*, Del. Super., 636 A.2d 892, 899 (1994); *Battista v. Chrysler Corp.*, Del. Super., 517 A.2d 295, 297 (1986), *app. dism.*, Del. Supr., 515 A.2d 397 (1986).

[3] *Johnson v. Chrysler Corporation*, Del. Supr., 213 A.2d 64, 66 (1965).

[4] *Starkey v. Unemployment Ins. Appeal Bd.*, Del. Super., 340 A.2d 165 (1975), *aff'd*, Del. Supr., 364 A.2d 651 (1976) (Table); *Coleman v. Department of Labor*, Del. Super., 288 A.2d 285 (1972).

cause," which 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."[5]

7. The Board accepted the testimony of Mr. Noll and the human resources manager and found that Isip's behavior toward Noll was aggressive, that the employer had a policy prohibiting aggressive behavior, and that the claimant had been warned against aggressive behavior on two prior occasions. On this basis the UIAB concluded that the claimant's behavior toward Mr. Noll constituted willful and wanton misconduct.

8. In support of his appeal, the claimant complains that management did not listen to his side of the incident before discharging him, gives explanations of the prior incidents, and argues that he was unjustly discharged. I have carefully considered the points made by the claimant and reviewed the entire record. Based upon my review of the record, I have determined that the decision of the UIAB should be affirmed. The UIAB had the benefit of the evidence from both sides, whereas the referee did not. There is substantial evidence in the record to support the Board's conclusion that the claimant was aggressive, or threatening, in his conduct, that the employer had a

[5] *Avon Products, Inc. v. Wilson*, Del. Supr., 513 A.2d 1315, 1317 (1986) (citing *Abex Corp. v. Todd*, Del. Super., 235 A.2d 271, 272 (1976)).

policy prohibiting such conduct, and that the claimant had been warned twice previously concerning such conduct. One of the prior incidents was sufficient to move the employer to require counseling. There is no real reason to believe that the employer would have arrived at a different decision had it listened to the employee's side before acting. At the hearing the employer's representative expressed a legitimate concern about employee safety and the repetitive nature of the claimant's conduct. It was not legal error for the Board to conclude that just cause existed for the claimant's termination.

9. Therefore, the decision of the UIAB is ***affirmed.***

IT IS SO ORDERED.

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Resident Judge

oc: Prothonotary
cc: Order Distribution