IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

EDWIN BROWN, III.,	)	
Employee - Appellant,	)	
	)	
v.	)	C.A. 04A-06-007 PLA
	)	
SHERIF ZAKI SALON,	)	
Employer - Appellee,	)	
	)	
and	)	
	)	
UNEMPLOYMENT INSURANCE APPEAL BOARD,	)	
Appellee.	)	

Submitted: September 14, 2004
Decided: October 6, 2004

UPON APPEAL FROM A DECISION OF
THE UNEMPLOYMENT INSURANCE APPEAL BOARD
AFFIRMED.

Edwin Brown III., *Pro se*

Emon Zaki, *Pro se* for Appellee Sherif Zaki Salon

ABLEMAN, JUDGE

On appeal from the Unemployment Insurance Appeal Board ("UIAB" or "Board"), the Court finds substantial evidence supporting the Board's decision that Appellant's employment was terminated for willful misconduct. The decision of the UIAB is therefore **AFFIRMED**.

Facts

Appellant Edwin Brown, III. worked as an assistant for Appellee Sherif Zaki Salon ("Salon") from July 2003 to February 2004. The parties seem to agree on the general circumstances of the termination. According to Salon's owner, Emon Zaki, Brown simply stopped doing his work about three months before the termination. She claims that she had to constantly order Brown to stop hiding in the laundry room, talking on his cell phone, or leaning against the wall watching others work, only to discover him doing some combination of those things a few minutes later. Brown also missed a week of work just before he was fired because he had a throat infection. Zaki verbally warned Brown about this behavior numerous times, but never issued a written warning.

Brown admits to most of the conduct that resulted in his termination, but offers various excuses. He talked on his phone frequently because he had car trouble. He had lots of free time at work and did not know what to do, so he just waited to be told. Brown had a doctor's note for the throat infection, but forgot to bring it to show to Zaki the day he was fired. Brown claims that he tried to do his

job to the best of his ability, and that his actions represent mere incompetence, not willful misconduct.

Brown filed for unemployment shortly after he was fired, and Salon contested his entitlement. The case was first heard by a Claims Deputy, who granted Brown benefits. Salon filed an appeal, and the case was heard again by a Referee on April 16, 2004. Both parties testified at this hearing, and made the same arguments as they had before the Deputy: Brown claimed that he was incompetent, and Zaki claimed that he willfully neglected his job.

The Referee affirmed Brown's entitlement, finding that "unsatisfactory job performance, without something more, does not constitute willful misconduct."[1] The Referee apparently accepted Brown's version of the facts; i.e. that he simply did not know how to sweep floors, do laundry, and rinse hair cutting equipment, and that his failure to do so was not willful.

Salon again appealed, this time to a panel of the UIAB. Brown did not show up to this hearing even though it was properly noticed, apparently because he thought that it was in Wilmington rather than Newark. Zaki did show, and was questioned fairly extensively by the Board. Zaki testified that Brown did his job for the first several months she employed him, but then stopped for no apparent reason. Zaki did not believe that Brown's behavior stemmed from any mystery

[1] Decision of Referee No. 231095 at 2., D.I. #4 at 12.

about his job responsibilities, which were simple and which he had previously performed, but rather from an unexplained, sudden decision not to do them.

The UIAB, in a May 19, 2002 decision, reversed the Referee and denied Brown's unemployment entitlement. The Board found that Salon had proved, by a preponderance of the evidence, that Brown's termination was based upon his refusal to perform his job, and that this refusal constituted willful misconduct. Brown promptly and properly appealed.

Discussion

This Court considers appeals from agency decisions such as this one under the substantial evidence standard.[2] This review is a very limited one; the Court questions only whether there was enough evidence for the agency to fairly and reasonably reach its decision.[3] This standard does not permit the Court to second-guess the agency's credibility determinations or findings of fact.[4]

This only issue in this case is credibility. Zaki's testimony that Brown adequately performed his job for six months, but then suddenly stopped performing it for three, provides sufficient basis for finding that Brown's conduct was willful, rather than merely incompetent. The question was whether the Board

[2] *Mellow v. Board of Adjustment*, 565 A.2d 947, 954 (Del. Super. Ct. 1988), *aff'd*, 567 A.2d 422 (Del. 1989).
[3] *Streett v. State*, 669 A.2d 9, 11 (Del. 1995)
[4] *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66-67 (Del. 1995).

would find this testimony to be credible. It did, and this Court has no power to reach a contrary conclusion.[5]

Brown successfully rebutted Zaki's testimony during the first two claims hearings, but he did not show up to do so before the UIAB. I am reasonably certain that his failure to do so lost him the case. While the Court is not wholly unsympathetic to Brown's plight, the appellate process is not intended to provide a second chance to a party who fails to appear before the Board.

Conclusion

For these reasons, the decision of the Unemployment Insurance Appeal Board is **AFFIRMED**.

IT IS SO ORDERED.

Peggy L. Ableman, Judge

cc: Edwin Brown, III.
Emon Zaki
Unemployment Insurance Appeal Board
Prothonotary

[5] *Id.*