

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

ROBERT B. YOUNG
JUDGE

KENT COUNTY COURT HOUSE
38 THE GREEN
DOVER, DELAWARE 19901

April 22, 2005

Hope M. Shephard
52 S. Railroad Avenue
Wyoming, DE 19934
Appellant

Lindy Ohlig
Tender Hearts Learning Center, Inc.
402 Cowgill Street
Dover, DE 19901
Appellee

Re: **Shephard v. Tender Hearts Learning Center, Inc.**
C.A. No: 04A-08-002 RBY

On Appeal from a Decision of the Industrial Accident Board. **AFFIRMED.**

Ladies:

Ms. Shephard (“Employee”) has filed an Appeal of a decision from the Industrial Accident Board (“Board”) of August 4, 2004, in which the briefing was completed on February 11, 2005. The case was specifically assigned for Appeal to this Court on February 16, 2005. In its said August 4, 2004 decision, the Board found in favor of Tender Hearts Learning Center, Inc. (“Employer”).

PARTIES’ CONTENTIONS

Employee argues on Appeal that the Board’s decision is not supported by substantial evidence that she voluntarily left her work without good cause.

Employer responds that substantial evidence of Employee’s voluntarily leaving the work place existed.

STANDARD OF REVIEW

The Supreme Court and this Court have repeatedly emphasized the limited appellate review of the factual findings of an administrative agency.¹ The function of the reviewing Court is to determine whether the agency's decision is supported by substantial evidence.² Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.³ The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.⁴ The reviewing Court must view the facts in a light most favorable to the party prevailing below.⁵ Therefore, this Court merely determines if the evidence is legally adequate to support the agency's factual findings.⁶ When factual determinations are at issue, the reviewing Court should defer to the experience and specialized competence of the Board.⁷ If the decision is supported by substantial evidence, the Court must affirm the decision of an agency even if the Court might have, in the first instant, reached an opposite conclusion.⁸

ISSUE ON APPEAL

The issue, then, is whether the testimony presented to the Board (the totality of which

¹ *Standard Distributing, Inc. v. Hall*, Del. Super., C.A. No. 03A-12-002, Cooch, J. (March 18, 2005) (Letter Op.)

² *General Motors Corp. v. Freeman*, 164 A. 2d 686, 688 (Del. 1960); *Johnson v. Chrysler Corp.*, 213 A. 2d 54, 66-67 (Del. Super. Ct. 1986), *app. disp.*, 515 A. 2d 397 (1986).

³ *Oceanport Ind. v. Wilmington Stevedores*, 636 A. 2d 892, 899 (Del. 1994); *Battista v. Chrysler Corp.*, 517 A. 2d 295, 297 (Del. Super. Ct. 1986), *app. disp.*, 515 A. 2d 397 (1986).

⁴ *Johnson*, 213 A. 2d at 66.

⁵ *Chudnofsky v. Edwards*, 208 A. 2d 516, 518 (Del. 1965).

⁶ 29 Del. C. §10142 (d).

⁷ *Histed v. E.I. DuPont De Nemours & Co.*, 621 A. 2d 340, 342 (Del. 1993); *Julian v. Testerman*, 740 A. 2d. 514, 519 (Del. Super. Ct. 1999), *aff'd* 737 A. 2d 530 (Del. 1999).

⁸ *Brogan v. Value City Furniture*, 2002 Del. Super. Lexis 88 at 6 (Del. Super. Ct.).

included the hearing officer's transcript and the Board's), was sufficient to satisfy the substantial evidence standard, as required by this Court to affirm a decision of the Board.

DISCUSSION

The Board's decision is supported by substantial evidence. In this case the question before the Board was whether or not Ms. Shepherd voluntarily left her work without good cause. The Board found that the Employer "met its burden of persuasion by a preponderance of the evidence...to support a determination that the claimant voluntarily terminated her employment by refusing to clock in...and subsequently leaving her place of employment without permission" (8/04/04 Decision letter, page 4), pursuant to 19 Del. Code §3314 and Delaware case law cited (8/04/04 Decision letter, page 3).

To that effect, the record (the page and line of the hearing transcript respectively being referred to as, for example: 5/7) reflects that Ms. Shepherd herself agreed that: "I said I am feeling very emotional right now." (8/8). Further, she agreed that the Employer had asked her to clock in two times. (11/19).

Employee's witness Figat testified that the Employee: "said that she was really emotional" (17/17) "...when you [Ohlig] had asked her [Shepherd] was she going to work today." (19/1). Ms. Figat also testified that Employee did not clock in that day. (21/14).

Thus, substantial evidence exists to support the decision of the Board that Appellant voluntarily terminated her employment.

The above cited testimony, in itself, sufficiently supports the decision of the Board. The additional testimonial references in the Board's 8/04/04 Decision letter (summarized on pp. 2 and 3) further delineate the evidentiary weighings, the determinations of credibility and factual findings by the Board for the foundation of the Decision. Those are factual determinations which this Court does not, in its limited appellate review, disturb.

CONCLUSION

The decision below by the Board was supported by substantial evidence. For the foregoing reasons, the decision of the Board is **AFFIRMED**

IT IS SO ORDERED.

/s/Robert B. Young

J.

oc: Prothonotary
xc: Industrial Accident Board