

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
ONE THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947

April 20, 2005

Ms. Jan A. Hyatt
6 Multiflora Drive
Harbeson, DE 19951

Michael Weidinger, Esquire
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P.O. Box 2306
Wilmington, DE 19899

RE: *Hyatt v. The Mills Corporation and Unemployment Insurance Appeals Board*
C.A. No. 04A-11-005 (THG)

Date Submitted: February 23, 2005

Dear Counsel and Ms. Hyatt:

This is the Court's decision on Petitioner Jan A. Hyatt's (hereinafter "Petitioner") appeal from the Unemployment Insurance Appeals Board (hereinafter "the Board"). The Board's decision denied her unemployment insurance benefits in connection with her dismissal from the Mills Corporation (hereinafter "Mills"). For the following reasons, the Board's decision is AFFIRMED.

Petitioner began employment with Mills when the company acquired the Dover Mall facility on February 1, 2003. As the designated marketing director, Petitioner was charged with developing and directing marketing plans and programs to promote sales at the Dover Mall. At the commencement of her employment with Mills, Petitioner received an employee handbook

detailing Mills company policies and procedures. She later received a copy of the Code of Business Conduct and Ethics.

On March 16, 2004, the Regional Human Resources Manager received allegations that Petitioner had submitted false expense reports and engaged in improper payment practices. An investigation revealed several infractions of company policy including: submitting false or erroneous expense reports, failing to follow company policy in hiring, paying and employing interns in contravention of company policy, submitting cellular phone bills for company reimbursement with excessive overages due to personal phone usage rather than business related calls, and failing to follow proper payment procedures for certain landscaping work completed at the mall. After an investigation of these allegations, Petitioner was asked to meet with the Regional Human Resources Manager on May 3, 2004. At this meeting, the Regional HR Manager inquired into and discussed all the allegations with Petitioner and ultimately discharged her based on the investigation.

On May 9, 2004, Petitioner filed a claim for unemployment benefits with the Delaware Department of Labor (hereinafter “DOL”). On June 4, 2004, the Claims Deputy for the DOL found that Petitioner was terminated with “just cause” and was therefore disqualified from receiving unemployment benefits.¹ The Claims Deputy found several of Petitioner’s actions to

¹ 19 *Del. C.* § 3314 states that “[a]n individual shall not be eligible for unemployment insurance...

[f]or 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.

Id. (emphasis added).

constitute just cause for dismissal, specifically citing her inappropriate handling of intern employment and payment. Petitioner appealed the Claims Deputy's decision.

An Appeals Referee held a hearing on July 12, 2004 to review the matter. Petitioner was present at the meeting and a representative of Mills participated by telephone. On August 13, 2004, the Appeals Referee issued a decision affirming the Claims Deputy's refusal of unemployment insurance benefits. The Appeals referee found that Petitioner's payment of landscape workers in cash, without deducting taxes, constituted willful and wanton misconduct on her part. That action was found to be a violation of her employer's interests as well as a violation of state and federal law. The Appeals Referee found that Petitioner was aware of the Mills' payment policies, with which she did not comply. The Referee also found that Petitioner was aware of Mills' policies as to the employment and non-payment of interns, but chose not to comply with those guidelines. Petitioner appealed this decision to the Delaware Unemployment Insurance Appeals Board.

A hearing before the Board took place on October 6, 2004. Petitioner testified before the Board and presented the testimony of two witnesses. In her testimony, Petitioner acknowledged and admitted various allegations made by Mills, but defended the actions as consistent with the policies and procedures she followed prior to Mills' acquisition of the Dover Mall.

A final decision was rendered on November 12, 2004, affirming the lower authorities' decisions. The Appeals Board found willful and wanton misconduct, constituting just cause for dismissal, in Petitioner's use and compensation of interns in contravention to company policy and cash payment of employees employed by a third party vendor. Unemployment benefits were

denied. Petitioner appealed the Board's decision to the Superior Court on November 18, 2004.

When addressing matters on appeal from the Board, the Superior Court is confined to a narrow standard.² The Court does not serve as a trier of fact to determine the credibility of certain testimony or to weigh evidence.³ Instead, when the Board adopts the findings of the Appeals Referee, the reviewing court is to depend on the referee's findings.⁴ The Court's principal function is to determine whether the findings of the Board are supported by substantial evidence and to reverse clear errors of law.⁵ The Court's role is therefore a very limited one.

In disputes involving an employee's right to unemployment insurance benefits, the employer has the burden of proving by a preponderance of evidence that the employee was dismissed for "just cause."⁶ Just cause is defined as a "willful or wanton act or pattern of conduct in violation of the employer's interest, the employer's duties, or the employee's expected standard of conduct."⁷

Each of the lower authorities to review this case found sufficient evidence of willful and wanton misconduct to justify Petitioner's termination for just cause. Petitioner appealed to this Court, citing the fact that the Appeals Referee did not find sufficient evidence to deny her

²*Ingram v. Barrett's Bus. Serv.*, 794 A.2d 1160 (Del. 2002).

³*Id.*

⁴*Boughton v. Dept. of Labor*, 300 A.2d 25, 26 (Del. Super. 1972)

⁵*Id.*

⁶*Majaya v. Sojourners' Place*, 2003 Del. Super. LEXIS 212, *16 (Del. Super. 2003).

⁷*Majaya*, at *14 quoting *Avon Prods., Inc. v. Wilson*, 513 A.2d 1315, 1317 (Del. 1986) (per curiam) (citation omitted).

unemployment benefits. Specifically, Petitioner claims that the only cited reason for her termination was the falsification of documents, which she claims was discounted by the Appeals Referee.

The Board did not find sufficient evidence of willful or wanton misconduct on the part of Petitioner with regard to her submission of false expense reports and excessive cell phone bills for reimbursement. However, I find that both the Appeals Referee and the Board denied unemployment insurance benefits to Petitioner correctly based on at least two other instances of misconduct, which provided sufficient evidence of just cause to warrant the denial of unemployment benefits.

The Appeals Board and Referee found that Petitioner willfully and wantonly violated Mills' policies with regard to the use and compensation of college interns, despite the fact that she was repeatedly informed of the company's policies. The Board found evidence that Petitioner willfully paid two interns through a vendor despite being told that interns were not to be paid, but were only to receive course credit for work completed at the mall. Moreover, email communications from the Regional HR Manager instructed Petitioner that paperwork on each intern would need to be submitted to the regional office before they began to work. Despite this instruction, Petitioner allowed the interns to work and paid them in cash. Petitioner ignored the policies and procedures that were explained to her repeatedly by the Regional HR Manager.

The Referee and Board also found that Petitioner violated company policy, as well as state and federal laws in her decision to compensate landscape employees in cash without deducting taxes. Petitioner disavows any wrongdoing, and instead claims that the third-party vendor who hired the workers were responsible for deducting taxes and completing 1099 forms.

However, the fact that Petitioner paid these employees in cash, alone, constitutes a violation of company policy and the Ethics Code that Petitioner signed in 2004. Moreover, the fact that she paid the employees in cash, without first verifying that their payment complied with state and federal tax laws, is sufficient to find just cause in her dismissal.

I agree with the Board's decision to deny Petitioner unemployment benefits. The findings of the Referee and the Board constitute substantial evidence of just cause for Petitioner's dismissal. The Board's findings are free of legal error. Therefore, pursuant to 19 *Del. C.* § 3314, Petitioner is not entitled to unemployment insurance benefits. For the foregoing reasons, the Board's decision is AFFIRMED.

Very truly yours,

T. Henley Graves

THG/jfg

oc: Prothonotary

cc: Unemployment Insurance Appeal Board