IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

TESLA INDUSTRIES, INC.,	)	
	)	
Appellant,	)	
	)	
v.	)	C. A. No. 03A-11-001-JEB
	)	
JESSICA SCHNEE, and UNEMPLOYMENT INSURANCE APPEAL BOARD,	)	
	)	
Appellee.	)	

Submitted: May 5, 2005
Decided: May 24, 2005

Appeal from a Decision of the Unemployment Insurance Appeal Board.
Decision Affirmed.

OPINION

Appearances:

Brian A. Sullivan, Esquire, and Amy D. Brown, Esquire, Wilmington, Delaware. Attorneys for Appellant Tesla Industries, Inc.

Jessica Schnee, *pro se*, 22 Hobart Drive, Apt. A-4, Newark, DE 19713. Appellee.

Mary Page Bailey, Esquire, Wilmington, Delaware.
Attorney for Unemployment Insurance Appeal Board.

Judge John E. Babiarz, Jr.

This is the Court's decision on an appeal of a decision of the Unemployment Insurance Appeal Board ("Board"). For the reasons explained below, the decision granting unemployment benefits to Claimant Jessica Schnee is affirmed.

Because a full recitation of the pertinent facts is provided in this Court's previous Opinion in this matter,[1] a summary of the facts is provided herein. Claimant worked for Employer Tesla Industries, Inc. as an accounting assistant from April 9, 2001, through May 25, 2001. Her hours were 8:00 a.m. to 4:30 p.m. On May 11, she was asked if she could work until 5 p.m., and she explained that she had to pick up her daughter by 5 p.m. from the person who watched her during the day. On May 21 or 22, Claimant enrolled her daughter in New Beginnings Learning Center, a local daycare facility. On May 24, Claimant was again asked if she could work until 5 p.m., and she said she would see what she could do. The next day she was asked if she had rearranged her schedule, and when she said no, she was fired.

Claimant's petition for unemployment insurance benefits was granted, and Employer appealed to this Court. After two remands, the appeal is before the Court for the third time. In its most recent decision, the Board determined that Claimant had not been terminated for just cause in connection with her work and was therefore entitled to workers' compensation benefits.

In disputes involving an employee's right to unemployment insurance benefits, the

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[1] *Tesla Ind. v. Schnee*, Del. Super., C.A. No. 02A-07-005, Babiarz, J. (Opinion)(June 24, 2003).

employer has the burden of proving by a preponderance of the evidence that the employee was dismissed for just cause.[2] Just cause is defined as willful or wanton misconduct in violation of the employer's interest, the employee's duties or the employee's expected standard of conduct.[3] On appeal, Employer argues that the Board's finding that Claimant was not terminated for just cause is not supported by substantial evidence and is inappropriately based on the Board's acceptance of Claimant's testimony.

When reviewing a decision of an administrative board, this Court's role is not to make factual findings or to revisit the Board's credibility determinations, unless they constitute an abuse of discretion.[4] The Court's functions are to determine whether the findings of the Board are supported by substantial evidence and to reverse clear errors of law.[5]

In this case, the Board found Claimant to be a credible witness and accepted her testimony. Claimant stated that she knew she had to change her schedule but that she had been told that her job was not in jeopardy. After the first request to work til 5 p.m., Claimant placed her daughter in a new daycare situation, but she believed that she would have to pay more to have the child stay beyond 5 o'clock. When was asked a second time to work later, her daughter had been in the new daycare for only a few days. To comply with the request,

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[2]*Hyatt v. Mills Corp.*, 2005 WL 1077728 at * 2 (Del. Super.).

[3]*Avon Products, Inc. v. Wilson*, 513 A.2d 1315, 1317 (1986).

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

[5]*Boughton v. Dept. of Labor*, 300 A.2d 25, 26 (Del. Super. Ct. 1972).

Claimant had to make different arrangements with the daycare and with her boyfriend since they shared a car. Claimant was given less than 24 hours to make these changes. Based on this testimony, the Board found that Claimant made reasonable efforts to change her schedule but was not given enough time to do so. The Board also found that any warning Employer may have given was vague and that Claimant reasonably believed that her job was not in jeopardy.

The Board's findings are supported by substantial evidence in the form of Claimant's testimonial evidence, and there is no error of law in the decision. The Court concludes that the Board acted within its discretion in awarding unemployment benefits.

For these reasons, the Board's decision granting unemployment insurance benefits to Claimant Jessica Schnee is ***Affirmed.***

It Is So ORDERED.

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Judge John E. Babiarz, Jr.

JEB,jr./bjw/ram
Original to Prothonotary