IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

DOUGLAS M. WATSON,	)	
	)	
Appellant,	)	
	)	
v.	)	C.A. No. 05A-11-006 JRJ
	)	
FORMOSA PLASTICS CO., and the UNEMPLOYMENT INSURANCE APPEALS BOARD,	)	
	)	
Appellees.	)	
	)	

Date Submitted: April 4, 2006
Date Decided: June 9, 2006

Upon Appeal From the Unemployment Insurance Appeals Board Decision—**AFFIRMED**.

OPINION

Douglas M. Watson, 135 Ratledge Road, Townsend, Delaware, 19734, Appellant, *pro se*.

G. Kevin Fasic, Esquire, Tighe, Cottrell & Logan, P.A., One Customs House Square, Suite 500, P.O. Box 1031, Wilmington, Delaware, 19899, Attorney for Appellee Formosa Plastics Co..

Mary Page Bailey, Esquire, Delaware Department of Justice, 820 North French Street, Wilmington, Delaware, 19801.

JURDEN, J.

This is the Court's decision on Douglas M. Watson's appeal of a decision of the Unemployment Insurance Appeals Board denying unemployment benefits from Employer Formosa Plastics Co. For the reasons explained below, the Board's decision is **AFFIRMED**.

FACTS

The Appeal currently before the Court arises from circumstances that occurred on April 27, 2005, while Douglas Watson (hereinafter "Mr. Watson") was working the midnight to eight shift as a "B Operator" at the Formosa Plastic Company (hereinafter "Formosa") S2 Reactor Building.[1] Part of Mr. Watson's job entails dropping the finished polymerized material from the reactor out to a blend tank.[2] On April 27, 2005, Mr. Watson erroneously opened the valve of a tank in the midst of being polymerized, causing 3,415 pounds of vinyl chloride to leak into the environment.[3] Effective April 27, 2005, Mr. Watson's employment was suspended while an investigation was conducted.[4] As of May 6, 2005, Mr. Watson's employment at Formosa was officially terminated.[5] On May 1, 2005, Mr. Watson filed an Unemployment Insurance Division Application for Benefits

[1] Referee Hearing Transcript (hereinafter abbreviated "Ref. Tran.") p.4.
[2] Ref. Tran., p. 4.
[3] Ref. Tran., p. 4.
[4] D.I. 5, p. 57.
[5] D.I. 5, p. 33.

(hereinafter the "Application").[6] On May 23, 2005, the Application was denied, and on June 2, 2005, that determination became final.[7] On May 31, 2005, Mr. Watson filed an Appeal Request Notification with the Division of Unemployment Insurance.[8] On June 27, 2005, a hearing was held in front of an Appeals Referee (hereinafter the "Referee").[9] On July 21, 2005, the Referee mailed a decision affirming the denial of benefits.[10] On July 26, 2005, a second appeal was filed, and on September 20, 2005, a second hearing was held in front of three Unemployment Insurance Appeal Board members.[11] On October 27, 2005, the resulting decision reaffirming the Referee's denial of benefits was mailed, and on November 6, 2005, it became final.[12] On November 10, 2005, Mr. Watson filed a timely Notice of Appeal with this Court.[13]

STANDARD OF REVIEW

In reviewing a decision on appeal from the Unemployment Insurance Appeal Board, this Court must determine if the decision is supported by substantial evidence and free from legal error.[14] Substantial evidence is such

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[6] D.I. 5, p. 57.
[7] D.I. 5, p. 58.
[8] D.I. 5, p. 59.
[9] D.I. 5, p. 61.
[10] D.I. 5, p. 61.
[11] D. I. 5, p. 104.
[12] D. I. 5, p. 104
[13] D.I. 1.
[14] *K-Mart v. Bowles*, 1995 WL 269872 (Del. Super. Ct.).

relevant evidence that a reasonable mind might accept as adequate to support a conclusion.[15] Absent an abuse of discretion, this Court must uphold the Board's decision.[16] "As an appellate court, it [is] not within the province of the Superior Court to weigh the evidence, determine questions of credibility or make its own factual findings."[17] The Court will only reverse a decision of the Board if its findings are not supported by substantial evidence, or where the Board has made a legal mistake.[18]

DISCUSSION

In his Superior Court Appeal, Mr. Formosa acknowledges that he made a mistake that resulted in the Vinyl Chloride leak.[19] Further, he takes responsibility for his actions, but states that in his twenty-eight years of service at Formosa, he saw similar mistakes occur which did not result in termination.[20] In addition, Mr. Watson states that the mistake in question also involved the improper actions of other employees, namely those who did not lock the 401 reactor on the earlier shift and the "A Operator" who did not accompany him to unlock the reactor as dictated by standard

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[15] *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. Super. Ct. 1994).
[16] *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. Super. Ct. 1994).
[17] *Unemployment Insurance Appeal Board v. Division of Unemployment Insurance*, 803 A.2d 931, 937 (Del. 2002).
[18] *Delgado v. Unemployment Insurance Appeal Board*, 295 A.2d 585 (Del. Super. Ct. 1972).
[19] D.I. 7.
[20] D.I. 7.

company procedure.[21] In his Reply Brief, Mr. Watson also states that his "past history had nothing to do with the reason [he] was terminated," and he feels that he was made to be an example because of an earlier incident in Formosa's Illinois plant.[22]

In its response, Formosa states that "Mr. Watson's Opening Brief adds nothing to the written record, and is little more than a recap of the arguments presented at the Referee and Board appeals," and that accordingly, his appeal should be denied.[23] In the alternative, Formosa states that they established sufficient facts to support a finding of "just cause" for termination that would allow the Board to deny benefits to Mr. Watson.[24] Formosa argues that testimony agreed to and acknowledged by Mr. Watson at the hearing shows that Mr. Watson violated an established and clearly-stated environmental safety procedure in failing to heed the red pressure-indicating light under the 401 reactor.[25] Further, Formosa asserts that the evidence presented is more than sufficient to meet the standard for "just cause" termination, and the Board properly considered the facts and circumstances as they relate to Mr. Watson.[26] Last, Formosa states that the result of Mr. Watson's behavior "was not minor, as it resulted in a reportable

[21] D.I. 7.
[22] D.I. 9.
[23] D.I. 8, at 1.
[24] D.I. 8, at 2.

release incident thousands of times in excess of the reporting requirement established by the Department of Natural Resources and Environmental Control."[27]

The issue in this case is whether Formosa terminated Mr. Watson's employment with or without "just cause." "Just cause" exists where the claimant commits a willful or wanton act or engages in a willful or wanton pattern of conduct in violation of the employer's interest, his duties to the employer or his expected standard of conduct.[28] Wanton conduct, for purposes of determining whether claimant seeking unemployment compensation was discharged with just cause, "is that which is heedless, malicious, or reckless, but not done with actual intent to cause harm."[29] It is apparent from the record that in failing to observe and/or act in accordance with the red light indicating pressure in the 401 reactor, Mr. Watson's behavior was heedless and reckless. Therefore, the Court finds that Formosa meets its burden of proof on the "just cause" issue. Further, Formosa's list of "Class A Work Rules," states that "Violation of Class 'A' Work Rules will result in immediate termination with cause."[30] Item 13A on that list is "Knowingly by-passing or not using established environmental compliance

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[25] D.I. 8, at 2.
[26] D. I. 8, at 2.
[27] D. I. 8, at 2.
[28] *Tuttle v. Mellon Bank of Delaware*, 659 A.2d 786, 789 (Del. Super. Ct. 1995).

equipment of procedures."[31] In terminating Mr. Watson's employment, Formosa was following its own established procedure, as set forth in its work rules.

For the reasons set forth above, the ruling of the Unemployment Insurance Appeal Board denying Mr. Watson unemployment benefits is hereby **AFFIRMED**.

IT IS SO ORDERED.

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Judge Jan R. Jurden

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[29] *Tuttle v. Mellon Bank of Delaware*, 659 A.2d 786, 789 (Del. Super. Ct. 1995).
[30] D.I. 5, p. 64.
[31] D.I. 5, p. 64.