

**IN THE SUPERIOR COURT  
OF THE STATE OF DELAWARE**

FRED S. SILVERMAN  
JUDGE

NEW CASTLE COUNTY COURTHOUSE  
500 N. KING STREET, SUITE 10400  
WILMINGTON, DELAWARE 19801  
(302) 255-0669

Submitted: April 4, 2006

Decided: July 19, 2006

RENEE D. CARTWRIGHT,	)	
	)	
Appellant,	)	
	)	
v.	)	CA.# 05A-11-008-FSS
	)	
LAST STRAW INCORPORATED,	)	
and the UNEMPLOYMENT	)	
INSURANCE APPEAL BOARD,	)	
	)	
Appellee,	)	

**ORDER**

**Upon Appeal from the Unemployment  
Insurance Appeal Board - - *AFFIRMED.***

Appellant worked for Appellee, a furniture store. She was fired for absenteeism. After an evidentiary hearing, the Unemployment Insurance Appeals Board denied benefits. Appellant, *pro se*, filed a timely appeal.

## **I.**

On December 27, 2005, the Prothonotary issued a briefing schedule calling for Appellant's Opening Brief on January 17, 2006 and Appellee's Answering Brief on February 6, 2006. Appellant filed a hand-written brief, which argues several ways that the administrative proceeding before the UIAB was flawed.

After Appellee failed to submit its Answering Brief, the Prothonotary mailed a Final Delinquent Brief Notice. Hearing nothing further from Appellee, on March 16, 2006 the court ordered that it would decide the case on the record, including Appellant's brief.

## **II.**

Appellee presented evidence to the UIAB tending to show that Appellant's attendance was poor. Over an extended time, for one reason or another, she failed to report. Appellant was warned about her absenteeism in August 2005. Appellant missed three days in September 2005. The first day, arguably, she could not appear due to bad weather. On the other days, however, personal matters were more important than her job. When Appellant did not appear on time on the third day, another employee told Appellant that she had been fired.

## **III.**

Because this is an appeal, the court's role is circumscribed. As to

questions of law, the review is plenary. As to the facts, the court does not examine the evidence and make its own findings. The court must uphold the administrative decision if legally sound and based on substantial evidence.<sup>1</sup> Substantial evidence is “relevant evidence [that] a reasonable mind might accept as adequate to support a conclusion.”<sup>2</sup>

#### IV.

Appellant argues that she was not progressively disciplined, and so on. Nevertheless, the court agrees with the Board. Showing up to work and staying on the job is fundamental.<sup>3</sup> Appellant was warned about her poor attendance, then failed to show up for work. Under these circumstances, Appellant’s failure to come to work constitutes just cause.<sup>4</sup> Even if Appellant’s excuses were legitimate, at some point chronic absence from work can amount to cause for discharge.<sup>5</sup> Here, the Board had

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<sup>1</sup> *Unemployment Ins. Appeal Bd. of Dept. of Labor v. Duncan*, 337 A.2d 308 (Del. 1975).

<sup>2</sup> *Streett v. State*, 669 A.2d 9, 11 (Del.1995).

<sup>3</sup> *Mid-Atlantic Pain Institute v. Wilkerson*, Del. Super., C.A. No. 99A-09-002, Silverman, J. (June 28, 2000)(ORDER).

<sup>4</sup> *Avon Prods., Inc. v. Wilson*, 513 A.2d 1315, 1317 (Del. 1986) (“‘Just cause’ is defined as a wilful or wanton act or pattem of conduct in violation of the employer's interest, the employee's duties, or the employee's expected standard of conduct.”).

<sup>5</sup> *Rhoades v. Integrity Staffing Solutions, Inc.*, Del. Super., C.A. No. 01A-02-001, Carpenter, J. (Oct. 31, 2001)(ORDER) (Employee’s discharge upheld where employee appeared late after being warned about absenteeism and tardiness).

reason to find that Appellant's excuses were not legitimate. And to the extent Appellant had the sort of position where a warning was required before discharge, the evidence supports the finding that Appellant was absent after warning.

**V.**

For the foregoing reasons, the Unemployment Insurance Appeal Board's December 22, 2004 decision, which was mailed on December 28, 2004, is ***AFFIRMED.***

**IT IS SO ORDERED.**

/s/ Fred S. Silverman

Judge

oc: Prothonotary (Appeals Division)  
pc: Mary Page Bailey, Deputy Attorney General, U.I.A.B.  
Ms. Renee D. Cartwright  
Last Straw Incorporated