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

MACEO SINGLETON,	)	
	)	
Appellant,	)	
	)	
v.	)	C.A. No. 05A-11-005 WCC
	)	
STAR BUILDING SERVICES and the UNEMPLOYMENT INSURANCE APPEAL BOARD,	)	
	)	
Appellees.	)	

Submitted: June 6, 2006
Decided: September 26, 2006

MEMORANDUM OPINION

Appeal from Unemployment Insurance Appeal Board. AFFIRMED.

Maceo Singleton, 1 Bryan Circle; Bear, Delaware 19701. *Pro Se* Appellant.

Unemployment Insurance Appeal Board, 4425 N. Market Street; Wilmington, Delaware 19802. Appellee.

Star Building Service, P.O. Box 11410; Wilmington, Delaware 19850. Appellee.

CARPENTER, J.

Introduction

Before this Court is Maceo Singleton's appeal from the Department of Labor, Division of Unemployment Insurance Appeal Board's ("Board") decision, in which it found that Mr. Singleton was terminated by Star Building Services ("Star") for just cause. Upon review of the record in this matter, this Court finds the Board's decision is hereby AFFIRMED.

Facts

On Saturday, April 9, 2005, Mr. Singleton was employed by Star and working on its behalf by assisting with cleaning the Dade Behring facility. Upon leaving the site, Mr. Singleton discovered a cellular phone in the parking lot, which was later determined to belong to Dade Behring. Using the newly discovered phone, Mr. Singleton called his home to determine if the phone was operable, and then subsequently made and received a number of calls with the same phone. Thereafter, Dade Behring contacted its phone carrier and obtained a call log indicating the phone calls made and received on that particular phone since it turned up missing on April 9, 2005.[1] On Monday, April 11, 2005, George Shelton, Mr. Singleton's supervisor, was contacted by Dade Behring and advised of the missing Dade Behring phone and

[1]The call log obtained from the phone company indicates that phone was used 38 times by Mr. Singleton, 7 times of which were inbound calls.

call log obtained. In an attempt to find the missing phone, Mr. Shelton made some phone calls using the numbers appearing on the call log. One of the phone numbers Mr. Shelton dialed connected him to Mr. Singleton, allowing Mr. Shelton the opportunity to question his employee. The questioning led to Mr. Singleton's admission to finding the phone in the Dade Behring parking lot, and using it for personal calls. Upon request by Mr. Shelton, Mr. Singleton returned the phone to his employer on Tuesday, April 12, 2005.

As a consequence of Mr. Singleton taking and using the phone, Star terminated his employment. Thereafter, Mr. Singleton filed for unemployment benefits with the Department of Labor, Division of Unemployment Insurance (DOL). His claim was denied, and Mr. Singleton timely appealed the DOL decision. On June 2, 2005, a hearing before the Appeals Referee of the Division of Unemployment Insurance was held, at which time both Mr. Singleton and Mr. Shelton testified. That same day a decision was issued by the Appeals Referee determining that Mr. Singleton was, in fact, disqualified for benefits pursuant to 19 Del. C. §3314(2)[2] based on his admission

[2]19 Del. C. §3314(2) states, in pertinent part:
An individual shall be disqualified for benefits: (2) For 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. . . .

that he removed the phone from the premises and used it to make and receive phone calls instead of turning it over to security. The Appeals Referee characterized these actions as "wilful or wanton act[s]," disqualifying Mr. Singleton from benefits.[3]

On July 15, 2005, Mr. Singleton filed a timely appeal of the Appeal Referee's decision, and on September 21, 2005 the Board held a hearing to address the appeal. Again, both Mr. Singleton and Mr. Shelton appeared before the Board. The Board issued its decision on October 31, 2005 (the "Board Decision"), indicating that Mr. Singleton knew he had possession of someone else's phone and that making calls on that phone would cause someone else to incur charges. Based on the testimony and evidence presented, the Board upheld the Appeal Referee's decision that Mr. Singleton's actions constituted "wilful or wanton conduct."[4] Mr. Singleton has filed a timely appeal of the Board Decision, which is currently before this Court.

On December 27, 2005, a briefing schedule for this appeal was issued by this Court, and on January 31, 2006 Mr. Singleton filed his opening brief. On April 10, 2006, a Final Delinquent Brief Notice was sent to the Appellee indicating that the Appellee must file its responding brief within ten days. To date, the Appellee has not filed a brief in this appeal. On May 12, 2006, this Court issued an order pursuant to

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[3] *Singleton v. Star Bldg. Serv.*, Decision of Appeals Referee No. 236268 (June 2, 2005).

[4] *Singleton v. Star Bldg. Serv.*, Determination of Dept. of Labor Claim No. 236268 (Oct. 31, 2005).

Super. Ct. Civ. R. 107(e), indicating the Court would make a determination of the issues on the papers currently before it.[5] This is the Court's decision on the matter.

Standard of Review

This Court's role regarding an appeal from the Board is limited to an evaluation of the record, in the light most favorable to the prevailing party, to determine if it includes evidence that a reasonable mind accepts as adequate support for the conclusion and is free from legal error.[6] In this capacity, the Court accepts the findings of credibility and weight of the evidence of the Board.[7] Further, if the Board

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[5]Super. Ct. R. 107(e) state, in pertinent part:
(e) Failure or neglect to file briefs or discovery material. If any brief, memorandum, deposition, affidavit, or any other paper which is or should be a part of a case pending in this Court, is not served and filed within the time and in the manner required by these Rules or in accordance with any order of the Court or stipulation of counsel, the Court may, in its discretion, dismiss the proceeding if the plaintiff is in default, consider the motion as abandoned, or summarily deny or grant the motion, such as the situation may present itself, or take such other action as it deems necessary to expedite the disposition of the case. . . .

[6]*Gen. Motors Corp. v. Freeman*, 164 A.2d 686, 689 (Del. 1960) ("The position of the Superior Court . . . on appeal is to determine only whether or not there was substantial evidence to support the findings of the Board. If there was, these findings must be affirmed."); *Fed. Street Fin. Serv. v. Davies*, 2000 Del. Super. Ct. LEXIS 286, at *6 ("In reviewing the decisions of the UIAB, this Court must determine whether the findings and conclusions of the UIAB are free from legal error and supported by substantial evidence in the record."). See also *Michael A. Sinclair, Inc. v. Riley,* 2004 WL 1731140 (Del. Super. Ct.), at *2; *Majaya v. Sojourners' Place*, 2003 WL 21350542 (Del. Super. Ct.), at *4.

[7]*Michael A. Sinclair, Inc.* 2004 WL 1731140, at *2. (citing *Unemploy. Ins. Appeal Bd. v. Div. of Unemploy. Ins.*, 803 A.2d 931, 937 (Del. 2002) ("Questions of credibility are exclusively within the province of the Board which heard the evidence. 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.")).

adopts the findings of the Appeals Referee, this Court will also review that findings of fact and conclusion of law.[8] Lastly, if the record supports the Board's findings, the Court should accept those findings even though, acting independently, the Court might reach a different conclusion.[9]

Discussion

The sole question before this Court is whether the Board had substantial evidence to determine that Mr. Singleton acted wilfully and wantonly when he took possession of the cellular phone and used it for two days to make and receive personal calls, thereby providing Star just cause for termination, and excluding him from eligibility to receive unemployment benefits. Based on the record, this Court finds that the Board did have substantial evidence to reach its conclusion.

An employee who is terminated for wilful or wanton conduct is considered terminated for "just cause," and is not eligible to receive unemployment benefits pursuant to 19 Del. C. § 3314(2).[10] Wilful and wanton conduct must be established

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[8] *Majaya,* 2003 WL 21350542, at *4.

[9] *H & H Poultry Co. v. Whaley*, 408 A.2d 289, 291 (Del. 1979).

[10] *Mosley v. Initial Sec.*, 2002 WL 31236207 (Del. Super. Ct.), at *2. (The appellant signed the employer policy which stated employers were not allowed to use a client's phone for personal use. Nevertheless, the appellant used a client's phone to make personal calls. This sufficiently established wilful or wanton conduct and the employee dismissed the appellant with just cause. The appellant was disqualified from receiving unemployment benefits.).

by an employer, and "requires a showing that one was conscious of his conduct or recklessly indifferent of its consequences."[11] Lastly, "just cause" exists if the employee violated a company rule, particularly if he was on notice of the rule.[12]

Here, Star met its burden and established "just cause" for the termination of Mr. Singleton through two avenues. First, the record reflects that Mr. Singleton admitted to finding the phone and removing it from the parking lot. Mr. Singleton further admitted to using the phone, and the call log indicates Mr. Singleton used the phone as many as 38 times.[13] Mr. Singleton also admitted that he was aware someone would have to pay for any calls he made.[14] Nevertheless, he picked up the phone and used it to make and receive calls. By being aware the phone belonged to someone else, and by knowing use of the phone would cause someone else to pay for the calls

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[11] *Mosley*, 2002 WL 31236207, at *2. (citing *Coleman v. Dept. of Labor*, 288 A.2d 285, 288 (Del. Super. Ct. 1972)).

[12] *Id.*

[13] R. at 10, 37-38.

[14] THE REFEREE: You know that somebody has to pay for those calls. You know when you use a phone you pay for the calls. You know that.
MACEO SINGLETON: Yes sir.
THE REFEREE: So you are not paying for them. So you are using someone else dollar to pay for ...
MACEO SINGLETON: I didn't use the phone excessively. I just seen . . .
THE REFEREE: Just a little bit.
MACEO SINGLETON: Yes.
Tr. Dept. of Labor (June 6, 2005) Appeal. No. 236268, 19.

he made, it is reasonable to conclude Mr. Singleton consciously disregarded those two facts. By doing so, Mr. Singleton acted "recklessly indifferent of its consequences" when he made 38 phone calls with the Dade Behring phone. Second, Mr. Singleton admitted he read the Disciplinary Procedures of Star.[15] But, despite being on notice that theft was forbidden by Star's company policy, he chose to take the phone from the parking lot, and then he deliberately used it 38 times. By doing so, Mr. Singleton knowingly violated the company policy.

Thus, the facts enumerated above establish that there was substantial evidence before the Board to show Star had "just cause" to terminate Mr. Singleton, requiring the Board to uphold the Appeals Referee's decision to deny Mr. Singleton unemployment benefits.

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[15]Tr. Dept. of Labor (June 6, 2005) Appeal. No. 236268, 7. The Star Building Services, Inc. Rules and Regulations, dated January 1, 2003, states, in pertinent part, as follows:

> Acts of willful and deliberate misconduct will result in immediate discharge, and will not be subject to the three (3) warning notice.
>
> . . . .
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> Star Building Services, Inc. considers some offenses as grounds for immediate dismissal. Examples are: Malicious destruction of property belonging to the company or the client, falsification of employment application, theft, and intent to violate Star Building Services, Inc.'s rules or polices. (emphasis omitted).

R. at 25.

Conclusion

For the foregoing reasons, the decision of the Board is AFFIRMED.

IT IS SO ORDERED.

Judge William C. Carpenter, Jr.