

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

TRAFINA WILSON,)	
)	
Appellant,)	
)	
v.)	C.A. No. 06A-03-009 WCC
)	
CHRISTIANA CARE HEALTH)	
SERVICES and the UNEMPLOYMENT)	
INSURANCE APPEAL BOARD,)	
)	
Appellees.)	

Submitted: September 1, 2006
Decided: November 30, 2006

MEMORANDUM OPINION

Appeal from Unemployment Insurance Appeal Board. AFFIRMED.

William D. Fletcher, Jr., Esquire; 414 South State Street; P.O. Box 497; Dover, Delaware 19903. Attorney for Appellant.

David H. Williams; Morris, James, Hitchens & Williams, LLP; 222 Delaware Avenue; P.O. Box 2306; Wilmington, Delaware 19899. Attorney for Appellee, Christiana Care Health Systems, Inc.

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

CARPENTER, J.

Introduction

Before this Court is Trafina Wilson's appeal from the Delaware Department of Labor, Division of Unemployment Insurance Appeal Board's ("Board") decision, in which it found that Ms. Wilson was terminated by Christiana Care Health Services, Inc. ("Christiana Care") for just cause. Upon review of the record in this matter, the Board's decision is hereby AFFIRMED.

Facts

Ms. Wilson was employed by Christiana Care as a Billing Representative within the Occupational Health Billing Department from March 16, 1998 through August 16, 2005.¹ During the course of her employment, Ms. Wilson was disciplined several times for arriving to work late. Specifically, on April 7, 2003, Ms. Wilson was advised by her supervisor that her pattern of lateness and absence was unacceptable, though no formal disciplinary action was taken. On June 16, 2003, Ms. Wilson was placed on the first step of Christiana Care's disciplinary policy due to continued excessive lateness.² On or around October 28, 2003, Ms. Wilson was moved to the second step of the discipline policy, after being late 13 times and being

¹R. at 62.

²R. at 7.

absent in violation of company standards.³ Then, on March 18, 2005 Ms. Wilson was elevated to Decision Making Leave,⁴ the third step of Christiana Care’s progressive discipline policy, due to her personal phone calls and internet use during work hours.⁵

Because she was placed on Decision Making Leave, Ms. Wilson was provided a Disciplinary Action Record, which she signed, that indicated the following:

As a result of this infraction of idleness & previous active 2nd step reminder for overall attendance, you are being issued this Decision Making Leave. If you do not accrue any additional disciplinary actions within the next 3 years, this DML will be deactivated. Please note that any future violation of ANY Christiana Care policy or procedure requiring formal disciplinary action during the active life of this decision making leave will be reviewed for termination.⁶

Despite this warning by Christiana Care, Ms. Wilson continued to spend excessive amounts of work time on personal calls and personal internet use. As a result, she was terminated on or about August 16, 2005 from her position with Christiana Care for “idleness.”⁷

Consequently, Ms. Wilson filed the proper documentation with the Delaware Department of Labor to initiate a claim for unemployment benefits. Because the

³*Id.*

⁴Decision Making Leave was described by Melinda Fitzgerald as “a day off with pay. A review pass history of occurring events that just happened. They are to give a statement of commitment on issues that happened and they are to return back to work with this.” R. at 87.

⁵R. at 9.

⁶*Id.*

⁷R. at 12.

Claims Deputy determined Ms. Wilson was disqualified pursuant to 19 Del. C. §3314(2),⁸ her claim was denied.⁹ Ms. Wilson appealed this decision, and after a hearing before the Appeals Referee, the Claim Deputy's determination was affirmed.¹⁰ Ms. Wilson filed a timely appeal of the Appeals Referee's decision, and a hearing before the Unemployment Insurance Appeal Board (the "Board") was held on February 22, 2006. Based on the testimony and evidence presented, the Board upheld the Appeal Referee's decision that Ms. Wilson was discharged by Christiana Care for just cause (the "Board Decision").¹¹ Ms. Wilson filed a timely appeal of the Board Decision, which is currently before this Court. This is the Court's decision on the matter.

⁸19 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. . . .

⁹*Wilson v. Christiana Care Health Serv.*, Determination of Dept. of Labor Claim No. 159869 (Sept. 4, 2005); see also R. at 14.

¹⁰*Wilson v. Christiana Care Health Serv.*, Decision of Appeals Referee No. 159869 (Dec. 15, 2005); see also R. at 22.

¹¹*Wilson v. Christiana Care Health Serv.*, UIAB Hearing No. 159869 (Mar. 15, 2006); see also R. at 159.

Standard of Review

This Court gives deference to the Board's decision,¹² and will review the record in the light most favorable to the prevailing party to determine if the Board's decision is adequately supported by the record and to ensure the Board's decision is free from legal error.¹³ Sufficient evidence to support the Board's decision requires evidence that a reasonable mind accepts as adequate support for the conclusion.¹⁴ This Court accepts the findings of credibility and weight of the evidence of the Board when determining the sufficiency of the evidence.¹⁵ If the record does support the Board's findings, this Court shall accept the Board's findings even if this Court might reach a different conclusion.¹⁶

¹²*Reeves v. Conmac Sec.*, 2006 WL 496136 (Del. Super. Ct.), at *3 (citations omitted).

¹³*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 (De. Super. Ct.), at *2; *Majaya v. Sojourners' Place*, 2003 WL 21350542 (Del. Super. Ct.), at *4.

¹⁴*Id.*

¹⁵*Michael A. Sinclair, Inc.*, 2004 WL 1731 140, at *2. (citing *Unemploy. Ins. App. 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."))

¹⁶*H & H Poultry Co., Inc. v. Whaley*, 408 A.2d 289, 291 (Del. 1979).

Discussion

The sole question before this Court is whether the Board's determination that Ms. Wilson was discharged for just cause is supported by substantial evidence. Based on the record, this Court finds that the Board did have substantial evidence to reach its conclusion, and Ms. Wilson is correctly disqualified from receiving unemployment benefits pursuant to 19 Del. C. § 3314(2).

An employee is not eligible to receive unemployment benefits if an employer establishes that she was terminated for "just cause."¹⁷ Just cause includes termination for wilful or wanton conduct, meaning the employee was "conscious of [her] conduct or recklessly indifferent of its consequences."¹⁸ Thus, just cause will exist if an employee knows of a company rule or policy and nevertheless violates that policy, or if an employee violates the expected standard of conduct.¹⁹

¹⁷19 Del. C. § 3314(2); See *Mosley v. Initial Sec.*, 2002 WL 31236207 (Del. Super. Ct.), at *2. (The appellant signed the employer's policy which stated employees 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 employer dismissed the appellant with just cause. The appellant was disqualified from receiving unemployment benefits.).

¹⁸*Mosley*, 2002 WL 31236207, at *2. (citing *Coleman v. Dept. of Labor*, 288 A.2d 285, 288 (Del. Super. Ct. 1972)).

¹⁹*Id.* ("[J]ust cause' exists where an employee violates a company rule or policy, especially where the employee is given notice of the rule, such as in a company handbook."); *Avon Prod., Inc. v. Wilson*, 513 A.2d 1315, 1316 (Del. 1986) ("Just cause' is defined as a wilful or wanton act or pattern of conduct in violation of the employer's interest, the employee's duties, or the employee's expected standard of conduct.") (citations omitted).

Here, there is sufficient evidence to support the Board's conclusion that Christiana Care established just cause to terminate Ms. Wilson. First, the record supports that Ms. Wilson was aware of Christiana Care's attendance policy. On November 18, 2002, Ms. Wilson was a recipient of an email explaining the new time-keeping system Christiana Care would implement and Christiana Care's policy regarding lateness.²⁰ Then, after being placed on the first step of Christiana Care's discipline policy due to her attendance, Ms. Wilson was moved to the second tier of discipline for continued unacceptable attendance. Accordingly, she signed the Disciplinary Action Record (DAR) form, which stated her previous attendance problems and which advised Ms. Wilson that for the next two years any additional violations could result in "further discipline up to and including termination."²¹

However, within two years of her last disciplinary action, Ms. Wilson received another DAR, this time for idleness.²² This DAR form stated that Ms. Wilson's phone use while on Christiana Care's paid time was improper and constituted idleness. This form also reiterated that any further violation by Ms. Wilson of any Christiana Care

²⁰The email specifically stated, "Just remember that Christiana Care's policy is if you're [sic] one minute late you're [sic] considered late." R. at 8, 53. Ms. Wilson testified she received the email and signed it acknowledging receipt. R. at 153.

²¹R. at 7.

²²R. at 9.

policy could result in termination. Ms. Wilson again signed this form acknowledging she received and understood the form. In addition, Ms. Wilson submitted a memorandum to her supervisor acknowledging that she understood the severity of the violation she committed by excessively using the phone during working hours, and she would adjust her actions accordingly.²³

Each of the DAR forms explained what Christiana Care expected regarding both attendance and productivity, and what the violation committed by Ms. Wilson entailed. By signing a form for each step of the progressive discipline policy of Christiana Care, Ms. Wilson acknowledged that she understood Christiana Care's progressive discipline policy, and that any further violations could result in termination. These signed DAR forms coupled with the personally drafted memorandum stating she understood the severity of her actions, established that any similar violation committed thereafter was done with full knowledge of Christiana Care's expected standards and policy. As such, all of the above is substantial evidence supporting the Board's decision that Ms. Wilson had complete knowledge of Christiana Care's progressive discipline policy, as well as Christiana Care's attendance and idleness policy, prior to her final violation thereof.

²³R. at 11, 89.

After being made aware of the company's rules and after being advised of her status within the progressive disciplinary policy, the record also supports the Board's conclusion that Ms. Wilson continued to violate Christiana Care's standards. Before the Appeals Referee, Melinda Fitzgerald²⁴ testified that Ms. Wilson admitted to continued use of the phone for personal calls and against company policy.²⁵ Further, while testifying before the Appeals Referee, Ms. Wilson directly admitted to making the phone calls.²⁶ Lastly, Christiana Care presented the final Disciplinary Action Form completed by the company indicating Ms. Wilson made excessive personal calls during Christiana Care's time.²⁷ The sworn testimony and presented company

²⁴Melinda Fitzgerald, Billing Supervisor for the Healthcare Center and Occupational Health for Christiana Care, was Ms. Wilson's supervisor. R. at 81.

²⁵LARRY BRYSON: Okay. Did you ask Ms. Wilson for an explanation of the ...

MELINDA FITZGERALD: Yes.

BRYSON: Okay and what did she indicate?

FITZGERALD: She indicated that she is aware of the policy. She is aware that she did make personal phone calls. She received personal phone calls. She said it was friends. It was not emergency situation but she did receive phone calls.

BRYSON: And so as a result of her continued violation of Christiana Care policy what action was taken?

FITZGERALD: She was terminated.

R. at 92.

²⁶MR. PRIMOS: Okay. Now after you received the decision-making leave discipline in March of 2005 did you make some additional personal phone calls?

TRAFINA WILSON: Yes I did.

R. at 131, 132.

²⁷R. at 12.

documents support the conclusion that, despite knowing that she was not to use the phone for personal use, Ms. Wilson's actions continued.

An employee acts wilfully or wantonly when she knowingly violates a company standard, or continues a pattern of behavior detrimental to the company.²⁸ Here, there is substantial evidence that Ms. Wilson was aware of Christiana Care's policy regarding personal phone calls, she was warned to cease personal use of the phone, and she continued to violate this policy. This constitutes wilful and wanton conduct and is just cause for termination. Further, Ms. Wilson was placed on several different levels of discipline for both attendance and idleness, with warnings that any further violation of any policy of Christiana Care would be reviewed for possible termination. Nevertheless, Ms. Wilson continued to violate the known standards of Christiana Care as she progressed through its discipline policy, creating a pattern of detrimental behavior, and providing just cause for termination.

Ms. Wilson's primary argument to support her contention that the Court should reverse the decision of the Board is that she was not the only employee of Christiana Care who violated the phone policy,²⁹ and as such, the action by her employer is

²⁸*Avon*, 513 A.2d 1315.

²⁹Melinda Fitzgerald discussed with Jennifer Hisey her phone use and was advised any further abuse would be cause to have Ms. Hisey placed on the first step of Christiana Care's discipline policy. R. at 41. Terri Eastburn was verbally disciplined for her phone use by Ms. Fitzgerald. R at. 111. Lastly, Melinda Fitzgerald discussed with Stacie Lovett her excessive

simply to punish her for refusing to move to a different position as requested by her immediate supervisor. But, unfortunately for Ms. Wilson, “[t]he test for ‘just cause’ for termination in this context does not include any consideration of the discipline other employees received.”³⁰ Each case is to be assessed on its own merits, and not compared to other cases.³¹ Thus, while Ms. Wilson asserts that Christiana Care disciplined her more severely than other employees who committed the same violations, the Board was not required to address this assertion in determining that Christiana Care had just cause to terminate.³²

In addition, even if the claimant’s assertions were true, which the Court does not believe is supported by the record, this does not provide justification for her to continue to violate company policy, particularly when she has been advised of the

phone use and the policy of Christiana Care. R. at 49.

³⁰*Smoot v. Comcast Cablevision*, 2004 WL 2914287, at *4 (Del. Super. Ct. 2004).

³¹*Ingram v. Barretts Bus. Serv.*, 2001 WL 1482451, at * 2 (Del. Super. Ct.) (Appellant argued he was treated differently than the other two employees, but the Court rejected this argument since each “case must be judged on its own merits, not compared with other cases which are not a part of this record.”).

³²However, some evidence was presented regarding other employees’ similar conduct and discipline, and the Board determined there was not sufficient evidence to establish that Ms. Wilson was treated more harshly. Specifically, the Board stated, “While the Board can appreciate the fact that the Claimant may have received a more severe discipline for using the phone and internet for personal reasons, as the Referee stated below, the other employees may not have been on final warnings as the Claimant was.” *Wilson v. Christiana Care Health Serv.*, UIAB Hearing No. 159869 (Mar. 15, 2006); R. at 159.

violations and possible consequences. This argument is analogous to one contending that, since everyone is speeding on the interstate, it must be okay for me to speed even though I have been given numerous warnings that such conduct is a violation of law. That defense is unsuccessful in defending a speeding ticket and is equally without merit here. The record reflects substantial evidence to support the Board's conclusion that Christiana Care had just cause to terminate Ms. Wilson, and she is therefore disqualified from the receipt of unemployment benefits pursuant to 19 Del. C. §3314(2).

Conclusion

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

IT IS SO ORDERED.

Judge William C. Carpenter, Jr.