

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHRISTOPHER GIBSON,	§
	§ No. 422, 2010
Claimant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
MERIT EMPLOYEE RELATIONS	§ C.A. No. 09A-05-001
BOARD, ¹	§
	§
Respondent Below-	§
Appellee.	§

Submitted: February 11, 2011

Decided: April 12, 2011

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

ORDER

This 12th day of April 2011, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The claimant-appellant, Christopher Gibson, filed an appeal from the Superior Court’s June 17, 2010 order affirming the April 2, 2009 decision of the Merit Employee Relations Board (the “Board”), which found that Gibson’s employer, the Violent Crimes Compensation Board (the “VCCB”), had just cause to terminate Gibson. We find no merit to the appeal. Accordingly, we affirm.

¹ Although the appellant named the Merit Employee Relations Board as the appellee in this appeal, the real party in interest is the Violent Crimes Compensation Board, the appellant’s former employer and the respondent below.

(2) The record reflects that Gibson was employed as an Investigator II with the VCCB from May 2, 2005 until July 22, 2008, when his employment was terminated. As an Investigator II, Gibson's job was to investigate claims by violent crime victims for lost wages, living expenses and relocation expenses. In 2008, Gibson was assigned the case of Lakeshia Truitt. Truitt, the victim of a shooting by her drug dealer ex-boyfriend, was a witness on behalf of the State at his murder trial. In January 2008, after a witness reported that Truitt's ex-boyfriend had contracted to have her killed, Truitt was placed in protective custody under a material witness warrant and a witness protection agreement with the Delaware Department of Justice ("DOJ"). She was placed under constant police supervision and was living in a confidential location.

(3) In April 2008, following her ex-boyfriend's murder trial, Truitt was no longer subject to the material witness warrant. However, she continued to be subject to the agreement with the DOJ, continued to live in a confidential location, and was working with the DOJ on relocating to another state. Stephanie Hamilton, the Domestic Violence Coordinator for the Wilmington Police Department, was in charge of providing services to Truitt during this period. On January 30 and June 2, 2008, Hamilton confirmed with Gibson that Truitt continued to be subject to the witness protection agreement with the DOJ. On February 27, 2008, Andrea Lewis,

the Support Services Administrator for the VCCB, also confirmed Truitt's status with Gibson.

(4) On June 9, 2008, Gibson and other VCCB staff were scheduled to present a workshop at a domestic violence conference in Rehoboth Beach. Gibson asked Truitt to speak at the conference. Subsequently, Marianne Kenville-Moore, the Director of Victim Services for the DOJ and a conference participant, visited Truitt to discuss her relocation plan. Truitt mentioned that Gibson had asked her to participate in the conference, but agreed with Kenville-Moore, at least at that point, that it would be unwise to do so. At that time, Truitt's ex-boyfriend had been convicted of first degree murder and was awaiting sentencing. Gibson did not inform VCCB's Executive Director, Barbara Brown, that he had contacted Truitt about appearing at the conference.

(5) When Kenville-Moore arrived at the conference location, she learned that Gibson had brought Truitt with him. Believing that it was inappropriate and dangerous for Truitt to appear in public at the conference, Kenville-Moore escorted Truitt back to the hotel where Truitt remained until the workshop was concluded. GPS records from Gibson's State-owned vehicle revealed that Gibson had been in the vicinity of Truitt's confidential residence without authorization on the day of the conference.

(6) On June 13, 2008, Brown and a human resource representative from VCCB met with Gibson to discuss the incident with Truitt. Gibson confirmed that he had never told Brown about his plan to bring Truitt to the conference. When asked where he had met Truitt to take her to the conference, Gibson replied that he had met her in the VCCB parking lot. He was shown the GPS records, which directly contradicted his statement. The GPS records also revealed that Gibson had used the State-owned vehicle for his own personal business during the week of the conference in violation of the policy applicable to State-owned vehicles.

(7) On July 22, 2008, following a pre-termination meeting at the VCCB, Gibson was terminated from his employment. In her termination letter, Brown listed the following grounds for Gibson's termination from employment with the VCCB: jeopardizing the safety of a VCCB client; jeopardizing the safety of the attendees of a VCCB event; failing to obtain approval from a supervisor to bring a client to a VCCB event; providing false statements to a supervisor regarding the pick-up location of the client; transporting a non-State employee in a State vehicle; utilizing a State vehicle for personal business; and failing to return a State vehicle in a timely fashion.

(8) In July 2008, Gibson filed a merit system grievance appeal with both the Office of Management and Budget (the "OMB") and the Merit Employee Relations Board (the "Board"). The OMB denied the appeal on August 19, 2008.

The Board, following a two-day hearing, issued its written decision denying the appeal on April 2, 2009. Gibson then appealed to the Superior Court, which affirmed the Board's decision by order dated June 17, 2010.

(9) Under Rule 12.1 of the Board's Merit Rules,² an employee may be terminated for "just cause." "Just cause" requires a showing that a) the employee has committed the charged offense; b) the employee has been afforded the due process specified in the Merit Rules; and c) the penalty is appropriate to the circumstances.³ In an appeal to the Superior Court from a decision of the Board, the Superior Court's function is to correct any errors of law as well as determine whether the record contains substantial evidence to support the Board's findings of fact and conclusions of law.⁴

(10) This Court utilizes the same standard of review on appeal from the Superior Court's affirmance of a decision of the Board. Specifically, this Court reviews decisions of the Board "to determine whether [it] acted within its statutory authority, whether it properly interpreted and applied the applicable law, whether it conducted a fair hearing and whether its decision is based on sufficient substantial

² The purpose of the Merit Rules is to "establish for this State a system of personnel administration based on merit principles" Del. Code Ann. tit. 29, §5902.

³ See *Avallone v. State/Dep't of Health and Soc. Servs.*, --- A.3d ----, 2011 WL 250994, at *2 (Del. Jan. 27, 2011).

⁴ *Delaware Alcoholic Beverage Control Comm'n. v. Newsome*, 690 A.2d 906, 910 (Del. 1996).

evidence and is not arbitrary.”⁵ Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”⁶ Questions of law are reviewed *de novo*.⁷

(11) In this appeal, Gibson claims that the Board’s decision should have been reversed by the Superior Court because a) the Board erred by not issuing subpoenas for witnesses and documents as requested by Gibson; b) the Board’s decision was not supported by substantial evidence; c) the Board erred by considering testimony by the Chairman of the VCCB that Gibson had “violated client trust” because that charge was not among the original charges supporting his termination; and d) the Board erred by imposing a penalty that was not appropriate in the circumstances. To the extent that Gibson fails to present other grounds to support his appeal that were raised previously, those grounds are deemed to be waived and will not be addressed by the Court.⁸

(12) We have carefully reviewed the transcript of the hearing before the Board, the Board’s decision, and the Superior Court’s order affirming the decision of the Board. Because Gibson’s claim that the Board erred by not issuing subpoenas for witnesses and documents was not raised below, we decline to

⁵ *Avallone*, 2011 WL 250994, at *3 (quoting *Hopson v. McGinnes*, 391 A.2d 187, 189 (Del. 1978)).

⁶ *Id.* (quoting *Person-Gaines v. Pepco Holdings, Inc.*, 981 A.2d 1159, 1161 (Del. 2009)).

⁷ *Id.*

⁸ *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993).

consider it for the first time in this appeal.⁹ As for Gibson's remaining claims, we find that the Board acted within its statutory authority, properly interpreted and applied the applicable law, conducted a fair hearing and based its decision that Gibson had been terminated for "just cause" on sufficient substantial evidence. Gibson's claim that the VCCB Chairman's testimony added a basis for termination that was not included in the original charges is not supported by the record. We, therefore, conclude that the Superior Court's affirmance of the Board's decision must, itself, be affirmed.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

⁹ Supr. Ct. R. 8.