

IN THE UTAH COURT OF APPEALS

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JMR Enterprises, Inc. dba)	MEMORANDUM DECISION
Encore Grill,)	(Not For Official Publication)
)	
Petitioner,)	Case No. 20051133-CA
)	
v.)	F I L E D
)	(June 29, 2006)
Workforce Appeals Board,)	
Department of Workforce)	2006 UT App 271
Services; and Nilla C.)	
Sleater,)	
)	
Respondents.)	

Original Proceeding in this Court

Attorneys: Michael R. Sciumbato, Orem, for Petitioner
Suzan Pixton, Salt Lake City, for Respondent
Workforce Appeals Board, Department of Workforce
Services

Before Judges Billings, McHugh, and Orme.

PER CURIAM:

JMR Enterprises, Inc. (Encore Grill) petitions for judicial review of the decision of the Workforce Appeals Board of the Department of Workforce Services (the Appeals Board). Encore Grill argues that the Appeals Board erred in determining that Nilla C. Sleater was discharged without cause from her employment at Encore Grill. We affirm.

Encore Grill alleges that there was insufficient evidence to support the Appeals Board and the Administrative Law Judge's (ALJ) findings that Encore Grill discharged Sleater. It argues that the evidence supported a finding that Sleater voluntarily quit her employment. A review of the record reveals that Encore Grill and Sleater gave differing accounts of the events leading to the termination of her employment. "This court grants great deference to an agency's findings, and will uphold them if they are 'supported by substantial evidence when viewed in light of the whole record before the court.'" Albertsons, Inc. v. Department of Employment Sec., 854 P.2d 570, 575 (Utah Ct. App.

1993) (citation omitted). Further, "[w]e defer to the Board's assessment of conflicting evidence. . . . 'It is the province of the Board, not appellate courts, to resolve conflicting evidence, and where inconsistent inferences can be drawn from the same evidence, it is for the Board to draw the inferences.'" Id. (citation omitted). Sleater's testimony, if believed, was sufficient to support the Appeals Board's finding that Sleater was discharged.

Encore Grill also argues that the Board ignored its own rules in determining that Sleater was discharged. Specifically, it argues that Sleater's termination from her employment should be viewed as a quit because under the administrative rules, a separation is viewed as a quit "if a worker announces an intent to quit but agrees to continue working for an indefinite period as determined by the employer, even though the date of separation was determined by the employer." Utah Admin. Code R.994-405-106(6)(a). However, the record, taken as a whole, reveals that the Appeals Board did not believe that Sleater had ever announced an intent to quit, and thereby never implicated that rule.¹

Further, the Appeals Board's finding that Sleater was discharged necessarily indicates that Sleater did not voluntarily quit her employment with Encore Grill. The Appeals Board was not required to make a specific finding that Sleater did not voluntarily quit her employment.

The evidence also supports the Appeals Board's findings and subsequent conclusion that Sleater was not terminated with "just cause." To establish that a person is discharged with just cause, a party must demonstrate that the employee's conduct that led to her discharge involved culpability, knowledge and control. See Bhatia v. Department of Employment Sec., 834 P.2d 574, 577 (Utah Ct. App. 1992). Each such element is described by the Utah Administrative Code. See Utah Admin. Code R.994-405-202 (2005). Because the Appeals Board and the ALJ believed the testimony of Sleater, the record is sufficient to support the Appeals Board's finding that Encore Grill failed to prove culpability, knowledge

¹It also appears that Encore Grill makes this argument for the first time on appeal. At the hearing before the ALJ, Encore Grill alleged that Sleater gave two weeks notice. If such was the case, Sleater's separation would have been viewed as a discharge. See Utah Admin. Code R.999-405-106(6)(b) (stating that a separation is a discharge if employee gives a date certain for separation and is relieved of her responsibilities before that date). It was not until this appeal that Encore Grill argued that Sleater announced an intent to quit but to continue working for an indefinite period.

and control. Accordingly, the conclusion that Sleater was not terminated for just cause is supported by the record and will not be disturbed on appeal. See Albertsons, Inc., 854 P.2d at 575.

Affirmed.

Judith M. Billings, Judge

Carolyn B. McHugh, Judge

Gregory K. Orme, Judge