

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

CARLET D. WARD,)	
)	C.A. No. 08A-08-002 (JTV)
Appellant,)	
)	
v.)	
)	
)	
UNEMPLOYMENT INSURANCE)	
APPEAL BOARD and FEDERATED)	
RETAIL HOLDING, INC. 40049354 DBA)	
MACY'S DEPARTMENT STORE,)	
)	
Appellees.)	

Submitted: May 12, 2009

Decided: August 31, 2009

Carlet D. Ward, *Pro Se*.

Gregory B. Williams, Esq., and Sophia Siddiqui, Esq., Fox Rothschild, LLP,
Wilmington, Delaware. Attorneys for Appellees.

*Upon Consideration of Appellant's Appeal from
Unemployment Insurance Appeal Board*

AFFIRMED

VAUGHN, President Judge

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OPINION

Carlet D. Ward appeals a decision from the Unemployment Insurance Appeal Board disqualifying her from receiving unemployment benefits after finding that she was terminated for just cause pursuant to 19 *Del. C.* § 3314(2).¹

FACTS

The appellant was an employee of Macy's Retail Holdings, Inc., a Division of Macy's Inc. from October 19, 2006 to February 29, 2008 as a sales associate.²

On February 21, 2008, the appellant worked a day shift split between two departments. At the end of her shift, she returned to her initial assigned area to retrieve her belongings. She discovered that her coat, which she had hung on a rack behind her assigned cash register in a Macy's bag, was not there. Believing it had been stolen, she called her supervisor, Group Sales Manager Mindy Parker. Ms. Parker explained that she had placed the coat in the stockroom not knowing to whom it belonged. The appellant countered that Ms. Parker knew it was the appellant's coat. She abruptly hung up the telephone on Ms. Parker and went to the stockroom to get her coat.

Ms. Ward located her coat in the stockroom with a note inquiring about its

¹ The relevant portion of 19 *Del. C.* § 3314(2) states an individual shall be disqualified for benefits. . .:

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.

² The caption incorrectly refers to the appellee as Federated Retail Holding, Inc. 40049354 DBA Macy's Department Store.

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status since it was a Macy's brand with no receipt nor tags attached. Ms. Parker met the appellant in the stockroom to explain her actions and discuss the appellant's telephone conduct. She opened the door, allowed the door to close behind her, stood blocking the door and began to explain her actions. The appellant did not engage Ms. Parker in conversation but, instead, directed Ms. Parker to the human resources manager. After Ms. Ward put on her coat, she walked towards the sole stockroom door and reached past Ms. Parker to the doorknob. She pushed Ms. Parker out of the way and pinned her behind the door. She then pushed it harder against her. Another manager heard yelling from the stockroom and witnessed Ms. Ward's departure. The appellant testified that she pushed her [Parker] out of the way. Parker and a colleague also claim Ward yelled a profane phrase after walking past them.

On February 25, 2008, Ward filed a report against Parker alleging false imprisonment due to the stockroom incident. On February 28, 2008, Ward was verbally terminated for violating company policy. Macy's has a zero tolerance policy on physical assault. The policy is included in a handbook provided to all associates at orientation.³ Ward signed paperwork indicating that she received the policy.

On March 24, 2008, the Delaware Department of Labor Division of Unemployment Insurance Claims Deputy found that the appellant was discharged from employment without just cause. Through its agent TALX UCM Services, Inc., UC eXpress, Macy's appealed the Claims Deputy's decision. The Appeals Referee

³ Macy's employee handbook includes a Standards of Conduct which states, "Certain rules relating to theft, dishonesty, the safety of our customers and coworkers, as well as rules designed to maintain the integrity of our reputation, may prompt immediate termination, without warning or progressive discipline."

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reversed the Claims Deputy's decision on May 1, 2008, finding that the appellant had been discharged for just cause and was disqualified from receiving unemployment insurance benefits. The appellant appealed the decision to the UIAB, who held a hearing on July 23, 2008. The UIAB affirmed the Appeals Referee's decision on July 28, 2008, finding that the appellant was discharged due to insubordination and a physically violent act.⁴ The appellant filed this appeal on August 7, 2008.

STANDARD OF REVIEW

In reviewing the decisions of the UIAB, the court must determine whether its findings and conclusions are free from legal error and supported by substantial evidence in the record.⁵ Substantial evidence means such relevant evidence that a reasonable mind might accept as adequate to support a conclusion.⁶ The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.⁷ It is within the exclusive purview of the UIAB to judge witness

⁴ 19 Del. C. §§ 3314(2), 3315(3). The UIAB decision became final on August 7, 2008.

⁵ *Unemployment Ins. Appeal Bd. v. Martin*, 431 A.2d 1265, 1269 (Del. 1981); *Prof'l Ambulance Serv., Inc. v. Unemployment Ins. Appeal Bd.*, 1991 WL 68965, at *1 (Del. Super. Apr. 25, 1991); 19 Del. C. § 3323(a) ("In any judicial proceeding under this section, the findings of the [UIAB] as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the Court shall be confined to questions of law.").

⁶ *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battisa v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super. Ct. 1986), *appeal dismissed*, 515 A.2d 397 (Del. 1986).

⁷ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

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credibility and resolve testimony conflicts.⁸ The reviewing court merely determines if the evidence is legally adequate to support the agency's factual findings.⁹ The court considers the record in the light most favorable to the party prevailing below.¹⁰

DISCUSSION

Employees discharged for just cause are disqualified from receiving unemployment insurance benefits.¹¹ Just cause is a "willful or wanton act in violation of either the employer's interests, or of the employee's duties, or of the employer's expected standard of conduct."¹² "Wilful and wanton conduct is that which is evidenced by either conscious action, or reckless indifference leading to a deviation from established and acceptable workplace performance; it is unnecessary that it be founded in bad motive or malice."¹³ The employer has the burden to show that the

⁸ *Starkey v. Unemployment Ins. Appeal Bd.*, 340 A.2d 165, 166 (Del. Super. 1975), *aff'd*, 364 A.2d 651 (Del. 1976)(TABLE); *Coleman v. Dep't of Labor*, 288 A.2d 285, 287 (Del. Super. 1972).

⁹ *Majaya v. Sojourners' Place*, 2003 WL 21350542, at *4 (Del. Super. June 6, 2003); 19 Del. C. § 3323(a)(providing that, absent fraud, the factual findings of the Board shall be conclusive and the jurisdiction of a reviewing court shall be confined to questions of law).

¹⁰ *Pochvatilla v. U.S. Postal Serv.*, 1997 WL 524062, at *2 (Del. Super. June 9, 1997).

¹¹ 19 Del. C. § 3314(2) states, in relevant part, "An individual shall be disqualified for benefits . . . [f]or the week in which the individual was discharged from the individual's work for just cause . . ."

¹² *Krouse v. Cape Henlopen Sch. Dist.*, 1997 WL 817846, at *3 (Del. Super. Oct. 28, 1997); *Avon Products, Inc. v. Wilson*, 513A.2d 1315, 1317 (Del. 1987); *Starkey*, 340 A.2d at 167.

¹³ *Barton v. Innolink Sys.*, 2004 WL 1284203, at *1 (Del. Super. May 28, 2004)(quoting *MRPC Fin. Mgmt. LLC v. Carter*, 2003 WL 21517977, at *4 (Del. Super. June 20, 2003)).

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employee acted willfully or wantonly out of compliance with the employer's policy.¹⁴

The employer must also show that the employee received notice of the policy and possibility of their deviation leading to termination.¹⁵

Violation of a reasonable company rule may constitute just cause for discharge if the employee is aware of the policy and the possible subsequent termination.¹⁶ This Court uses a two-step analysis to evaluate just cause: "1) whether a policy existed, and if so, what conduct was prohibited, and 2) whether the employee was apprised of the policy and if so, how was he made aware."¹⁷ Knowledge of a company policy may be established by evidence of a written policy, such as an employer's handbook¹⁸ or by previous warnings of objectionable conduct.¹⁹

The appellant contends the UIAB reached an erroneous decision due to gross discrimination, false pretense and incorrect explanation of the incident. She concedes the occurrence of the incident; the contrast between the appellant's version and Parker's version occurs in the interpretation. The appellant's contentions reach

¹⁴ *Id.*

¹⁵ *Id.* ("just cause does include notice to the employee that further poor behavior or performance may lead to termination.").

¹⁶ *McCoy v. Occidental Chem. Corp.*, 1996 WL 111126, at *3 (Del. Super. Feb. 7, 1996).

¹⁷ *Id.* See *Parvusa v. Tipton Trucking Co., Inc.*, C.A. No. 92A-12-009 (Del. Super. Dec. 1, 1993).

¹⁸ *Id.* (citing *Honore v. Unemployment Ins. Appeal*, C.A. No. 92A-12-007 (Del. Super. Oct. 5, 1993)(Steele, R.J.).

¹⁹ *Id.*

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beyond the scope of the Court's review.

The appellant's insubordination and assault clearly violated Macy's employee standard of conduct. Macy's has demonstrated the existence of their zero tolerance assault policy and the appellant's knowledge of it.²⁰ I am persuaded that the UIAB's conclusion that the appellant was discharged for just cause is reasonable, supported by substantial evidence and free of legal error. UIAB arrived at its conclusion after considering witness testimony, the Appeals Referee hearing transcript and evidence as well as additional information submitted by the appellant. There is substantial evidence on record to support the UIAB's determination that the appellant was terminated in accordance with Macy's zero tolerance assault policy of which she was aware. Since the UIAB's decision is supported by substantial evidence and is free of legal error, it is *affirmed*.

/s/ James T. Vaughn, Jr.

President Judge

oc: Prothonotary
cc: Order Distribution File

²⁰ See *Pochvatilla*, 1997 WL 524062, at *3 ("A single incident of misconduct may justify termination after a company policy against the conduct is clearly communicated to the employee.").