**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

| | | |
|---|---|---|
| TESLA INDUSTRIES, INC., | ) | |
| | ) | |
| Appellant, | ) | |
| | ) | |
| V. | ) | C.A. No. N14A-03-005-CEB |
| | ) | |
| THE UNEMPLOYMENT INSURANCE APPEAL BOARD, DELAWARE DEPARTMENT OF LABOR, AND EUGENIA D. WALLS, | ) | |
| Appellees. | ) | |

Submitted: September 23, 2016
Decided: January 5, 2017

*Upon Consideration of*
*Appellant's Appeal of Decision of the*
*Unemployment Insurance Appeal Board,* **AFFIRMED.**

**ORDER**

This 5th day of January, 2017, upon consideration of the appeal of Tesla Industries, Inc. ("Tesla" or "Employer") from the decision of the Unemployment Insurance Appeal Board to award benefits to Eugenia D. Walls ("Ms. Walls") and finding that Tesla failed to establish that Ms. Walls was terminated for just cause, it appears to the Court that:

1. Ms. Walls was employed by Tesla Industries, Inc. beginning September 7, 2010 as a benefits coordinator. On March 7, 2011, Ms. Walls was terminated from her employment. The reasons for the termination were stated in a letter dated March 9, 2011, listing a series of separate instances of alleged "gross misconduct" by Ms. Walls.

2. This case has been before the Court before and its procedural history is a bit more detailed than most. The dispute began when Ms. Walls filed a claim for unemployment benefits on April 1, 2011. Benefits were denied by the Claims Deputy on May 2, 2011. Ms. Walls appealed, and a hearing before a Referee was held on June 2, 2011. The Referee awarded Ms. Walls unemployment benefits as a result of that hearing. The Referee's decision was appealed by Tesla to the Unemployment Insurance Appeal Board ("Board"). A hearing was held before the Board on August 24, 2011, with the Board reaching a split decision, resulting in the Referee being affirmed and sustaining the award of unemployment benefits to Ms. Walls.

3. Tesla appealed the Board's decision to Superior Court. On August 1, 2013, the Hon. Charles Toliver found that the Referee did not engage in the proper legal test to determine if "just cause" for termination existed. The case was remanded to the Board for consideration using the proper legal standard.

4. In a discharge case, the sole question before the Board is whether employer had just cause to terminate a claimant. The employer has the burden of proving by a preponderance of the evidence that the claimant was terminated for "just cause."[1] A "preponderance of the evidence" is defined to mean "the side on which the greater weight of evidence is found."[2] "Just cause" is defined as "a willful 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."[3]

5. In his Order of remand, Judge Toliver outlined the appropriate two-step analysis to be applied in determining whether the termination for violation of an employer policy constitutes "just cause." Under Delaware Law, violation of a company policy may constitute just cause for termination, but the employee must be given clear and unambiguous notice that such violation may result in termination.[4] First, the Board is to determine whether a policy existed, and if so,

---

[1] *Wilson v. Unemployment Ins. Appeal Bd.*, 2011 WL 3243366 (Del. Super. Ct. July 27, 2011) (citing cases).

[2] *Taylor v. State*, 748 A.2d 914, 914 (Del. 2000).

[3] *Majaya v. Sojourner's Place*, 2003 WL 21350542, at *4 (Del. Super. Ct. June 6, 2003)(quoting *Avon Prods., Inc. v. Wilson,* 513 A.2d 1315 (Del. 1986)).

[4] *See Wilson,* 2011 WL 3243366, at *8 (citation omitted).

what conduct was prohibited. Second, the Board must determine whether or not the employee was apprised of the policy, and if so, how she was made aware.[5]

6. On remand, the Referee's hearing held on November 14, 2013 was limited to whether a policy existed and whether Ms. Walls was apprised of such policy. After applying the two-step analysis, the Referee again found in favor of Ms. Walls, awarding her unemployment benefits. Tesla once again appealed. At a hearing on February 26, 2014, the Board found in Ms. Walls' favor and again awarded benefits. Tesla appealed the Board's finding a second time, bringing the case before this Court for the second time.

7. Pursuant to 19 *Del. C.* § 3323(a), "the findings of the Unemployment Insurance Appeal Board 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." Therefore, on appeal, the Court will not "weigh the evidence, determine questions of credibility, or make its own factual findings."[6] This Court may not draw its own conclusions as to the credibility of particular witnesses or the factual circumstances surrounding the case.[7] Rather, the Court's function is limited to review for legal error and to "determine whether or not there was

---

[5] *Thornton v. Unemployment Ins. Appeal Bd.,* 1996 WL 658816, *Wesley College v. Unemployment Ins. Appeal Bd.,* 2009 WL 5191831, at *7 (Del. Super. Ct. Dec. 31, 2009).

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

[7] *Smoot v. Comcast Cablevision,* 2004 WL 2914287, at *2 (Del. Super. Ct. Nov. 16, 2004).

substantial competent evidence to support the finding of the Board, and, if so, to affirm the findings of the Board."[8] "Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion."[9]

8. Ms. Walls is charged with violating company policies in a series of separate incidents of alleged "gross misconduct," which include not writing termination letters when instructed to do so, going into a locked cabinet, uploading personnel files to a public in house server and not wearing appropriate footwear and safety goggles when walking through the production area.

9. In addition to the evidence presented to the Appeals Referee, the Referee's Decision and the Employer's Notice of Appeal, which was reviewed and made part of the record, the Board also heard further testimony at a hearing held on February 26, 2014 from counsel for the Employer, Krista Butler, counsel for Ms. Walls, Susan Flood, and from Ms. Walls. While counsel for Employer argued that even a single violation of a written policy constitutes just cause for termination, counsel for Ms. Walls argued that the Employer policies were vague and Ms. Walls was never given a written warning that she could be terminated for violating policy. Ms. Walls testified that she was not made aware of any infractions that she committed.

---

[8] *Unemployment Ins. Appeal Bd. v. Div. of Unemployment Ins.*, 803 A.2d 931, 936 (Del. 2002).

[9] *Willerton v. Unemployment Ins. Appeal Board*, 2015 WL 151044, at *2 (Del. Super. Jan. 8, 2015).

10. Through the evidence and testimony before it, the Board determined that the only incident relevant to Ms. Walls' termination was the final incident in which Ms. Walls violated the Employer's dress code policy. To the extent that Employer relied on other incidents for termination of Ms. Walls' employment, the Board declined to consider them. The Board found that while policies existed and Ms. Walls was aware of them, the Employer deviated from their "Intolerable Offense" policy by not suspending or terminating Ms. Walls for any of these prior incidents. Therefore, the Board found the only relevant incident for the purposes of the two-step analysis to be Ms. Walls violating the Employer's dress code policy by wearing high heeled shoes in a manufacturing area.

11. The Board found that at the time Ms. Walls wore inappropriate footwear in the manufacturing area, she was both aware and in violation of the Employer's dress code policy, which read, "For safety reasons shoes with open toes, sides and high heels cannot be worn while working in the Electronic Assembly, Mechanical Assembly/Repair and Machine Manufacturing and Shipping and Receiving Departments." The policy also stated, "Violations of the Dress Code Policy will be addressed through the progressive disciplinary action process as stated in the Employee Handbook." While satisfying the first step of the analysis by finding that a policy did exist, the Board concluded that at no point did the Employer

proffer a copy of the progressive discipline policy, and at no point was Tesla able to proffer a signed acknowledgement of Ms. Walls receiving that policy.

12. By not providing Ms. Walls with a copy of the progressive discipline process, the Employer failed to satisfy the second step of the analysis, as Ms. Walls was never made aware of the policy.

13. The record reveals that upon applying the two-step analysis, the Board did not abuse its discretion in denying the appeal, finding that the Tesla failed to satisfy just cause and granting Ms. Walls' unemployment benefits.

14. Based on the foregoing, the Court is satisfied that the Board applied the correct legal standards in finding that Ms. Walls is qualified to receive unemployment benefits and that its decision is supported by substantial evidence. Accordingly, the decision of the Board is **AFFIRMED.**

**IT IS SO ORDERED.**

Judge Charles E. Butler