

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

MURPHY MARINE SERVICES,)
Appellant,)
) C.A. No. N16A-06-004 CEB
v.)
)
UNEMPLOYMENT INSURANCE)
APPEAL BOARD AND)
ERIK MORROW)
Appellee.)

Date Decided: April 6, 2017

*Upon Consideration of Appeal
from the Unemployment Insurance Appeal Board.*
AFFIRMED.

This 6th day of April, 2017, upon consideration of the appeal of Murphy Marine Services (the “Appellant”) from the decision of the Unemployment Insurance Appeal Board (the “Board”), to reverse the determination that Claimant was fired with just cause, it appears that:

1. Erik Morrow (“Claimant”) was employed by Appellant from February 13, 1995 until February 5, 2016. On February 5, 2016, while operating a top pick vehicle in the Port of Wilmington, Claimant was involved in an accident which resulted in \$30,000 in damage and caused a power outage at the port. Claimant’s employment was terminated as a result.

2. Upon termination from his employment, Claimant filed a claim for unemployment benefits with the Delaware Department of Labor on February 21, 2016 which was immediately referred to an Appeals Referee (the "Referee"). After a hearing on March 28, 2016, the Referee issued its determination, finding that Claimant was fired with just cause, disqualifying him from receiving unemployment insurance benefits pursuant to 19 *Del. C.* § 3314(2). The Referee held that "Claimant knowingly operated a machine in an area that he was aware it should not be operated and operated it without a safety precaution of which he was aware was needed. . . Such conduct does not have to be tolerated by an Employer."

3. On April 1, 2016, Claimant filed a timely appeal. The basis for the appeal was that "the Referee was unaware that the employer told me to go to an area that the machine shouldn't be." At the hearing on April 27, 2016, the Board heard testimony from both Claimant and a representative for Appellant, Stephanie Malone. Before the Board, Claimant testified that he had been using the machinery involved in the accident for three months and stated, "After the accident, I went and looked up OSHA regulations and the company violated OSHA regulations by not providing a spotter for me. But before . . . this I didn't know – I was unaware of it because the training that [employer] had gave me didn't talk about OSHA regulations with . . . what you should do and not do." Claimant offered further detailed testimony to the Board regarding the machinery

he was operating on the day of the accident, the events leading up to the accident, OSHA regulations and what could have been done differently to avoid the accident. The Board then heard testimony from Ms. Malone on behalf of the Appellant. Ms. Malone testified that Claimant had been in a previous accident and would have received a warning, but was unable to provide the date of the previous accident or produce evidence of a warning or an incident report.

4. The Board found that while Claimant's actions on the date in question constituted negligence, absent evidence that Claimant was involved in a prior accident involving "similar conduct" about which Claimant was warned, his actions did not rise to the level of negligence required to find "just cause" for termination. The Board found that there was no evidence before it to show that this was an intentional act by Claimant or done with reckless indifference to the consequences to rise to the level of "just cause."

5. Appellant filed a timely appeal to this Court arguing that Appellant was not given the opportunity to supplement the record with evidence of Claimant's prior accident and warning. Appellant further argues that it was unaware that Claimant's prior warning would be an issue on appeal, and that the Board should have either: (1) accepted the Appellant's testimony regarding the Claimant's prior accident as true or (2) determined there was insufficient evidence

regarding the Claimant's previous accident and remanded the claim back to the Referee.

6. This Court's review of Claimant's appeal is limited to a review for legal error and a determination whether "substantial evidence exists to support the Board's findings of fact and conclusions of law."¹ "Substantial evidence is that relevant evidence that a reasonable mind might accept as adequate to support a conclusion."² The Board's decision is reviewed *de novo* for errors of law.³ In the absence of legal error, the Board's decision is reviewed for abuse of discretion.⁴ The Court will find an abuse of discretion when the Board's decision "exceeds the bounds of reason in view of the circumstances and has ignored recognized rules of law or practice so as to produce injustice."⁵ On appeal, the Court will not "weigh the evidence, determine questions of credibility, or make its own factual findings."⁶

7. When an employee is terminated for misconduct, the burden rests with the employer to establish by a preponderance of the evidence that the

¹ *Arrants v. Home Depot*, 65 A.3d 601, 604 (Del. 2013).

² *Wyatt v. Rescare Home Care*, 81 A.3d 1253, 1258-59 (Del. 2013) (internal citations omitted).

³ *Arrants*, 65 A.3d at 604.

⁴ *Id.*

⁵ *McIntyre v. Unemployment Ins. Appeal Bd.*, 2008 WL 1886342, at *1 (Del. Super. Apr. 29, 2008) *aff'd*, 962 A.2d 917 (Del. 2008).

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

employee was terminated for just cause.⁷ “Just cause” is defined as a “willful or wanton act in violation of either the employer’s interest, or of the employee’s duties, or of the employee’s expected standard of conduct.”⁸ While “willful” implies “actual, specific or evil intent” the term “wanton” requires only “heedless, malicious or reckless [action] ... [and] does not require actual intent to cause harm.”⁹ However, a negligent act can also give rise to a finding of just cause. For negligence to rise to the level of just cause, the employer must show: (1) the employee received a prior warning about similar conduct and (2) “there is no excuse, or justification, because of the type of work or the employee’s abilities.”¹⁰

8. This Court's role in reviewing an appeal from the Board is limited to an evaluation of the record, in the light most favorable to the prevailing party, to determine if it includes substantial evidence that a reasonable mind accepts as adequate support for the conclusion and is free from legal error.¹¹ Questions of credibility are exclusively within the province of the Board that heard the

⁷ *Wilson v. Unemployment Ins. Appeal Bd.*, 2011 WL 3243366, at ¶ 7 (Del. Super. Ct. Jul. 27, 2011)(citing cases).

⁸ *Majaya v. Sojourner’s Place*, 2003 WL 21350542, at *4 (Del. Super. Ct. June 6, 2003).

⁹ *Id.*

¹⁰ *Kingswood Community Center v. Chandler*, 1999 WL 167772, at *3 (Del. Super. Ct. Jan 19, 1999).

¹¹ *Johnson v. TMSI*, 2008 WL 3271162, at *1 (Del. Super. July 30, 2008).

evidence.¹² 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.¹³ If the record supports the Board's findings, the Court must accept those findings even though the Court might reach a different conclusion on the facts presented.¹⁴

9. There is no reason before the Court to find that the Board abused its discretion in reversing the decision of the Referee. The Board's decision did not exceed the bounds of reason in view of the circumstances and the Board has not ignored recognized rules of law or practice so as to produce injustice. The Board heard testimony from both Claimant and Appellant, and Appellant failed to offer any evidence regarding a prior accident involving "similar conduct" to the conduct that led to Claimant's termination. While the Appellant argues on appeal that the Board should have accepted the Appellant's testimony regarding the Claimant's prior accident as true, it is the duty of the Board, not this Court, to determine questions of credibility and make factual findings. Further, not every act that violates the employee's duties or expected standard of behavior is necessarily a willful or wanton act, and while the conduct of the Claimant was clearly a

¹² *Michale A. Sinclair, Inc. v. Riley*, 2004 WL 1731140, at *2 (Del. Super. July 30, 2004).


¹³ *Id.*

¹⁴ *Johnson*, 2008 WL 3271162, at *1.

deviation from his expected standard of conduct, the Board found no evidence that it was willful or wanton.

10. The Court appreciates that the employee's error caused substantial damage and his termination was certainly within the reasonable responses by the employer. But the unemployment insurance code and the Court's limited review on appeal asks only whether, viewing the record in the light most favorable to the prevailing party, the Board abused its discretion in reversing the decision of the Referee and that its decision is supported by substantial evidence. The Court finds the Board acted properly and accordingly, the decision of the Board finding Mr. Morrow qualified to receive unemployment benefits must be **AFFIRMED**.

IT IS SO ORDERED.



Judge Charles E. Butler