IN THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR KENT COUNTY

CLAUDIA STEADMAN,	:	
	:	C.A. No: 13A-07-002 (RBY)
Appellant,	:	
	:	
v.	:	
	:	
WALMART,	:	
	:	
Appellee.	:	

Submitted: March 12, 2014 Decided: May 7, 2014

Upon Consideration of Appellant's Appeal from the Unemployment Insurance Appeal Board AFFIRMED

ORDER

Claudia Steadman, *Pro se*.

Wal-Mart Inc., *Pro se*.

Young, J.

SUMMARY

This is an appeal from a decision of the Unemployment Insurance Appeal Board (the "Board") denying unemployment benefits to former employee of Wal-Mart, Claudia Steadman ("Appellant"), in connection with the termination of her employment from Wal-Mart (herein "Wal-Mart" or "employer"). The issue before the Court is whether Wal-Mart had sufficient just cause to discharge Appellant from her employment. After a month's leave of absence from work, Appellant received warning from her employer that she would be terminated if she did not return to work by the end of January, 2013.

When Appellant did not return to work by Wal-Mart's specified deadline, Appellant violated her employer's expected standard of conduct. Therefore, Wal-Mart had sufficient just cause to terminate Appellant's employment, disqualifying Appellant from receiving unemployment benefits. The Board's decision is supported by substantial evidence, and is free from legal errors. Thus, the decision of the Board is **AFFIRMED**.

FACTS AND PROCEDURAL POSTURE

Beginning in November, 2011, Appellant worked for Wal-Mart as a full-time cashier in the Pharmacy Division, making \$8.10 per hour. Appellant's last day working for Wal-Mart was on December 21, 2012. Before Appellant's last day working for Wal-Mart, she had been given two weeks notice to vacate her home. Due to her lack of time to find a new place to live on such short notice, Appellant elected rented a room in the home of a friend. That house was two hours away from the Wal-Mart where she worked. Appellant decided that it was not feasible

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for her to drive that distance to work.

Subsequently, Appellant asked the manager of Wal-Mart if she could have a leave of absence for the month of January, 2013, which the manager granted. Appellant had hoped that, during her leave of absence, she could transfer to a Wal-Mart location closer to her present residence. Soon after Appellant applied for a transfer to a new Wal-Mart location, Wal-Mart had a job hiring freeze. Appellant asked the first Wal-Mart location for a second month's leave of absence with the hope that the job hiring freeze would cease. The first Wal-Mart location refused to grant her a second leave of absence. In addition, the manager of the first location informed her that she would be terminated at the end of January. By the end of January, Appellant was in fact terminated by the first Wal-Mart location's manager for failing to return from her leave of absence.

On March 7, 2013, the Claims Deputy of the Delaware Department of Labor Unemployment Division found that Appellant voluntarily quit her employment without good cause, and was disqualified from the receipt of unemployment benefits. On March 14, 2013, Appellant sent a request notification and letter, appealing the Claims Deputy's decision. On April 1, 2013, an Administrative Hearing before Appeals Referee, Dina M. Burge, took place. Wal-Mart failed to attend the hearing.

In her decision, the Appeals Referee found that Appellant's failure to return to work from her leave of absence constituted misconduct. Although the Claims Deputy initially found that Appellant had voluntarily given up her employment, the Appeals Referee found that Appellant had been terminated from her

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employment at Wal-Mart with just cause, disqualifying her from receiving unemployment benefits.

On April 16, 2013, Appellant sent a letter appealing the Appeals Referee's decision to the Board. On June 26, 2013, an Administrative Hearing was held before the Board, in which the Board affirmed the decision of the Appeals Referee. On July 7, 2014, Appellant filed an appeal, challenging the decision of the Board, to this Court. On December 20, 2014, Appellant filed an Opening Brief.

STANDARD OF REVIEW

For administrative board appeals, this Court is limited to reviewing whether the Board's decision is supported by substantial evidence and free from legal errors. Substantial evidence is that which "a reasonable mind might accept as adequate to support a conclusion." It is "more than a scintilla, but less than preponderance of the evidence." An abuse of discretion will be found if the board "acts arbitrarily or capaciously... exceeds the bounds of reason in view of the circumstances and has ignored recognized rules of law or practice so as to produce injustice." Where an agency has interpreted and applied a statute, the court's

¹ 29 Del C. §10142(d); Avon Prods. v. Lamparski, 203 A.2d 559, 560 (Del. 1972).

² Olney v. Cooch, 425 A.2d 610, 614 (Del. Super. 1981) (citing Consolo v. Fed. Mar. Comm'n, 383 U.S. 607, 620 (1966)).

³ *Id.* (quoting *Cross v. Calfano*, 475 F.Supp. 896, 898 (D. Fla. 1979).

⁴ Delaware Transit Corp. v. Roane, 2011 WL 3793450, at *5 (Del. Super. Aug. 24, 2011) (quoting Straley v. Advanced Staffing, Inc., 2009 WL 1228572, at *2 (Del. Super. April 30, 2009).

review is *de novo*.⁵ In the absence of an error of law, lack of substantial evidence or abuse of discretion, the Court will not disturb the decision of the board.⁶

DISCUSSION

In her Opening Brief, Appellant argues that she was led to believe that she had been approved for a transfer to another Wal-Mart location prior to the hiring freeze. That, she felt, meant that she did not voluntarily quit her position at Wal-Mart. However, any approval was conditional upon an interview with the new Wal-Mart location's manager of the Pharmacy Division. Following Appellant's meeting with this manager, Appellant was not hired. Appellant asserts that she was left with no choice but to quit her job at the first Wal-Mart location, because the two hour commute from her new place of residence was not feasible.

The issue before the Board was whether Appellant's employer had sufficient just cause to discharge Appellant from her employment. In a discharge case, the employer must show by a preponderance of the evidence that the claimant was discharged for just cause in connection with her work. Just cause exists where the claimant commits a willful or wanton act, or engages in a willful or wanton pattern of conflict in violation of the employer's interest, her duty to the employer or her

 $^{^{5}}$ Lehman Brothers Bank v. State Bank Commissioner, 937 A.2d 95, 102 (Del. 2007).

⁶ Anchor Motor Freight v. Ciabattoni, 716 A.2d 154, 156 (Del. 1998).

 $^{^7}$ Wilson v. Unemployment Ins. Appeal Bd., 2011 WL 3243366, at Paragraph 7 (Del. Super. Ct. Jul. 27, 2011).

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expected standard of conduct.8

The evidence presented by Appellant to the Board was substantially the same as that offered to the Appeals Referee. Despite Appellant's intentions of finding another Wal-Mart location to work, she did voluntarily quit working for her employer. Appellant failed to return from her leave of absence after she was warned that she would be terminated if she did not return by the end of January, 2013.

Appellant's failure to return from her leave of absence became grounds for terminating her employment, according to Delaware law. Generally, poor attendance will support a finding of "just cause" for the discharge of an employee under unemployment compensation law. Further, a factor utilized in determining just cause for discharging an employee is whether the employee received a prior warning of the termination. 10

In this matter, Appellant received a prior warning from her employer that she would be terminated if she did not return to work by the end of January, 2013. While it was inconvenient for Appellant to commute two hours to her employment from where she resided. Her residence selection and her decision to forego the prolonged commute were her own elections. When Appellant did not return to

⁸ 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).

⁹ 19 *Del.C.* § 3315(2); *Ortiz v. Unemployment Ins. Appeal Bd.*, 305 A.2d 629 (Del. Super. Ct. 1973), reversed 317 A.2d 100.

¹⁰ Tuttle v. Mellon Bank of Delaware, 1995, 659 A.2d 786 (Del. Super. Ct. 1995).

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work by the end of January, she violated her employer's expected standard of conduct. Therefore, Wal-Mart had sufficient just cause to terminate Appellant's employment. Accordingly, Appellant is disqualified from receiving unemployment benefits. The Board's decision is supported by substantial evidence, and is free from legal errors.

CONCLUSION

For the foregoing reasons, the decision of the Board is **AFFIRMED**.

IT IS SO ORDERED.

/s/ Robert B. Young
J.

RBY/lmc

oc: Prothonotary

cc: Ms. Steadman, Pro se

Walmart Inc.

UIAB

Opinion Distribution

File