

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

BAYHEALTH MEDICAL CENTER)
Appellant,)
v.) C.A. No. N13A-03-002
)
PATRICIA BRENNEMAN, AND)
UNEMPLOYMENT INSURANCE)
APPEAL BOARD)
Appellees.)
)
)

Submitted: August 20, 2013

Decided: November 27, 2013

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

OPINION

David H. Williams, Esquire, James H. McMackin, III, Esquire, Morris James LLP,
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Attorneys for Appellant.

Patricia A. Brenneman, 507 Crestview Drive, Milford, DE 19963, *Pro Se*
Appellee.

RAPPOSELLI, J.

INTRODUCTION

This is an appeal by Bayhealth Medical Center (“Employer”) from a decision of the Unemployment Insurance Appeal Board (“the Board”) in which the Board affirmed a determination that Patricia Brenneman, Appellee (“Claimant”) was entitled to unemployment benefits because Employer failed to meet its burden that Claimant engaged in willful or wanton misconduct. This Court finds that there was substantial evidence to support this finding and the decision of the Board is, therefore, **AFFIRMED**.

FACTUAL AND PROCEDURAL BACKGROUND¹

Claimant was employed as a nurse by Employer from March 23, 1973 through her termination on August 10, 2012. On August 10, 2012, Claimant was the “charge nurse” in a unit of Employer’s Women’s Services Department. At approximately 8:45 a.m., Claimant received a phone call notifying her that there was a warrant for her arrest for nonpayment of a loan and that she would be served at her place of employment by local police in two hours if the situation was not corrected. She was extremely upset about the call and believed that she had 45 minutes to correct the situation or face an arrest. Before leaving her employment,

¹Recitation of the facts and procedural history is adopted from the Decision of the Unemployment Insurance Appeal Board on Appeal from the Decisions of Dina M. Burge, *Patricia Brenneman v. Bayhealth Medical Center*, Docket No. 40863679 (February 5, 2013).

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Claimant asked one nurse to cover her patients, assigned another nurse to take over as charge nurse, and left a message for an on-call nurse to come in to work.

Claimant checked her patients before leaving but did not document their charts. A replacement nurse arrived fifteen to thirty minutes after Claimant left. At some point after leaving, Claimant found out that the phone call was a scam. Claimant returned to work at approximately 12:45 p.m. As a result of the above incident, Claimant was discharged.

Claimant filed a claim for unemployment insurance benefits on September 2, 2012. On September 27, 2012, the Claims Deputy found that Claimant had been discharged by Employer without just cause and was not disqualified from receiving employment insurance benefits pursuant to 19 Del. C. § 3314(2). This decision was appealed by Employer on October 4, 2012. On October 25, 2012, Claimant and an Employer representative participated in an Administrative Hearing before an Appeals Referee. The Appeals Referee affirmed the decision of the Claims Deputy that Claimant had been discharged without just cause in connection with her work.

On November 8, 2012 Employer appealed the decision of the Appeals Referee to the Board. Following a February 5, 2013 hearing, the Board affirmed

the decision of the Referee and found that, under the circumstances, Employer failed to demonstrate that Claimant engaged in willful or wanton misconduct.

On March 7, 2013, Employer filed a Notice of Appeal with this Court and submitted its Opening Brief on July 9, 2013. Claimant filed an Answering Brief on July 22, 2013. Employer filed a Reply Brief on August 12, 2013.

DISCUSSION

I. *Standard of Review*

The scope of review of this Court in an appeal from a decision of the Board is limited to a determination of whether the Board's decision is supported by substantial evidence and free from legal errors.² Substantial evidence requires such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.³ The Court does not weigh the evidence, determine questions of credibility, or make factual findings.⁴ Rather, when making factual determinations, the Court defers to the experience and specialized competence of the Board.⁵

² *City of Newark v. Unemployment Ins. Appeal Bd.*, 802 A.2d 318, 323 (Del. Super. 2002).

³ *Avon Products, Inc. v. Wilson*, 513 A.2d 1315, 1317 (Del.1986).

⁴ *Arrants v. Home Depot*, 65 A.3d 601, 605 (Del. 2013).

⁵ 29 Del. C. § 10142(d); *Histed v. E.I. DuPont de Nemours & Co.*, 621. A.2d 340, 342 (Del. 1993).

II. *Merits of this Appeal*

The Board's Decision affirmed a determination that Claimant was not disqualified from the receipt of unemployment insurance benefits pursuant to a finding that Employer failed to meet its burden that Claimant was discharged from her employment for just cause.⁶ The term "just cause" denotes a willful or wanton act in violation of either the employer's interest, or the employee's expected standard of conduct.⁷ Willful or wanton conduct is "that which is evidenced by either conscious action, or reckless indifference leading to a deviation from established and acceptable workplace performance."⁸ In a termination case, the employer has the burden of proving just cause.⁹

Employer argues that there was just cause to terminate Claimant, and that the Board lacked substantial evidence and committed legal error in holding the contrary. In support of its position, the Employer points to evidence that Claimant left work without informing a supervisor, failed to properly document her patient's

⁶ *Avon Products, Inc.*, 513 A.2d at 1317; see 19 Del. C. § 3314.

⁷ *Moeller v. Wilmington Sav. Fund Soc'y*, 723 A.2d 1177, 1179 (Del.1999); *Tuttle v. Mellon Bank of Del.*, 659 A.2d 786, 789 (Del.Super.1995); *Abex Corp. v. Todd*, 235 A.2d 271, 271 (Del.Super.1967).

⁸ *MRPC Fin. Mgmt. LLC v. Carter*, 2003 WL 21517977, at *4 (Del. Super.2003).

⁹ *Country Life Homes, Inc. v. Unemployment Ins. Appeal Bd.*, 2007 WL 1519520, at *3 (Del.Super.2007); *Carter*, 2003 WL 21517977, at *4.

charts, and remained absent for approximately four hours, and that this conduct amounted to “[w]illful neglect in the performance of assigned duties,” in violation of Employer’s Corrective Action Policy. Employer additionally argues the discharge was independently warranted as Claimant’s conduct violated the terms of Claimant’s progressive discipline status.¹⁰ The Board disagreed with the Employer and accepted the Referee’s finding that Claimant believed she was handling an emergency situation and, therefore, the conduct did not rise to the level of “willful or wanton misconduct”.

Employer asks this Court to reverse the Board’s decision based, in part, on the holding in *Sharkawy v. Placers, Inc.*¹¹ and suggests that Claimant was unable to prove that a true emergency existed to justify her sudden departure from work. In *Sharkawy*, the claimant was discharged after she left her place of employment after receiving harassing phone calls made by her estranged husband. The *Sharkawy* Court did not rule on whether a true emergency existed but rather, remanded the case to the Board based on a finding that that the Board had not adequately considered whether a true emergency exception applied.¹² The *Sharkawy* Court emphasized that, on remand, the Board should apply an objective

¹⁰ Claimant’s discipline status stemmed from a February 11, 2011 suspension following an attendance issue.

¹¹ *Sharkawy v. Placers, Inc.*, 1995 WL 465196 (Del. Super. July 31, 1995).

¹² *Id.*

assessment of the true emergency argument, noting that “[i]f an employee *unreasonably* decides that he or she is justified in walking off the job, that is willful misconduct.”(emphasis added)¹³

The circumstances of this case are distinguishable from *Sharkawy*. First, the Board in *Sharkawy* found that the conduct of Claimant in that case rose to the level of willful and wanton misconduct in denying Claimant her benefits, and then failed to apply the factors to determine if a true emergency existed to justify her conduct. Here, the Board determined that the Claimant did not engage in willful and wanton misconduct. Toward that determination, the Board’s decision relied on evidence that Claimant believed there was a warrant for her arrest that needed immediate attention to justify her need to leave work. The Board further relied on testimony that Claimant took steps to minimize any adverse effects to Employer resulting from her emergency departure.

Despite Employer’s criticism of how Claimant handled the above circumstances, this Court “can only look at the record and see whether it is legally sufficient to support the Board’s determination that [Employer] failed to sustain its burden of showing just cause.”¹⁴ This Court finds that the record provides

¹³ *Id.* at *2.

¹⁴ *Delstar Indus., Inc. v. Delaware Dep’t of Labor Div. of Unemployment Ins. Appeal Bd.*, 1997 WL 27109 (Del. Super. Jan. 8, 1997).

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substantial evidence to support the Board's Decision that claimant was discharged without just cause.

For the reasons discussed above, the Board's Decision is AFFIRMED.

IT IS SO ORDERED.

/s/Vivian L. Rapposelli
Judge Vivian L. Rapposelli

cc: Prothonotary