

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

JUDY MOORE, :  
 : C.A. No: K14A-02-005 RBY  
\_\_\_\_\_Appellant, :  
 :  
 v. :  
 :  
NEW HUB, LLC, :  
 :  
 Appellee. :  
 :

*Submitted: August 13, 2014*  
*Decided: September 16, 2014*

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

**ORDER**

Judy Moore, *Pro se.*

New Hub, LLC, *Pro se.*

Stacey Stewart, Esquire, Deputy Attorney General, Department of Justice,  
Wilmington, Delaware for Unemployment Insurance Appeal Board.

Young, J.

### **SUMMARY**

Judy Moore (“Appellant”), appeals the decision of the Unemployment Insurance Board (“the Board”) disqualifying her from receiving unemployment benefits. Appellant worked as a housekeeping manager for New Hubb, LLC (“New Hub”) at the Hampton Inn of Middletown. After a series of mishaps involving, among other things, hostile and public altercations with other employees, Appellant was terminated from her post. The Department of Labor (“the Department”) issued a decision disqualifying Appellant from receiving benefits, finding that she had been terminated for just cause. The Appeals Referee reversed and on appeal, the Board reversed the decision of the Referee, affirming the Department. The Court finds that the Board’s decision was properly founded in substantive evidence and was free from legal error. The decision of the Board is **AFFIRMED**.

### **FACTS AND PROCEDURAL POSTURE**

Appellant was previously employed as a housekeeping manager at the Hampton Inn of Middletown, where she had worked for five consecutive years from July 2008 to October 2013. Appellant’s difficulties began in July of 2013, when she was officially reprimanded on the 19<sup>th</sup> by the General Manager, Linda Dunn, for gossiping. Appellant further instructed that gossiping about other workers was against company policy, and that she would be terminated if such behavior continued. On September 26 and 27, 2013, Appellant was suspended for failing to perform her duties adequately.

Upon returning to work on September 28, 2013, Appellant engaged in an altercation with two of the other employees named Renee Rothwell and Sunshine

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Shampo. The parties dispute whether it was Appellant or the other employees who instigated the confrontation, however, all agree that the genesis of the dispute was Appellant's allegation that Ms. Rothwell had derisively spoken about Appellant's suspension. Appellant further alleges that other co-workers, including Ms. Shampo, had posted similarly offensive comments on the social media website Facebook. One other Hampton Inn employee, Charlotte Jones, claims to have witnessed the confrontation, alleging that Appellant followed Ms. Rothwell around the workplace verbally abusing her.

On September 30, 2013, the three hotel employees who witnessed and/or had been involved in the altercation informed Ms. Dunn of their version of events. Each had made statements that the Appellant was the instigator of the row. Ms. Dunn determined that Appellant was in violation of her July 19, 2013 warning and two employee handbook rules: rule number 3, prohibiting discussion of personal matters at work, and rule number 11, prohibiting disrespectful behavior. Ms. Dunn terminated Appellant on October 1, 2013.

The Department issued a decision disqualifying the Appellant from receiving unemployment insurance benefits on October 29, 2013, finding that Appellant had been dismissed for just cause. On appeal, the Referee reversed the decision of the Department, holding that the evidence against Appellant was largely based on hearsay. At the hearing, only Ms. Dunn was interviewed. Her information regarding Appellant's behavior on September 28, 2013, stemmed primarily from the statements of three hotel employees who were not present at the hearing.

New Hubb appealed the decision of the Referee to the Board. On February 5,

2014, the Board issued its Opinion, this time siding with New Hubb, and reversing the Referee. Notably, the three hotel employees whose testimony constituted the bulk of the evidence against Appellant, appeared as witnesses at this hearing, The Board held that Appellant was discharged for just cause, and as such her benefits were properly disqualified.

### **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.<sup>1</sup> Substantial evidence is that which "a reasonable mind might accept as adequate to support a conclusion."<sup>2</sup> It is "more than a scintilla, but less than preponderance of the evidence."<sup>3</sup> 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."<sup>4</sup> Where an agency has interpreted and applied a statute, the court's review is *de novo*.<sup>5</sup> In the absence of an error of law, lack of substantial evidence or abuse of discretion, the

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

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

<sup>3</sup> *Id.* (quoting *Cross v. Calfano*, 475 F.Supp. 896, 898 (M.D. Fla. 1979)).

<sup>4</sup> *Delaware Transit Corp. v. Roane*, 2011 WL 3793450, at \*5 (Del. Super. Ct. Aug. 24, 2011) (quoting *Straley v. Advanced Staffing, Inc.*, 2009 WL 1228572, at \*2 (Del. Super. Ct. Apr. 30, 2009)).

<sup>5</sup> *Lehman Brothers Bank v. State Bank Commissioner*, 937 A.2d 95, 102 (Del. 2007).

Court will not disturb the decision of the board.<sup>6</sup>

### **DISCUSSION**

\_\_\_\_\_ Where an employee is terminated for just cause, 19 *Del. C.* § 3314(2) provides that this employee will be disqualified from receiving unemployment benefits. In analyzing whether Appellant’s termination was for just cause, the Board must determine whether Appellant engaged in “a willful or wanton act or pattern of conduct in violation of the employer’s interest, employee’s duties, or the employee’s expected standard of conduct.”<sup>7</sup> “Wanton connotes a heedless, malicious or reckless act, but does not require actual intent to cause harm.”<sup>8</sup> Willful “implies actual, specific or evil intent.” As New Hubb contends that Appellant violated explicit company policies, the Board must inquire first, if there was a policy in place and second, if Appellant was aware of this policy and the possibility of termination.<sup>9</sup>

Inquiring into the record before it, the Board determined that Appellant became aware of the company policies in July 2008, the date of her employment. Further, the Board concluded that on July 13, 2013, Appellant had been informed that her conduct violated company policies and that continuing in such behavior would result in her discharge. Finally, drawing from the testimony of Appellant’s former co-workers, the

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<sup>6</sup> *Anchor Motor Freight v. Ciabattoni*, 716 A.2d 154, 156 (Del. 1998).

<sup>7</sup> *Majaya v. Sojourner’s Place*, 2003 WL 21350542, at \*4 (Del. Super. Ct. Jun. 6, 2013) (internal quotations omitted).

<sup>8</sup> *Boughton v. Div. of Unemployment Ins. Of Dept. Of Labor*, 300 A.2d 25, 26 (Del. Super. Ct. 1972).

<sup>9</sup> *Wilson v. Unemployment Ins. Appeal Bd.*, 2011 WL 3243366, at \*2 (Del. Super. Ct. Jul. 27, 2011).

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Board determined that Appellant violated the company policies by her conduct on September 28, 2013, when she proceeded to berate her colleagues openly and vociferously. The Board found this to be the wanton actions constituting just cause for Appellant's dismissal.

Appellant's case is factually rich, and it is from these weighty materials that the Board made its ruling. It is not the role of this Court to act as fact-finder in an appeal from an administrative board.<sup>10</sup> The decision of the Board is to be affirmed, unless the Court finds that its opinion is against the great weight of evidence.<sup>11</sup> Although Appellant's testimony concerning the September 28<sup>th</sup> incident is in direct conflict with the testimony of her three co-workers, it was within the Board's discretion to "weigh the evidence presented and resolve conflicting testimony and issues of credibility."<sup>12</sup>

The Court finds that the Board properly investigated the various sources of evidence presented it, and that it based its decision on substantial evidence. Three employees of New Hubb testified to Appellant's improper behavior in the workplace.<sup>13</sup> Moreover, it is undisputed that Appellant had previously been warned

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<sup>10</sup> *Bernhard v. Phoenix Mental Health*, 2004 WL 304358, at \*1 (Del. Super. Ct. Jan. 30, 2004).

<sup>11</sup> *Hall v. City of Wilmington*, 1978 WL 186829, at \*2 (Del. Super. Ct. Jan. 27, 1978).

<sup>12</sup> *Bernhard*, 2004 WL 304358, at \*1.

<sup>13</sup> The concerns raised by the Referee regarding the hearsay nature of the evidence against Appellant are dispelled by the fact that the three testifying colleagues appeared as witnesses before the Board. The Court further notes that administrative boards are "not constrained by the rigid evidentiary rules which govern jury trials," and "hearsay evidence is generally admissible..." *Baker v. Hospital Billing & Collection Serv., Ltd.*, 2003 WL 21538020, at \*3 (Del. Super. Ct. Apr. 30, 2003).

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by her supervisor that the exact conduct, in which she is alleged to have engaged, would result in her dismissal. Appellant was on notice both of her employer's policies and the possibility of termination.

In addition, the Board grounded its disqualification of Appellant upon the governing statute 19 *Del. C.* § 3314(2). Where there is just cause for discharge, an applicant is ineligible for unemployment benefits. Finding that the termination was just, the Board properly followed the statute in denying Appellant's application for benefits. The Court finds no error of law in the Board's determination.

### **CONCLUSION**

From the extensive record, the Board, in its permitted discretion, concluded that Appellant's behavior on the date in question was in direct violation of her employer's enumerated policies. This was a reasonable finding based upon substantial evidence. Moreover, the ultimate decision to disqualify Appellant from receiving unemployment benefits was based upon the controlling statute and hence free from legal error. The decision of the Board is **AFFIRMED**.

**IT IS SO ORDERED.**

/s/ Robert B. Young  
J.

RBV/lmc  
oc: Prothonotary  
cc: Stacey Stewart, Esq.  
Ms. Moore, *Pro se*  
New Hub, LLC, *Pro se*  
Opinion Distribution  
File