

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

<b>LAVELLE BELISLE,</b>	:	
	:	<b>C.A. No: 13A-01-003 (RBY)</b>
_____ <b>Appellant,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>PERDUE FARMS,</b>	:	
	:	
<b>Appellee.</b>	:	

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*Submitted: July 1, 2013  
Decided: October 2, 2013*

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

**ORDER**

Lavelle Belisle, *pro se*.

Lori A. Brewington, Esq., Richards, Layton & Finger, Wilmington, Delaware for Appellee.

Young, J.

### **SUMMARY**

Lavelle Belisle (“Claimant”) was discharged because she acquired four active disciplinary records within six months. Perdue Farms (“Perdue” or “Employer”) asserts that this is the maximum allowed by policy. The issue in this case is whether Perdue established just cause for the Claimant’s discharge. For the reasons stated below, this Court, finding no error, **AFFIRMS** the Unemployment Insurance Appeal Board’s (“Board”) decision to deny Appellant Belisle’s unemployment insurance benefits.

### **PROCEDURAL POSTURE**

On August 3, 2012, Claimant appealed an Incident Review Board (“IRB”) decision discharging her from employment, which denied her unemployment insurance benefits. After a hearing on September 5, 2012, the Appeals Referee reversed the IRB’s decision. The Appeals Referee found that Claimant was discharged by her Employer without just cause in connection with her work. Therefore, the Claimant was qualified for the receipt of unemployment benefits pursuant to Section 3314(2), Title 19, Delaware Code. She was found eligible to receive benefits for each week of unemployment insurance benefits claimed for which the division determines she meets the eligibility requirements of Section 3315, Title 19, Delaware Code.

On January 2, 2013, Perdue appealed the decision to the Board. The Board considered the evidence presented by the Appeals Referee, reversing the decision of the Referee. The Board found that Claimant *was* discharged for just cause in connection with her work, thereby disqualifying her from the receipt of

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unemployment benefits. On February 18, 2013, Claimant requested an appeal of the Board's decision.

### **FACTS**

Claimant worked as the Deboning Team Leader for Perdue from November 14, 2008 until July 13, 2012, when she was discharged on the basis of having accumulated multiple disciplinary violations. Claimant received her first disciplinary action on February 3, 2012. On February 14, 2012, Claimant received a second written discipline for policy violations. On February 21, 2012, Claimant received an extraordinary offense discipline for continued poor attendance and failure to follow instructions. On July 5, 2012, Claimant was issued a five day suspension pending termination, as she had accrued her fourth discipline. Claimant's final discipline was determined to have been the result of her failure to complete tasks that were assigned to her on June 13, 2012.

In an email, she was directed to execute an assignment by the IRB. Claimant was to retrain her floor associates on June 15, 2012. Claimant admitted that she failed to follow that directive, because, she stated, she failed to read the email. Claimant had failed to complete the task assigned to her on June 13, 2012, though she was on notice through the Employer's policies and handbook, for which she signed a receipt, that she could be terminated on a fourth offense. Claimant had reached four active disciplinary records within six months, which was the maximum allowed by Employer. Ultimately, Claimant's employment was terminated by the Employer for misconduct on July 13, 2012.

### **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> Questions of law will be reviewed *de novo*.<sup>5</sup> 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.

### **DISCUSSION**

Perdue argues that because Claimant was unemployed by reason of discharge for just cause in connection with work, she was ineligible for unemployment benefits. Section 3314(2), Title 19, Delaware Code, states:

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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. 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 (D. Fla. 1979)).

<sup>4</sup> *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)0.

<sup>5</sup> *Anchor Motor Freight v. Ciabattoni*, 716 A.2d 154, 156 (Del. 1998).

An individual shall be disqualified for benefits:

(2) For the week in which the individual was discharged from the individual's work for just cause in connection with the individual's work and for each week and thereafter until the individual has been employed in each of four subsequent weeks (whether or not consecutive) and has earned wages in covered employment equal to not less than 4 times the weekly amount. Wage credits earned in such work, if from employment under this title in the employ of any employer liable for assessments under § 3348 of this title, shall not constitute employer's benefits wages in connection with §§ 3349-3356 of this title. Any employer liable for reimbursement payments in lieu of assessments shall reimburse the Unemployment Compensation Fund in accordance with § 3345 of this title when an individual becomes eligible for benefits upon separation from a subsequent employer.

19 *Del. C.* § 3314(2).

Perdue argues that there is substantial evidence in the record, allowing the Board to find that Claimant failed to establish by a preponderance of the evidence that she was eligible for unemployment benefits. Perdue claims that it is undisputed that Claimant was unemployed, because she engaged in willful and wanton misconduct when she violated company policy and directive. This resulted in a fourth and final discipline consistent with the Employer's progressive disciplinary procedure.

Opposing that, Claimant states that she was targeted by upper management, specifically Chris Ricks, on numerous occasions. In fact, she was moved by upper management from the Deboning Department entirely and from under Chris Ricks

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management due to previous unfair acts by management. During her time supervising the Deboning area, her detailed reports exceeded the expectations of upper management. Prior to Claimant's move back to Deboning under Chris Ricks, Claimant moved throughout the Milford plant and managed several departments under several different upper managers. Claimant excelled and did not receive any write ups until she was moved into Deboning under the management of Chris Ricks.

Claimant alleges that Human Resource manager, Chris DelCastillo, lead the Board to believe that discipline policy section 109 was in the Employee Handbook, which was signed by Claimant prior to or after becoming a supervisor in 2010 on November 14, 2008. Apparently, however, it was not. Nor was policy 109 signed by Claimant prior to or after becoming a supervisor in 2010. Claimant contends that, according to HR policy 109, step one is merely corrective counseling. The written warning of provision IV of the same policy states that "Attendance discipline is a separate system with separate documentation." The first two disciplinary records were based on a violation of the Attendance policy. Therefore, Claimant argues that her attendance violations did not count towards the four disciplinary records she accrued within the sixth month time period.

The Disciplinary Action section of the handbook lists four steps in the disciplinary process: corrective counseling, written warning, suspension, and discharge. On February 3, 2012, the Claimant signed a Disciplinary Record for a first written warning. On February 14, 2012, the Claimant signed a memo from Edgardo Torres, Debone Unit Leader, regarding lateness. On February 21, 2012,

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the Claimant signed a Disciplinary Record for a suspension due to continued poor attendance. The memo to the Claimant from Mr. Torres attached to that Disciplinary Record warned the Claimant that if she failed to follow the action plan set out as a result of the suspension or if she continued to exhibit poor attendance and failed to follow Torres' instructions, she would be terminated.

It is true that Section IV under the Discipline Section indicates that attendance discipline is a separate system with documentation, but the policy does not explicitly state that attendance discipline does not count towards an accumulation of disciplinary records in general. Claimant was afforded the benefit of each step of the Disciplinary Process: corrective counseling, written warning, suspension, and discharge. By the time she entered the suspension stage, she had clearly been put on notice of that policy. When Claimant did not follow upper management's directive to execute a training on July 13, 2012, she violated Employer's policies, justifying termination.

Therefore, Perdue established just cause for Claimant's discharge. This Court finds no error and no reason to disturb the decision of the Board.

### **CONCLUSION**

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

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**IT IS SO ORDERED.**

/s/ Robert B. Young

J.

RBY/lmc

oc: Prothonotary

cc: Counsel

Ms. Lavelle Belisle, *pro se*

UIAB

Opinion Distribution

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