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

WILLIAM REEVES Appellant,	)	
v.	)	C.A. No. 05A-10-008-PLA
CONMAC SECURITY Appellee.	)	

Submitted: February 1, 2006
Decided: February 21, 2006

UPON APPEAL OF A DECISION FROM THE
UNEMPLOYMENT INSURANCE APPEAL BOARD
AFFIRMED.

William Reeves, Wilmington, Delaware, *pro se*.

Robert C. McDonald, Wilmington, Delaware, Attorney for Appellee.

ABLEMAN, JUDGE.

William Reeves ("Appellant") has appealed from the decision of the Unemployment Insurance Appeal Board of the State of Delaware ("UIAB" or "Board") wherein the Board affirmed the decision of the Appeals Referee that Reeves had been discharged for "just cause" and, therefore, is disqualified from receiving unemployment benefits pursuant to 19 Del.C. § 3315(2). Upon review of the parties' submissions and the record below, the Court concludes that the Board's decision should be affirmed.

Procedural History

Reeves was hired by Conmac Security in July of 2004 and terminated from his employment on January 21, 2005. Reeves filed an application with the Department of Labor for unemployment compensation effective January 23, 2005, claiming that he had been employed by Conmac Security, Inc. from July 1, 2004 until January 21, 2005. On February 16, 2005, the Claims Deputy found that Reeves had been terminated for "just cause" and was thereby disqualified from receiving benefits.

Reeves appealed the foregoing decision to the Appeals Referee on February 22, 2005. After considering evidence presented at a March 14, 2005 hearing, the Referee held that Reeves was discharged from his work with Conmac Security for just cause in connection with his work.

Reeves filed an appeal of the Referee's decision to the Unemployment Insurance Appeals Board. Following a hearing on September 16, 2005, the Board adopted the Referee's findings of fact and affirmed the Referee's decision denying benefits, thus precipitating the filing by Reeves of the instant appeal on October 26, 2005 to the Superior Court.

Statement of Facts

Mr. Reeves was employed by Conmac Security from July 1, 2004 until January 21, 2005 as a full-time security officer. Reeves' first assignment for Conmac was to provide security at the Wilmington Riverfront. During the few months that he worked at that location he was absent from his post on several occasions, resulting in several write-ups, a counseling session, and reassignment to the Brandywine Town Center.

At the Town Center, employees were either assigned to patrol the parking area by vehicle or to a twelve-hour shift to provide security inside the movie theatre. The employee working inside is entitled to a one-hour break at a time designated by management. During that break, one of the security officers who is on outside detail is then assigned to substitute to cover security inside the cinema complex. That

employee must be trained both for the inside detail and perform well in that position.

On January 21, 2005, Reeves was assigned by Conmac at the Brandywine Town Center on the 4:00 p.m. to 12:00 p.m. shift for crowd control and crime prevention purposes. As part of his assignment that night, Reeves was to arrive on patrol in a certain sector of the Center. Since he met the criteria required, he was also selected to substitute for the officer assigned to the interior of the Regal Cinema during that officer's break.

At some point during this break, the Regal Cinema manager attempted to contact Reeves as he needed security in a congested area of the theatre. Reeves could not be located. Eventually, Reeves was discovered standing outside smoking. When asked what he was doing, Reeves responded sarcastically with the question, "what does it look like I'm doing?" As a result of Reeves being both off his post and disrespectful, the Regal Theatre manager specifically requested of Conmac that Reeves no longer be assigned to work in the theatre.

Upon investigation of the incident, the Conmac Management determined that Reeves was absent from his post without authorization,

a dereliction for which he had previously been warned,[1] and that he had spoken to the Regal manager in an insubordinate manner. As a result Reeves was terminated for being absent from his post and for insubordination.

Reeves' testimony essentially consisted of an after the fact effort on his part to justify all of his infractions. For instance, he testified that he was absent from his post on the Riverfront because he feared for his safety when asked to patrol alone at night. He also maintains that he requested that he not be placed on the twelve-hour shift because, in his opinion, "it was the worst shift." Without any data or corroborating documentation to support his claims, he maintains that "he was always the one to cover the break" although other officers were qualified.

With respect to the incident on January 21, 2005, which resulted in his termination, he stated that he called 10-1 before stepping outside to get some fresh air, which he needed because the smell of popcorn was getting to him. He felt justified in leaving without first getting permission to do so because he had already been on the detail for more than an hour. Reeves admitted that he was having a cigarette when approached by the theatre manager but claims that the manager did not identify himself and, since he did not know him, he was not being insubordinate.

[1]There were several documents presented to the hearing officer and made a part of the record that confirm the prior incidents, warnings, and probationary status at the time of the 1/21/05 incident.

Issues on Appeal

Reeves lost before both the Claims Deputy and the Referee, who found that he had been properly terminated for "just cause" as that term is defined in the statute. Reeves appealed the decision, which resulted in a hearing before the UIAB, and a decision reaffirming that Reeves' had been fired for just cause.

The brief submitted by Reeves in support of his appeal cites no errors of law or fact, nor does it identify any instances of the tribunal's abuse of discretion. The gist of Reeves' claim is that the case is one of "blatant discrimination" because he was being "singled out" to perform certain duties. He claims to have expressed to his supervisor that he was "feeling highly stressed" over "doing coverage in the Regal Cinema" and that his stress was due to the "discriminatory actions" of Conmac. These conclusory allegations are presented without any factual support in the record, and are based entirely on Reeves' own subjective conclusions as to why he believed he was treated unfairly. In essence, there is not even a scintilla of evidence to support Reeves' discrimination or unfair firing claims except for his own unsupported statements.

Also without any factual basis to support his claim, Reeves submits that he was discharged by his employer because it had recently

lost one of its clients, was attempting to cull its staff, and was merely using this incident as a means to make room for other displaced officers.

Conmac did not file an Answering Brief but instead filed a Motion to Dismiss Appeal and Affirm the Decision of the Unemployment Insurance Appeals Board, with a brief supporting memorandum. Conmac contends that Appellant's conduct constituted "just cause" for his discharge from employment and that the Board's decision denying him unemployment insurance benefits on that basis should be affirmed.

Standard of Review

The Delaware Supreme Court and this Court repeatedly have emphasized the limited appellate review of factual findings of an administrative agency.[2] The function of the reviewing Court is limited to determining whether substantial evidence supports the Board's decision regarding findings of fact and conclusions of law, and is free from legal error.[3] Substantial evidence means such relevant evidence as a

[2]*Industrial Rentals, Inc. v. New Castle County Board of Adjustment*, 2000 WL 710087 (Del. Super. Ct.), *rev'd on other grounds*, 776 A.2d 528 (Del. 2001); *Public Water Supply Co. v. DiPasquale*, 735 A.2d 378, 382 (Del. 1998).
[3]DEL. CODE ANN. tit. 29 §10142(d) (1997 & Supp. 2002); *See also Soltz Mgmt. Co. v. Consumer Affairs Bd*., 616 A.2d 1205, 1208 (Del. 1992); *Mellow v. Bd. of Adjustment*, 565 A.2d 947, 954 (Del. Super. Ct. 1988), *aff'd*, 567 A.2d 422 (Del. 1989); *Janaman v. New Castle County Bd. of Adjustment*, 364 A.2d 1241 (Del. Super. Ct. 1976), *aff'd*, 379 A.2d 1118 (Del. 1977); *M.A. Harnett, Inc. v. Coleman*, 226 A.2d 910 (Del. 1967); *Johnson v. Chrysler Corp*., 213 A.2d 64, 66-67 (Del. 1965); *Gen. Motors Corp. v. Freeman*, 164 A.2d 686, 688 (Del. 1960).

reasonable mind might accept as adequate to support a conclusion.[4] Moreover, substantial evidence is that evidence from which an agency fairly and reasonably could reach the conclusion it did.[5] It is more than a scintilla but less than a preponderance.[6] When reviewing a decision on appeal from an agency, the Superior Court does not weigh the evidence, determine questions of credibility, or make its own factual findings.[7] It is well established that it is the role of the Board, not this Court, to resolve conflicts in testimony and issues of credibility.[8] Whenever the factual issues are fairly debatable, it is the duty of the Board to formulate decisions about the weight and credibility of various evidence or testimony presented to the Board.[9] The Court's responsibility is merely to determine if the evidence is legally adequate to support the agency's factual findings.[10] If the agency or Board's decision is supported by *substantial evidence*, the Court must sustain the decision of the Board, even though it would have decided otherwise had it come before it in the first instance.[11]

---

[4]*Streett v. State*, 669 A.2d 9, 11 (Del. 1995); *accord Oceanport Ind. V. Wilmington Stevedores, Inc*., 636 A.2d 892, 899 (Del. 1994); *Battista v. Chrysler Corp*., 517 A.2d 295, 297 (Del. Super. Ct. 1986), *app. dism*., 515 A.2d 397 (Del. 1986); *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981).
[5]*Mellow*, 565 A.2d at 954 (citing *Nat'l. Cash Register v. Riner*, 424 A.2d 669, 674-75 (Del. Super. Ct. 1980)).
[6]*Id*. at 954 (citing *Olney*, 425 A.2d at 614 (Del. 1981)); *Downes v. State*, 1993 WL 102547, at *2 (Del.) (quoting *Breeding v. Contractors-One-Inc*., 549 A.2d 1102, 1104 (Del. Super. Ct. 1988)).
[7]*Johnson*, 213 A.2d at 66.
[8]*See Mooney v. Benson Mgmt. Co*., 451 A.2d 839, 841 (Del. Super. Ct. 1982), *rev'd on other grounds*, 466 A.2d 1209 (Del. 1983).
[9]*Mettler v. Bd. of Adjustment*, 1991 WL 190488, at *2 (Del. Super. Ct.).
[10]DEL. CODE ANN. tit. 29, §10142(d).
[11]*Mellow*, 565 A.2d at 954 (citing *Kreshtool v. Delmarva Power & Light Co*., 310 A.2d 649, 653 (Del. Super. Ct. 1973)); *Searles v. Darling*, 83 A.2d 96, 99 (Del. 1951) (emphasis added to original).

In essence, the Court does not sit as trier of fact, nor should the Court replace its judgment for that of the Board.[12] Specifically, when considering questions of fact, due deference shall be given to the experience and specialized competence of an administrative board.[13] It is the exclusive function of an administrative board to evaluate the credibility of witnesses before it,[14] as evidenced by the weight and reasonable inferences to be drawn therefrom.[15] Thus, the Court determines if the evidence is legally adequate to support the agency's factual findings.[16] Application of this standard "[r]equires the reviewing court to search the entire record to determine whether, on the basis of all the testimony and exhibits before the agency, it could fairly and reasonably reach the conclusion that it did."[17] In this process, "[t]he Court will consider the record in the light most favorable to the prevailing party below."[18] Only where there is no satisfactory proof in support of the factual findings of the Board, may the Superior Court or the Supreme Court overturn it.[19]

[12] *Johnson*, 213 A.2d at 66.
[13] DEL. CODE ANN. tit. 29, §10142(d); *Histed v. E.I. duPont deNemours & Co.*, 621 A.2d 340, 342 (Del. 1993).
[14] *See, e.g., Vasquez v. Abex Corp*., 1992 WL 397454, at *2 (Del.).
[15] *Coleman v. Dep't of Labor*, 288 A.2d 285, 287 (Del. Super., Ct. 1972); *Downes v. State*, 1993 WL 102547, at *2 (Del.).
[16] *Id*.
[17] *Nat'l. Cash Register*, 424 A.2d at 674-75.
[18] *Gen. Motors Corp. v. Guy*, 1991 WL 190491, at *3 (Del. Super. Ct.).
[19] *Johnson*, 213 A.2d at 64.

Discussion

Delaware Courts have consistently defined "just cause" as a "willful or wanton act in violation of either the employer's interests, or of the employee's duties, or of the employer's expected standard of conduct."[20] Willful or wanton misconduct requires a showing that one was conscious of one's conduct and recklessly indifferent to its consequences.[21] In this context, while "willful" has been deemed to imply actual, specific, or evil intent, "wanton" has come to denote needless, malicious, or reckless conduct, but does not require actual intent to cause harm.[22]

Even a cursory review of the issues raised by Appellant in this appeal indicate that they are without factual support and are not grounded in the law.

The Claims Deputy, the Appeals Referee, and the Board all found that Reeves was discharged for "just cause." The Court agrees with these findings, as the facts and testimony contained in the record support these determinations and provides the requisite substantial evidence to affirm the Board's decision.

[20] *Avon Products, Inc. v. Wilson* 513 A.2d 1315, 1317 (Del. 1987); *Starkey v. Unemployment Ins. Appeal Bd*., 340 A.2d 165, 167 (Del. Super. Ct. 1975); *Abex Corp. Todd*, 317 A.2d 100 (1974).
[21] *Coleman*, 288 A.2d at 288.
[22] *Boughton v. Div. of Unemployment Ins. Dept. of Labor*, 300 A.2d 25, 26 (Del. Super. Ct. 1972).

The Court finds that Reeves' conduct on January 21, 2005, especially when considered in the context of his prior incidences of being absent from his post while working at the Riverfront, in leaving the interior of the Regal Cinema constituted "just cause" for his discharge from employment with Conmac.

From the time he was first hired by Conmac Security, Reeves was advised of the work rules that specifically require a security guard to remain at the work assignment when assigned. Reeves was counseled and placed on probation for an unauthorized absence from his workstation at the Riverfront and for being late. His supervisor, Michael Connelly, met with Reeves on August 23, 2004 for the purpose of counseling him in the hopes of seeing improvement. When Reeves was placed on probation he was advised that, if improvement did not occur, further disciplinary action may be taken, including termination.

After the Riverfront Development Corporation notified Conmac Management that it no longer wanted Reeves to work at the Riverfront, Reeves was assigned to the 4-12 shift at the Brandywine Town Center. Reeves was told that he may be required to provide security inside the movie theatre when other employees were on break. Reeves had expressed his dissatisfaction with the assignment at Regal Cinemas but he was advised that if he were needed to fill in for breaks he would have

to do so until properly relieved by the same officer for whom he was substituting. Reeves was also aware that if the break lasted longer than the hour, he was still expected to remain on duty until relieved by the other employee or until given permission by a supervisor. These rules were also provided in writing to Reeves.

Thus, the incident on January 21, 2005 was not an isolated situation. Reeves had been warned of his duties and responsibilities earlier when he had worked at the Riverfront. He had been given a list of rules, which included the requirement that he not leave his post without proper relief or permission, and he had been expressly counseled regarding the areas in which he needed improvement. Indeed, he was on probation for previous similar infractions.

It is against the backdrop of the Appellant's probationary status, his prior incidences of being absent from his post or late, and the fact that he was on notice that continuation of this type of misconduct may lead to dismissal, that Reeves behavior must be viewed. When he again left his post without relief or permission on January 21, 2005, his act of insubordination by speaking sarcastically to the theatre manager gave Conmac little choice but to dismiss him.

I find, as did the Board, that Reeves' acts rose to the level of willful or wanton conduct, providing the employer just cause to discharge him. Reeves was assigned to provide security in a specific location and he was to remain there. He may not have liked the assignment but it was a reasonable one as were the instructions he was given. Reeves was also on notice that this same behavior, i.e. being absent from his post, might lead to dismissal. He was on probation for similar incidents in the past. To make matters worse, his inappropriate response to the theatre manager's question amounted to wanton misconduct, which provided additional just cause for his dismissal.

In assessing the evidence presented and formulating its discussion, the Board considered the factual evidence and performed its exclusive function of reconciling inconsistent testimony and determining the credibility of witnesses.[23] Upon reviewing the Board's decision on appeal, this Court will not weigh the evidence, determine questions of credibility, or make its own factual findings. The Board accepted the employer's testimony and discounted Reeves' testimony to the extent it was either contradictory or stated broad claims unsupported by any objective facts. It is the duty of the Board, and not of this Court, to resolve conflicts in testimony and issues of credibility. In accordance with the Board's finding, the Court holds that the evidence is legally

[23] *Simmons v. Delaware State Hospital*, 660 A.2d 384, 388 (Del. 1995); *Breeding*, 549 A.2d at 1106.

adequate, and overwhelmingly convincing to support the Board's factual finding that Appellant was discharged for "just cause." Absent an abuse of discretion, a reviewing court may not disturb the Board's decision.[24] Since the record does not establish any abuse of discretion on the part of the Board, this Court will not disturb its findings.

Accordingly, this Court holds that the decision of the Unemployment Insurance Appeal Board, finding that Appellant was terminated for "just cause" and denying unemployment compensation benefits pursuant to 19 Del.C. §3315(2) is based upon substantial evidence and free of legal error.

Conclusion

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

IT IS SO ORDERED.

PEGGY L. ABLEMAN, JUDGE

Original to Prothonotary
cc: Mr. William Reeves
Robert C. McDonald, Esquire

[24] *Simmons*, 660 A.2d at 388.