

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
1 THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947
(302) 856-5257

November 26, 2012

Shirley Lockwood
31212 Polly Branch Road
Selbyville, Delaware 19975

Re: *Lockwood v. Pyle Child Development Center, Inc.*;
C.A. No. S12A-04-002

On Appeal from the Unemployment Insurance Appeal Board: AFFIRMED

Date Submitted: November 9, 2012
Date Decided: November 26, 2012

Dear Ms. Lockwood:

Ms. Lockwood appeals a decision of the Unemployment Insurance Appeal Board (“the Board”). Because the Board was unable to reach a majority to either affirm or reverse the Appeals Referee’s decision, the decision in Ms. Lockwood’s case reverted to that of the Appeals Referee, who held Ms. Lockwood had been discharged from her place of employment for just cause in connection with that employment. That decision is affirmed for the reasons set forth below.

Nature and Stage of the Proceedings

Ms. Lockwood was employed by Pyle Child Development Center, Inc. (“Employer”) as a full-time early care & education teacher from February 2010 until she

was terminated on April 7, 2011. A Claims Deputy reviewed Ms. Lockwood's application for unemployment benefits and determined Employer had failed to meet its burden of showing it terminated Ms. Lockwood for just cause in connection with her employment. Employer appealed. A hearing was held before an Appeals Referee on June 15, 2011. Ms. Lockwood did not appear at the hearing but testimony was taken from Employer's representatives. April Kelly, Employer's Director and Curriculum Coordinator, testified to repeated altercations between Ms. Lockwood and other employees. Ms. Kelly stated she had moved Ms. Lockwood from room to room in an effort to accommodate Ms. Lockwood. Beginning in October 2010, Ms. Kelly documented problems concerning Ms. Lockwood's attitude as issues arose. Ms. Lockwood's January 2011 annual evaluation was written by Ms. Kelly and read, in part:

It was brought to my attention in October by a few other employees that [Ms. Lockwood] was watching other classrooms, gossiping a lot about employees, and making negative comments about other employees and her working environment.

...

Due to the lower than usual enrollment in the Infant Room, [Ms. Lockwood] has been assisting in various classrooms on a regular basis. Initially (11/20/10), this presented a great issue between me and [Ms. Lockwood]. Diane [Carey, Employer's Administrator,] was involved and the incident was documented, though [Ms. Lockwood] refused to sign the documentation.

Since there were two incidents in consecutive months, it was mentioned (on 11/30/10) that we may not be the most suitable environment for [Ms. Lockwood]. It was also stated that if we needed to meet again regarding conflict between her and other employees, we would need to part ways.

[Ms. Lockwood] has many wonderful qualities but they are sometimes overshadowed by her difficulty in working with coworkers.

Ms. Lockwood and Ms. Kelly signed this document on January 20, 2011. In March 2011, Ms. Lockwood and another employee, Gail, “exchanged words.” Ms. Kelly met with Ms. Lockwood to discuss the situation and Ms. Lockwood’s general ongoing complaints. On March 31, 2011, Ms. Lockwood, Ms. Kelly and Ms. Carey met again at Ms. Lockwood’s request to discuss the tension between Ms. Lockwood and Gail. Ms. Carey again told Ms. Lockwood that if she was involved in another incident, “we would part ways.” Ms. Kelly moved other employees around in order to accommodate Ms. Lockwood’s problems with Gail and to place Ms. Kelly in another room where she would work with two other employees, Rose and Tierney. Ms. Kelly told the Appeals Referee that Ms. Lockwood expressed displeasure about having to work with Rose because no one else allegedly wanted to work with Rose. Ms. Lockwood testified that she merely stated to Ms. Kelly that she had overheard other employees say they did not want to work with Rose. On April 1st, Ms. Kelly met with Ms. Lockwood, Rose and Tierney to discuss a change in room assignments that was to take place Monday, April 4th, and to “lay out the ground rules.” Ms. Kelly testified that, by Tuesday, tension between Ms. Lockwood and Rose in the room was noticeable. Ms. Kelly emailed Ms. Carey to say they needed a follow-up meeting because the Ms. Lockwood’s attitude had not improved and Ms. Lockwood’s behavior was contributing to a negative and hostile working environment.

On April 6th, Ms. Carey expressed concern that the continued confrontations were not good for the daycare center. Ms. Kelly informed Employer's Board of the continued issues with Ms. Lockwood and it recommended termination.

Ms. Carey also testified at the hearing. She stated Ms. Lockwood was a good worker but has a very negative attitude. In addition, Ms. Carey stated repeated tardiness was an issue.

The Appeals Referee reversed the Claims Deputy's determination and concluded Ms. Lockwood was disqualified from the receipt of benefits because she had been terminated for just cause in connection with her employment.

The Board accepted Ms. Lockwood's reasons for not attending the first hearing and remanded the matter to the Appeals Referee for a new hearing.

The Appeals Referee held a hearing that was attended by both parties on October 11, 2011. At that hearing, Employer largely relied on the testimony presented at the earlier hearing. Ms. Lockwood contested Ms. Kelly's version of events and noted that Ms. Kelly was not present for a number of the incidents she documented in Ms. Lockwood's employee file. Further, Ms. Lockwood noted that Ms. Kelly had written a positive letter of recommendation on her behalf in February of 2009. By way of decision mailed November 29, 2011, the Appeals Referee reversed the Claims Deputy's decision and held Ms. Lockwood was disqualified from the receipt of benefits.

Ms. Lockwood appealed to the Board and a hearing was held on March 6, 2012.

Ms. Lockwood again argued Employer's representatives were not testifying truthfully. She admitted into evidence a team player award and a provider appreciation day thank you card. Annetta Gibbs also testified on behalf of Ms. Lockwood. She stated she never saw Ms. Lockwood reprimanded and that Ms. Lockwood took good care of the children she supervised. Employer rested on the record below.

The four Board members who heard the case were unable to reach a majority to either affirm or reverse the decision below. As a result, the decision reverts to that of the Appeals Referee.¹ Unfortunately, the Board's decision dated March 6, 2012, inaccurately stated that the Appeals Referee's decision *affirmed* the decision of the Claims Deputy and found that Ms. Lockwood was *qualified* for the receipt of benefits. The Board's March 6th decision also cited the Appeals Referee's decision as dated July 28, 2011. Shortly thereafter, the Board realized its error and issued a revised decision, citing the correct date and result of the Appeals Referee's decision. This decision, dated April 3, 2012, also vacated the Board's March 6th decision. Ms. Lockwood appeals.

Discussion

When reviewing the decisions of the Board, this Court must determine whether the Board's findings and conclusions of law are free from legal error and are supported by

¹ *Pulli v. Intervet, Inc.*, 2006 WL 1173901, at *4 (Del. Super.) (citation omitted).

substantial evidence in the record.² “Substantial evidence” is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”³ The Court’s review is limited: “It is not the appellate court’s role to weigh the evidence, determine credibility questions or make its own factual findings, but merely to decide if the evidence is legally adequate to support the agency’s factual findings.”⁴

Section 3314 of Title 19 of the Delaware Code provides, in pertinent part, that one shall be disqualified for unemployment benefits if he has been “discharged from [his] work for just cause in connection with [his] work.”⁵ “Generally, the term ‘just cause’ refers to a wilful or wanton act in violation of either the employer’s interest, or of the employee’s duties, or of the employee’s expected standard of conduct.”⁶ Where a decision to terminate an employee is based upon misconduct, the employer has the burden of establishing the misconduct.⁷ Violation of a reasonable company policy may constitute

² *Unemployment Ins. Appeal Bd. v. Martin*, 431 A.2d 1265 (Del. 1981); *Pochvatilla v. U.S. Postal Serv.*, 1997 WL 524062 (Del. Super.); 19 *Del. C.* § 3323(a) (“In any judicial proceeding under this section, the findings of the [Board] as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the Court shall be confined to questions of law.”).

³ *Gorrell v. Division of Vocational Rehab.*, 1996 WL 453356, at *2 (Del. Super.).

⁴ *McManus v. Christiana Serv. Co.*, 1197 WL 127953, at *1 (Del. Super.).

⁵ 19 *Del. C.* § 3314(2).

⁶ *Abex Corp. v. Todd*, 235 A.2d 271, 272 (Del. Super. 1967).

⁷ *McCoy v. Occidental Chem. Corp.*, 1996 WL 111126, at *3 (Del. Super.).

just cause for termination, provided the employee is aware of the policy and the fact that termination may result for the violation thereof.⁸ Knowledge of a company policy may be established by evidence of a written policy, *i.e.*, an employer's handbook.⁹

With regard to Ms. Lockwood's claim for benefits, the Appeals Referee held:

The claimant was discharged due to repeated problems with negatively [sic] and not being able to get along with other employees. Because the employer is a child care center, it is important for the staff to work together to provide proper care to the children. An employee's inability to work with co-workers is disruptive to the workplace and could have negative repercussions with the children. The evidence in this case clearly shows that there were a number of issues throughout the claimant's employment where she had problems getting along with other employees. There were repeated discussions with the claimant about these problems, it was noted on her annual evaluation, and the claimant was warned that her job could be in jeopardy if things did not change. Because the employer willingly moved the claimant to other areas of the center to work with other employees, the employer was obviously making an effort to work with the claimant and to try to find a place where the claimant could work with no interaction issues. Despite the repeated conversations and the employer's efforts to assist the claimant, the problems continued. Given the numerous discussions with the claimant, her failure to adjust her behavior and find ways to get along with the other staff constitutes willful and wanton misconduct. The employer has met its burden of proving just cause for the claimant's discharge.

On appeal, Ms. Lockwood expresses confusion at the unfortunate typographical errors contained in the Board's March 6th decision. Although that decision stated it was reinstating the Appeals Referee's decision but misstated the substance of that decision, the

⁸ *Burgos v. Perdue Farms, Inc.*, 2011 WL 1487076, at *2 (Del. Super.).

⁹ *Id.*

Board moved in a timely fashion to correct the error. The Board's decision is correct in that the underlying Appeals Referee's determination stands in the event of a "tie" between the Board members' votes. That underlying decision was clear and unequivocal as evidenced not only by the language contained therein but by Ms. Lockwood's decision to appeal it. Although the inaccurate wording in the Board's March 6th decision was indeed confusing, the revised decision served to clarify the Board's ruling. Ms. Lockwood received this revised decision as evidenced by the fact that she attaches a copy of it to her appeal to this Court. There is no error.

Ms. Lockwood also contests the accuracy of the testimony of Employer's representatives. She argues she was unable to prove her case because two of three subpoenaed witnesses did not show at the Board hearing. Ms. Lockwood makes no proffer as to what that their testimony might have been. Unfortunately for Ms. Lockwood, the record reflects a factual dispute that involved the credibility of witnesses, a dispute that the Appeals Referee clearly resolved against Ms. Lockwood. That resolution is binding on this Court.¹⁰ The Appeals Referee's decision finding Ms. Lockwood was terminated for just cause in connection with her employment is supported by substantial evidence and free from legal error.

Conclusion

¹⁰ *Starkey v. Unemployment Ins. Appeal Bd.*, 340 A.2d 165, 167 (Del. Super. 1975).

The Appeals Referee's finding Ms. Lockwood was terminated for just cause in connection with her employment is AFFIRMED.

IT IS SO ORDERED.

Very truly yours,

/s/ T. Henley Graves

oc: Prothonotary
cc: Unemployment Insurance Appeal Board
Pyle Child Development Center, Inc.