IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

CHRISTINA BARNARD,	)	
	)	
Appellant,	)	
	)	
v.	)	C.A. No. N17A-05-002 RRC
	)	
DELAWARE PARK MANAGEMENT COMPANY, LLC,	)	
	)	
Appellee	)	
	)	
and	)	
	)	
UNEMPLOYMENT INSURANCE APPEAL BOARD.	)	

Submitted: October 6, 2017
Decided: January 3, 2018

On Appeal From a Decision of the Unemployment Insurance Appeal Board.
AFFIRMED.

ORDER

Christina Barnard, New Castle, Delaware, *pro se*, Appellant.

Wendy K. Voss, Esquire, Potter Anderson & Corroon LLP, Wilmington, Delaware, Attorneys for Appellee Delaware Park Management Company, LLC.

Carla A.K. Jarosz, Esquire, Deputy Attorney General, Department of Justice, Wilmington, Delaware, Attorney for the Unemployment Insurance Appeal Board.

COOCH, R.J.

This 3rd day of January 2017, upon consideration of Appellant's appeal from the decision of the Unemployment Insurance Appeal Board,[1] it appears to the Court that:

1. Appellant has appealed a decision of the Unemployment Insurance Appeal Board ("UIAB") denying her petition for unemployment benefits. On appeal, Appellant essentially argues that she was not terminated for just cause. The decision by the UIAB is supported by substantial evidence. Accordingly, this Court **AFFIRMS** the decision of the UIAB.

2. Appellant was an employee of Delaware Park Management Company, LLC ("Appellee").[2] She was employed as a Cage Cashier from May of 2014 until she was terminated on May 18, 2015.[3] On April 15, 2015, in accordance with Appellee's five-step disciplinary protocol,[4] Appellant was given a three-day suspension for violating Appellee's policy of "appearance and dress code and clearing hands."[5] At the time of this suspension, Appellant was given a final warning that she must "keep her . . . shirt tucked in at all times."[6] Appellant had been previously instructed to keep her shirt tucked in on three prior occasions: February 5, March 26, and April 9, 2015.[7]

3. One month after Appellant's suspension, on May 13, 2015, Appellee held a formal meeting with Appellant to address her noncompliance

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[1] Despite being named in the above caption on appeal, the Unemployment Insurance Appeal Board has advised this Court of its intent to refrain from filing an answering brief (unless this Court should otherwise direct) in this matter as the Appellant only challenges the decision of the Board on the merits.
[2] Record at 7.
[3] *Id.* at 7, 74.
[4] *Id.* at 38 (illustrating Appellee's "Progressive Discipline" protocol whereby an employee in violation of company policy may be subject to five potential disciplinary steps: (1) verbal warning; (2) first written warning; (3) second written warning with one-day suspension; (4) final written warning with three days' suspension; and (5) suspension, pending investigation and/or termination.
[5] *Id.* at 14.
[6] *Id.* (citing the April 9, 2015 conversation when Appellant's shift manager instructed here to "keep her pants fastened and shirt tucked in at all times.")
[7] *Id.* at 57-58.

with the appearance and dress code policy.[8] The next day, May 14, 2015, Appellant again appeared at work with her shirt untucked.[9] Appellee terminated Appellant's employment on May 18, 2015.[10]

4. Appellant filed a petition for unemployment on May 27, 2015.[11] A Claims Deputy and an Appeals Referee both determined that Appellant was "disqualified for receipt of benefits."[12] The UIAB affirmed that decision on September 22, 2015.[13] Appellant filed an appeal of the UIAB with this Court.[14] However, when the UIAB was unable to provide the transcript for the Appeals Referee hearing, this matter was remanded back to the Appeals Referee.[15] The Appeals Referee held a *de novo* hearing on February 9, 2017 and again determined that Appellant was terminated for just cause and was ineligible for receipt of benefits.[16] The UIAB again affirmed the Appeals Referee's determination, on April 18, 2017.[17] Appellant now appeals that decision to this Court.

5. On appeal, Appellant essentially argues that she is entitled to unemployment benefits because she was not terminated for just cause.[18] Appellant alleges that she was not "on the clock" at the time of the May 14, 2015 appearance and dress code violation.[19] Appellant also appears to argue that the appearance and dress code policy only applied to her "work area" and not the "casino floor."[20]

6. In response, Appellee asserts that the UIAB determination that Appellant was terminated for just cause was supported by substantial evidence.[21] Appellee argues that this "Court's review of the [UIAB's]

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[8] *Id.* at 13.
[9] *Id.*
[10] *Id.* at 7.
[11] *Id.* at 1-2.
[12] *Id.* at 27.
[13] *Id.* at 48-51.
[14] *Id.* at 62.
[15] *Id.* at 63-64.
[16] *Id.* at 70-71, 126.
[17] *Id.* at 164-67.
[18] Appellant's Op. Br. at 3.
[19] *Id.*
[20] *Id.* at 2-3.
[21] Appellee's Answ. Br. at 8-9.

decision does not entail weighing evidence, deciding questions of credibility, or engaging in fact-finding."[22] Thus, because the UIAB found substantial evidence that Appellant acted willfully and wantonly against known policies of Appellee the UIAB decision should be affirmed.[23]

7. "It is well established that an appeal from an administrative board's final order to this Court is confined to a determination of whether the UIAB's decision is supported by substantial evidence and is free from legal error."[24] Substantial evidence is evidence "that a reasonable mind might accept as adequate to support a conclusion."[25] This Court will not "weigh evidence, determine questions of credibility, or make its own factual findings[.]"[26] "Absent an error of law, the [UIAB's] decision will not be disturbed where there is substantial evidence to support its conclusions."[27] "In reviewing the record for substantial evidence, the Court will consider the record in the light most favorable to the party prevailing below."[28]

8. The UIAB decision below was supported by substantial evidence and thus will not be reversed. Pursuant to 19 *Del. C.* § 3314(2):

> 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 thereafter until the individual has been employed in each of 4 subsequent weeks (whether or not consecutive) and has earned wages in covered employment equal to not less than 4 times the weekly benefit 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

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[22] *Id.* at 12 (citing *Hall v. Rollins Leasing*, 1996 WL 659476, at *2 (Del. Super. Oct. 4, 1996)).
[23] *Id.* at 9.
[24] *Eaton v. Arch Telecom, Inc.*, 2017 WL 4857110, at *1 (Del. Super. Ct. Oct. 25, 2017) (citing *Unemployment Ins. Appeal Bd. v. Duncan*, 337 A.2d 308 (Del. 1975)).
[25] *Eaton*, 2017 WL 4857110, at *1.
[26] *Fordham v. Little Blessings Daycare*, 2017 WL 4457210, at *2 (Del. Super. Ct. Oct. 4, 2017).
[27] *Charleron v. Premier Staffing Sols.*, 2017 WL 3841596, at *1 (Del. Super. Ct. Sept. 1, 2017).
[28] *Pochvatilla v. U.S. Postal Serv.*,1997 WL 524062, at *2 (Del. Super. Ct. June 9, 1997).

> Unemployment Compensation Fund in accordance with § 3345 of this title when an individual becomes eligible for benefits upon separation from a subsequent employer.[29]

"'Just cause' is defined as a willful or wanton act or pattern of conduct in violation of the employer's interest, the employee's duties, or the employee's expected standard of conduct."[30] "Violation of a reasonable company rule may constitute just cause for discharge if the employee is aware of the policy and the possible subsequent termination."[31] This Court applies a two-step test to determine whether just cause existed to warrant the termination: "1) whether a policy existed, and if so, what conduct was prohibited, and 2) whether the employee was apprised of the policy, and if so, how was he made aware."[32] "Knowledge of a company policy may be established by evidence of a written policy, such as an employer's handbook[.]"[33]

9. The UIAB found that substantial evidence existed in the record that Appellant was aware that she was violating Appellee's appearance and dress code policy by not tucking in her shirt.[34] The UIAB found that Appellee has a appearance and dress code policy.[35] Appellant was instructed to keep her shirt tucked in "at all times," on April 9, 2015.[36] At the time of her three-day suspension, Appellant also received a written warning on April 17, 2015 for violation of Appellee's appearance and dress code policy.[37] The warning made clear that "[f]uture violations or failure to improve may result in disciplinary action up to and including discharge[.]"[38] Furthermore, in a formal meeting on May 13, 2015, management discussed with Appellant "the

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[29] 19 *Del. C.* § 3314(2).
[30] *Pochvatilla v. U.S. Postal Serv.*, 1997 WL 524062, at *2 (Del. Super. Ct. June 9, 1997) (quoting *Avon Prod., Inc. v. Wilson*, 513 A.2d 1315, 1317 (Del. 1986)).
[31] *Wilson v. Unemployment Ins. Appeal Bd.*, 2011 WL 3243366, at *2 (Del. Super. Ct. July 27, 2011).
[32] *Id.* (quoting *McCoy v. Occcidental Chem. Corp.*, 1996 WL 111126, at *3 (Del. Super. Ct. Feb. 7, 1996)).
[33] *Wilson*, 2011 WL 3243366, at *2.
[34] Record at 166.
[35] *Id.* at 9-12.
[36] *Id.* at 14, 166.
[37] *Id.*
[38] *Id.* at 13; *see also id.* at 79.

problem with her appearance—shirt tucking issue[.]"[39] The following day, Appellant again violated the appearance and dress code policy when she appeared on the casino floor with her shirt untucked.[40] Therefore, Appellant acted willfully and wantonly against known policies and was terminated for just cause.

10. As this Court will not weigh evidence on appeal, it need not address Appellee's arguments that she was not "on the clock" or that the appearance and dress code policy only applied to her when she was in her work area. Because the UIAB found that Appellant was to have her shirt tucked in "at all times," this Court will not disturb that finding.[41]

11. This Court will not disturb the decision of the UIAB below absent a showing of legal error or that the UIAB's decision was unsupported by substantial evidence. As there was no legal error and the findings below were supported by substantial evidence in the record, the decision of the UIAB is **AFFIRMED**.

IT IS SO ORDERED.

Richard R. Cooch

cc: Prothonotary
Unemployment Insurance Appeals Board

[39] *Id.* at 13.
[40] *Id.* at 13, 166.
[41] *Id.* at 166.