

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

DELAWARE TRANSIT CORP.)	
)	
Appellant,)	
)	
v.)	
)	C.A. No. N10A-05-006 DCS
LANA MARIE TAYLOR-AAKALA,)	
)	
Appellee.)	

Submitted: November 15, 2011
Decided: February 7, 2012

*Appeal of a Decision of the Unemployment Insurance Appeal Board
Decision **REVERSED***

MEMORANDUM OPINION

Appearances:

Andrew G. Kerber, Deputy Attorney General, Wilmington, Delaware
Attorney for Employer-Appellant Delaware Transit Corp.

Katisha D. Fortune, Deputy Attorney General, Wilmington, Delaware
Attorney for the Unemployment Insurance Appeal Board

STREETT, J.

INTRODUCTION

Claimant Lana Marie Taylor-Aakala, (“Taylor”), was employed by the Delaware Transit Corp., (“DTC”), as a bus driver from August 1, 2005, to June 3, 2009, when she was discharged.¹ Taylor was discharged from her employment for dishonesty regarding her health during the hiring process and for fraud in connection with her workers’ compensation claims.² DTC is now appealing the decision of the Unemployment Insurance Appeal Board, (the “Board”), to award unemployment benefits to Taylor.³ DTC claims that the Board’s decision constitutes legal error and demonstrates a capricious disregard for competent evidence.⁴ The Court agrees.

FACTUAL AND PROCEDURAL BACKGROUND

On July 15, 2005, prior to her employment with DTC, Taylor answered questions from DTC’s pre-hire worksheet as part of the interview process with DTC.⁵ The pre-hire worksheet asked the following question: “Do you have any physical or mental conditions which would limit or affect your ability to safely perform the job as a bus operator in a manner in which does not adversely affect

¹ Record on Appeal, 97 (hereinafter “R”).

² R at 44, 84, 91.

³ R at 162.

⁴ R at 162.

⁵ R at 78-82, 101.

the safety of your co-workers and/or our customers?”⁶ Taylor answered, “No.”⁷ Also, as a pre-condition to employment with DTC, Taylor was examined by Dr. Frederick Williams who, based on misrepresentations and incomplete information obtained from Taylor, certified that she could drive a bus.⁸ DTC later discovered that Taylor had significant pre-existing physical and mental conditions—bipolar disorder, psychiatric disorders, dizziness, balance disturbances, headaches, repeated falls, memory loss, two mental health hospitalizations, and the use of Percocet—that she did not disclose and that would have precluded her hire.⁹ Additionally, Dr. Williams indicated that had he known of Taylor’s true medical condition, he would not have certified her for employment.¹⁰

Nevertheless, Taylor was hired, and, in June 2006, she fell on the steps of her bus and injured her leg.¹¹ Taylor filed a workers’ compensation claim against DTC and began receiving disability benefits.¹² DTC subsequently learned that Taylor had already been collecting workers’ compensation payments from an injury she sustained while working at Daimler Chrysler Corporation, (“Chrysler”), in 2002.¹³ Consequently, DTC filed a petition to terminate her benefits.¹⁴

⁶ R at 81, 102.

⁷ R at 81, 102.

⁸ R at 57.

⁹ R at 10-11, 44, 54-61, 110.

¹⁰ R at 57-58.

¹¹ R at 53.

¹² R at 53, 111-112.

¹³ R at 44.

¹⁴ R 53-54.

In addition, as a result of Taylor's actions in collecting disability benefits simultaneously from two employers, criminal charges were brought against her, and she ultimately was found guilty to insurance fraud and theft.¹⁵

Testimony at the subsequent hearing of the Industrial Accident Board, (the "IAB"), indicated that Taylor was totally disabled from her injury at Chrysler in 2002 and was receiving benefits from Chrysler at the time she was injured in 2006 while working for DTC.¹⁶ Upon being asked whether she was receiving disability benefits from Chrysler during the time she was receiving wages from DTC, Taylor refused to answer asserting her right against self-incrimination under the Fifth Amendment.¹⁷ Evidence also shows that Taylor was treated for the *DTC* injury by Dr. Ross Ufberg and Dr. Norman Robinson, the same physicians who had previously treated her for the *Chrysler* injury.¹⁸ However, she concealed from both doctors that she was working for DTC and that she had been injured from a fall while on the DTC job.¹⁹ Consequently, Dr. Ufberg allowed her to continue receiving total disability benefits from Chrysler.²⁰ Upon being asked at the IAB hearing whether she made it appear to the physicians that her fall was related to

¹⁵ R at 71-74.

¹⁶ R at 11, 55-56.

¹⁷ R at 56.

¹⁸ R at 55, 58.

¹⁹ R at 58.

²⁰ R at 55, 58.

dizziness problems associated with her injury at Chrysler, Taylor again refused to answer asserting her right against self-incrimination.²¹

The IAB granted DTC's petition to terminate benefits finding that Taylor knowingly and willfully made false representations regarding her physical condition while applying for employment with DTC.²² Particularly, the IAB found that she denied having problems with dizziness and fainting, she denied having psychiatric disorders, she denied using Percocet, and she failed to disclose her status as totally disabled from her injury at Chrysler.²³ Furthermore, the IAB found that DTC relied upon Taylor's false representations, such reliance was a substantial factor in her hiring, and a causal link existed between her medical history and her injury in 2006.²⁴ This Court upheld the IAB's findings and its decision in *Aakala v. State of Delaware* in May 2009.²⁵

Upon termination of her disability benefits, Taylor next filed a claim for unemployment insurance benefits effective October 11, 2009, with the Department of Labor, Division of Unemployment.²⁶ On November 6, 2009, a claims deputy determined that Taylor was discharged from DTC for willful misconduct and, as such, was disqualified for unemployment benefits.²⁷ The claims deputy found that

²¹ R at 59.

²² R at 60. In its decision, the IAB relied upon *Air Mod Corp. v. Newton*, 215 A.2d 434 (Del. 1965).

²³ R at 13, 60.

²⁴ R at 60-61.

²⁵ C.A. No. 08A-04-008, Toliver, J., (Del Super. May 11, 2009).

²⁶ R at 39.

²⁷ R at 40.

Taylor's misconduct was willful and wanton in violation of the employer's standards based on (1) Taylor's admission in a fact-finding statement on October 19, 2009, that she was receiving *two* workers' compensation checks—one from her injury at Chrysler and one from her injury at DTC; (2) this Court's decision upholding the IAB's termination of Taylor's workers' compensation benefits; and (3) this Court's sentencing order in which Taylor was adjudged guilty of theft and insurance fraud and ordered to pay restitution in the amount of \$56,882.81.²⁸

Taylor appealed this denial of benefits on November 16, 2009.²⁹ During a hearing before the appeals referee on December 14, 2009, the pre-hire worksheet (which included her misrepresentations) was entered into evidence without objection.³⁰ On the same date, the appeals referee affirmed the decision of the claims deputy and found that Taylor was disqualified for benefits because she was discharged from DTC for sufficient cause.³¹ The appeals referee determined that Taylor knowingly failed to disclose pre-existing medical conditions that would have precluded her hire during the interview process with DTC.³² In so doing, the appeals referee particularly considered the pre-hire worksheet, in which Taylor denied any existing medical or physical conditions that would affect her driving, as

²⁸ R at 1-33, 115.

²⁹ R at 41.

³⁰ R at 42, 103.

³¹ R at 45-46.

³² R at 44.

a demonstration of Taylor's dishonesty.³³ The record evidence includes this Court's prior order terminating Taylor's disability benefits for the DTC injury and this Court's sentencing order for theft and insurance fraud.³⁴ The referee also referred to testimony from two managers at DTC who indicated that they discovered, pursuant to Taylor's workers' compensation claim filed against DTC, that Taylor had pre-existing physical and mental conditions for which she was already collecting workers' compensation from Chrysler.³⁵

Taylor, however, denied that she had been receiving workers' compensation benefits from Chrysler despite her numerous appearances at hearings, termination of her disability benefits because of her simultaneous receipt of benefits from two employers, and her criminal convictions for theft and fraud.³⁶ Moreover, she claimed that she did not remember how she answered the question regarding her physical or mental conditions.³⁷ Taylor insisted that the fact that she was injured at Chrysler has nothing to do with anything that happened at DTC.³⁸

The appeals referee found that Taylor was dishonest in that she knowingly failed to disclose medical conditions during the interview process and in so doing

³³ R at 44.

³⁴ R at 52-75.

³⁵ R at 44.

³⁶ R at 44.

³⁷ R at 121-122.

³⁸ R at 122-127. Much of Taylor's testimony seemed to concentrate on the problems she was having finding/maintaining legal representation and the fact that she was straightforward with various attorneys she spoke to concerning her receipt of disability benefits. *Id.*

violated DTC's standards of conduct.³⁹ The referee further found that such behavior on Turner's part was willful and wanton and is what led to her discharge.⁴⁰ As a result, the referee determined that DTC had just cause for the firing. And, since the discharge was for just cause, Turner was found to be disqualified for unemployment benefits.⁴¹ The appeals referee relied on *Barisa v. Charitable Research Foundation, Inc.*⁴² in concluding that an employer may discharge an employee without penalty where, due to the employee's misconduct, the employer no longer trusts the employee.⁴³

Taylor appealed the referee's decision on January 27, 2010, and a hearing was held before the Unemployment Insurance Appeal Board, (the "Board"), on March 24, 2010. This Court's previous order finding that Taylor falsely misrepresented her mental and physical condition and her disability status was included in the record evidence before the Board.⁴⁴ Additionally, Richard Seibel, a representative of DTC, testified regarding the reasons for Taylor's discharge—dishonesty and fraud—which reiterated much of the testimony at the hearing

³⁹ R at 45.

⁴⁰ R at 45-46.

⁴¹ R at 44-45.

⁴² 287 A.2d 679, 682 (Del. Super. 1972) *aff'd*, 299 A.2d 430 (Del. 1972).

⁴³ R at 46.

⁴⁴ R at 52-70.

before the appeals referee.⁴⁵ Taylor, on the other hand, asserted that DTC did not have sufficient evidence to show that she was dishonest.⁴⁶

Despite the totality of the evidence, the Board reversed the decision of the appeals referee on April 21, 2010, and approved benefits for Taylor finding that DTC did not show that Taylor was dishonest in the interview process.⁴⁷ The Board reasoned that there was insufficient evidence to show dishonesty on Taylor's part because DTC did not present "a falsified application" or evidence of a failed drug test at the hearing.⁴⁸

DTC has timely appealed the Board's decision to this honorable Court and filed an opening brief.⁴⁹ No answering brief was forthcoming. The matter is now ripe for decision.

CONTENTIONS OF THE PARTIES

DTC contends that the Board's decision constitutes legal error in that the Board re-litigated an issue of fact already determined by this Court in *Aakala v. State of Delaware*.⁵⁰ DTC further contends that the Board evinced a capricious disregard for competent evidence in that the Board's decision ignored record evidence and did not correctly comprehend and analyze the allegations of DTC.

⁴⁵ R at 146-152.

⁴⁶ R at 141-142.

⁴⁷ R at 133-135.

⁴⁸ R at 134.

⁴⁹ R at 162.

⁵⁰ C.A. No. 08A-04-008, Toliver, J. (Del. Super. May 11, 2009).

STANDARD OF REVIEW

An aggrieved party “may secure judicial review [of a decision of the Unemployment Insurance Appeal Board] by commencing an action in the Superior Court”⁵¹ The Court reviews the Board’s decision to determine if substantial evidence exists in the record to support the Board’s findings of fact and to determine if the Board erred in its application of the law.⁵²

Factual findings of the Board are deemed conclusive where such facts are supported by substantial evidence and upon the absence of any fraud.⁵³ Substantial evidence consists of “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”⁵⁴ The Court, in considering an appeal of the Board’s decision, does not weigh any evidence or make any factual findings but only determines if substantial evidence exists upon which the Board’s findings can be legally supported.⁵⁵ The Board’s findings can be overturned for “a capricious disregard for competent evidence.”⁵⁶

Regarding questions of law, however, the Court’s review is *de novo*.⁵⁷

⁵¹ 19 Del.C. § 3323.

⁵² *Unemployment Ins. Appeal Bd. v. Martin*, 431 A.2d 1265, 1266 (Del. 1981); *Hubble v. Delmarva Temporary Staffing, Inc.*, 2003 WL 1980811, *2, Graves, J. (Del. Super. April 28, 2003).

⁵³ 19 Del.C. § 3323; *Hubble*, 2003 WL 1980811 at *2.

⁵⁴ *Hubble*, 2003 WL 1980811 at *2 (quoting from *Gorrell v. Division of Vocational Rehab. and Unemployment Ins. Appeal Bd.*, Del. Super., C.A. No. 96A-01-001, Graves, J. (July 31, 1996) Letter Op. at 4.).

⁵⁵ *Hubble*, 2003 WL 1980811 at *2 (citing *McManus v. Christina Service Co.*, Del. Super., C.A. No. 96A-06-013, Silverman, J. (Jan. 31, 1997) Op. and Order at 4).

⁵⁶ *Ridings v. Unemployment Ins. Appeal Bd.*, 407 A.2d 238, 239 (Del. Super. 1979).

⁵⁷ *PAL of Wilmington v. Graham*, 2008 WL 2582986, *4 (Del. Super. June 18, 2008).

Furthermore, the “Court is limited to consideration of the record which was before the administrative agency.”⁵⁸ The Court considers the record in the light most favorable to the prevailing party below.⁵⁹

DISCUSSION

In this matter, the Court must determine whether the Board's findings that Taylor was not discharged for just cause and is qualified for unemployment benefits are supported by the evidence and free from legal error.

Under Delaware law, an individual is disqualified from receiving unemployment insurance compensation if she was discharged from employment for “just cause” in connection with her work.⁶⁰ The employer has the burden to show just cause for a termination.⁶¹ “Just cause” is defined as a willful or wanton act or pattern of conduct that violates the employer's interest, duties, or expected standard of conduct.”⁶² The term wanton requires “heedless, malicious or reckless action ... [but] does not require actual intent to cause harm.”⁶³ “Just cause” can

⁵⁸ *Hubbard v. Unemployment Ins. Appeal Bd.*, 352 A.2d 761 (Del. 1976).

⁵⁹ *Thompson v. Christiana Care Health Sys.*, 25 A.3d 778, 782 (Del. Aug. 12, 2011).

⁶⁰ 19 Del.C. § 3314(2); *Univ. of Delaware v. Unemployment Ins. Appeal Bd.*, 1975 WL 165709, *1, Stiffler, P.J. (Del. Super. Nov. 14, 1975); see also *E. I. DuPont De Nemours & Co. v. Dale*, 271 A.2d 35, 36 (Del. 1970) (stating that “[t]he interpretation and application of the Unemployment Compensation Law shall be to eliminate economic insecurity due to involuntary unemployment. The Act is stated to have been enacted for the benefit of persons unemployed through no fault of their own.”).

⁶¹ *Evans v. Tansley*, 1988 WL 32033, *1 (Del. 1988).

⁶² *Mergliano v. Unemployment Ins. Appeal Bd.*, 2009 WL 3069676, *2 (Del. Super. Sept. 16, 2009); *Majaya v. Sojourner's Place*, 2003 WL 21350542, at *4, Cooch, J., (Del. Super. June 6, 2003); *Starkey v. Unemployment Ins. Appeal Bd.*, 340 A.2d 165, 166 (Del. Super. 1975).

⁶³ *Majaya*, 2003 WL 21350542, at *4.

result from an isolated act by an employee that shows contempt for the acceptable procedures of the employer.⁶⁴

Furthermore, since “[a]n employer has a legitimate interest in having accurate information from prospective employees so as to make an informed hiring decision,” evidence that an applicant has provided false information can constitute just cause for a discharge.⁶⁵ Specifically, in this matter, Taylor has already been found by this Court to have knowingly and willfully made false representations to DTC as to her physical condition during the hiring process—she denied dizziness, fainting spells, and psychiatric disorders and she lied regarding her total disability status.⁶⁶ Where a question of fact is determined by the final judgment of a court of competent jurisdiction, the doctrine of collateral estoppel bars reconsideration of that same issue in a subsequent suit concerning a different cause of action.⁶⁷

So too, any decision by the Board that a claimant was discharged *without* just cause must be based on “findings of fact and conclusions of law adequate to support” such a decision.⁶⁸ A Board’s determination that a claimant was

⁶⁴ *Mergliano*, 2009 WL 3069676 at *2.

⁶⁵ *James v. Unemployment Insurance Appeal Board, et al.*, 1986 WL 5854, *2 (Del. Super. May 7, 1986).

⁶⁶ *Aakala*, C.A. No. 08A-04-008 at 8 (denying disability benefits to Taylor based on her false representations to DTC during the hiring process).

⁶⁷ *Hercules, Inc. v. Aiu Ins. Co.*, 783 A.2d 1275, 1277 (Del. 2000); *Messick v. Star Enter.*, 655 A.2d 1209, 1211 (Del. 1995).

⁶⁸ *Bd. of Educ., Capital Sch. Dist. v. Johns*, 2002 WL 471175, *2, Ridgely, P.J. (Del. Super. Mar. 27, 2002) (emphasis added).

discharged without just cause is deficient where it does not address the allegations culminating in and the evidence supporting the discharge.⁶⁹

In this case, DTC asserts that the core reason for the firing was false representation which was supported by relevant competent evidence. The Board's stated reasons for its decision to allow Taylor unemployment benefits were (1) Taylor's denials of any wrongful conduct, and (2) the fact that the DTC representative did not offer into evidence Taylor's employment application or a drug test demonstrating that Taylor was using prohibited prescription drugs.⁷⁰ Although the DTC representative testified that Taylor "was terminated for failing to disclose her health condition when she applied to work for [DTC]" and referred the Board to the IAB hearing and the Court's ultimate decision in that matter, the Board makes no mention of it in its decision.⁷¹ Despite the Court previously finding that Taylor had been dishonest concerning her medical condition and disability status, the Board decided that this Court's findings and the other evidence brought forth to demonstrate Taylor's dishonesty were insufficient to establish that she was fired for just cause without production of a falsified employment application.⁷²

⁶⁹ See *Johns*, 2002 WL 471175 at *2.

⁷⁰ R at 133-135.

⁷¹ R at 133, 146.

⁷² R at 8-26, 133-135, 139.

The Board's findings, however, constitute legal error. In order to determine whether DTC had just cause for Taylor's termination, the Board needs to find, by considering the evidence, whether Taylor willfully or wantonly acted in violation of DTC's interest, duties, or standard of conduct. Nonetheless, the Board's decision is devoid of any discussion of DTC's interests, duties, or standards, Taylor's conduct, or the record evidence which includes testimony from three doctors.

Indeed, although the Board was aware of and cursorily mentions Taylor's "conviction for Worker's Compensation *fraud*," the Board did not apply her conviction, her failure to disclose her status as totally disabled, or this Court's previous decision denying Taylor disability benefits in its consideration of her unemployment claim.⁷³ However, since Taylor's conduct in the instant circumstances has already been determined by this Court to be dishonest and fraudulent, the Board is estopped from re-determining that particular factual issue.

Moreover, while acknowledging Taylor's "conviction for Worker's Compensation fraud,"⁷⁴ the Board fails to discuss or analyze Taylor's fraud in connection with the firing even though DTC explained throughout the entire appeal process that Taylor's discharge was for dishonesty in withholding necessary information about her mental and physical condition during the hiring process and

⁷³ R at 134.

⁷⁴ R at 134.

for fraud.⁷⁵ The Board made a determination that DTC did not meet their burden of persuasion without any discussion of DTC's allegations in connection with the applicable law and the record evidence. Without a comparison of Taylor's conduct, which had already been determined as dishonest and fraudulent, with DTC's interests or standards, there can be no legally sufficient decision regarding whether DTC had just cause to terminate Taylor. And, without addressing the charges made by DTC against Taylor along with the record evidence supporting those charges, as discussed below, the Board's decision is invalid.⁷⁶ Thus, the Court finds that the Board's decision is deficient as to findings of fact and conclusions of law regarding whether Taylor's conduct was a deviation from DTC's interests.

The record contains a significant amount of relevant competent evidence that the Board could have considered in reaching its decision. In addition to the verbal testimony of Taylor and Richard Seibel, the Record includes the following:

- The Court's opinion of May 11, 2009, upholding the IAB's determination that Taylor *knowingly and willfully failed to disclose the true nature of her physical and mental condition during the employment process* at DTC and made false representations as to the status of her total disability;⁷⁷
- The pre-hire worksheet indicating that Taylor lied when asked about her mental and physical condition;⁷⁸

⁷⁵ R at 151-152.

⁷⁶ See *Johns*, 2002 WL 471175 at *2.

⁷⁷ R at 52, 60 (emphasis added).

⁷⁸ R at 81.

- The testimony from Dr. Frederick Williams showing that Taylor was hired based upon misrepresentations and incomplete information given at her pre-hire examination.⁷⁹
- The DTC agreement indicating that dishonesty by an employee was a serious offense for which the employee could be terminated immediately;⁸⁰ and
- The DTC Employee Handbook listing as unacceptable behavior the violation of procedures, administrative processes and safety rules.⁸¹

The legal standard is whether Taylor, by withholding the truth regarding her physical and mental condition during the hiring process and defrauding DTC through her duplicitous receipt of workers' compensation benefits, violated DTC's standards of honesty, safety, and procedure as well as DTC's monetary interests and interest in making an informed hiring decision. A complete review of the record reveals that Taylor's conduct was "reckless[ly] indifferen[t] leading to a deviation from established and acceptable workplace performance"⁸² Taylor demonstrated willful and wanton conduct in opposition to DTC's interests and standards. Her conduct violated the legal standard. Thus, DTC had just cause for her discharge.

The Court finds that the Board's decision constitutes legal error because it does not properly analyze Taylor's behavior pursuant to DTC's standards or

⁷⁹ R at 57-58.

⁸⁰ R at 48.

⁸¹ R at 50.

⁸² *MRPC Financial Mgmt. LLC v. Carter*, 2003 WL 21517977, *4 (Del. Super. June 20, 2003).

interests, demonstrates a capricious disregard for competent evidence because the record evidence was apparently ignored, and attempts to re-determine the factual determinations of this Court's previous order of May 11, 2009.

ACCORDINGLY, the decision of the Unemployment Insurance Appeal Board is ***REVERSED***.

IT IS SO ORDERED.

J. Streett

Original to Prothonotary

cc: Andrew G. Kerber, Deputy Attorney General, Wilmington, Delaware
Katisha D. Fortune, Deputy Attorney General, Wilmington, Delaware
Lana Marie Taylor-Aakala, Appellee