

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

JAMES F. HILL, )  
 ) C.A. No. K10A-12-002 JTV  
 Appellant, )  
 )  
 v. )  
 )  
 SHERATON HOTEL, )  
 KRAMEDAS & WOODS, )  
 )  
 Appellee. )

*Submitted: October 25, 2011*  
*Decided: January 31, 2012*

James F. Hill, *Pro Se.*

Sheraton Hotel, Kramedas & Woods, *Pro Se.*

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

**VAUGHN, President Judge**

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**ORDER**

Upon consideration of the appellant's brief and the record of the case, it appears that:

1. The claimant, James Hill, was a bellman at the Sheraton Hotel in Dover from August 8, 2001 until August 10, 2010 when he was terminated from his job. The Sheraton stated that he was terminated because of poor performance of duties and failing to meet its expectations. The final incident that gave rise to the decision to discharge the claimant was his failure to pass a performance review. His performance and conduct had worsened since his last review, according to the Sheraton. The claimant had been warned and threatened with termination if his attitude with co-workers and guests did not improve. There was evidence that the claimant would make efforts to improve but then his attitude would decline thereafter. The Sheraton had received repeated complaints from guests about the claimant's conduct, the claimant had been disciplined many times, and on December 26, 2007 the claimant had been put on notice that he faced termination if his problems resulting from his inappropriate attitude continued.

2. A Claims Deputy found that the claimant should be disqualified from receiving unemployment benefits because he was discharged for just cause. An Appeals Referee reversed that decision and found that he was entitled to benefits on the grounds that poor performance without proof of intentional or gross misconduct is not just cause. The Unemployment Insurance Appeal Board reversed the decision of the Referee, denying benefits on the grounds that unsatisfactory performance on the part of the claimant in this case rose to the level of willful or wanton misconduct

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because the claimant had been given due and adequate notice that his continued poor performance and misconduct would subject him to dismissal.

3. The appellant contends that he was discharged from his work without just cause; that the Sheraton offered no direct or first hand evidence to substantiate the guest's allegations of poor performance or attitude for which he was discharged; that poor performance without proof of intentional or gross misconduct as its cause does not disqualify him from receipt of unemployment insurance benefits; and that his alleged poor attitude is a subjective consideration.

4. When reviewing decisions from the Board, the court is limited to consideration of the record which was before the administrative agency.<sup>1</sup> The court must determine whether the findings and conclusions of the Board are free from legal error and are supported by substantial evidence in the record.<sup>2</sup> Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.<sup>3</sup> The court does not weigh the evidence, determine questions of credibility, or make its own factual findings.<sup>4</sup> The reviewing court merely determines if the evidence is legally adequate to support the agency's factual

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<sup>1</sup> *Hubbard v. Unemployment Ins. Appeal Bd.*, 352 A.2d 761, 763 (Del. 1976).

<sup>2</sup> *Unemployment Ins. Appeal Bd. v. Martin*, 431 A.2d 1265, 1266 (Del. 1981); *Pochvatilla v. United States Postal Serv.*, 1997 WL 524062, at \*2 (Del. Super. June 9, 1997); 19 Del. C. § 3323(a) (“In any judicial proceeding under this section, the findings of the [UIAB] 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.”).

<sup>3</sup> *Oceanport Ind. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del. 1994); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super. 1986).

<sup>4</sup> *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

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findings.<sup>5</sup> If there is substantial evidence and no mistake of law, the Board’s decision must be affirmed.<sup>6</sup>

5. In a discharge case the employer has the burden of proving by a preponderance of the evidence that the claimant was discharged for just cause. 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.”<sup>7</sup> “Willful and wanton conduct is that which is evidenced by either conscious action, or reckless indifference leading to a deviation from established and acceptable workplace performance . . . .”<sup>8</sup> It does not require a showing of bad motive or malice.<sup>9</sup>

6. In general, poor performance resulting from inefficiency, unsatisfactory conduct or incapacity will not be found to be a sufficient basis to sustain a finding for just cause termination.<sup>10</sup> However, courts have found that unsatisfactory performance

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<sup>5</sup> *Majaya v. Sojourners’ Place*, 2003 WL 21350542, at \*4 (Del. Super. June 6, 2003); *see also* 19 Del. C. § 3323(a) (providing that, absent fraud, the factual findings of the Board shall be conclusive and the jurisdiction of a reviewing court shall be confined to questions of law).

<sup>6</sup> *City of Newark v. Unemployment Ins. Appeal Bd.*, 802 A.2d 318, 3232 (Del. Super. 2002).

<sup>7</sup> *Majaya*, 2003 WL 21350542, at \*4 (quoting *Avon Prods., Inc. v. Wilson*, 513 A.2d 1315, 1317 (Del. 1986)).

<sup>8</sup> *MRPC Financial Mgmt, LLC v. Carter*, 2003 WL 21517977, at \*4 (Del. Super. June 20, 2003).

<sup>9</sup> *Id.*

<sup>10</sup> *Barrios v. Perdue & Unemployment Ins. Appeal Bd.*, 1995 WL 562147, at \*3 (Del. Super. Aug. 17, 1995) (citing *Starkey v. Unemployment Ins. Appeal Bd.*, 340 A.2d 165, 166-67 (Del. Super. 1975); *aff’d* 364 A.2d 651 (Del. 1976)).

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can rise to the level of willful or wanton misconduct when the employee is on notice that his continued inappropriate behavior may lead to his termination, particularly when his job details are relatively simple, and the behavior in question continues.<sup>11</sup> In *Coury v. Lowe's Home Centers*, the employee operated a cash register.<sup>12</sup> A customer made a purchase, and the employee gave the customer's check back to the customer instead of putting it in the cash register. The employee was counseled about the incident. This continued twice more for a total of three times, with the employee having been warned after the first two. The employee had no other issues at work, but was terminated after the third incident. Because the employee had two prior incidents with warnings, it was found there was just cause for termination.<sup>13</sup>

8. In *Barrios v. Perdue* a poultry plant employee was discharged following several acts of misconduct.<sup>14</sup> The employee had received both written and verbal warnings prior to termination. The Board's decision to deny unemployment benefits was based on the fact that the employer gave repeated warnings of unsatisfactory performance, the "tasks to which he was assigned were relatively simple," and "inexperience was not a factor in his poor performance."<sup>15</sup> Although each incident viewed in isolation would not be willful or wanton, it was the combination of the

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<sup>11</sup> *Coury v. Lowe's Home Centers, Inc.*, 2009 WL 3290730, at \*3 (Del. Super. Aug. 31, 2009).

<sup>12</sup> *Id.* at \*1.

<sup>13</sup> *Id.* at \*3.

<sup>14</sup> 1995 WL 562147, at \*1.

<sup>15</sup> *Id.* at \*3.

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multiple infractions that gave rise to just cause.

9. This case is similar to *Coury* and *Barrios*, the Board found, and the record reflects, that the claimant received numerous disciplinary actions during his tenure, many citing to his attitude specifically. Based on these warnings, the claimant was on notice of his unsatisfactory performance, such that when he received an unsatisfactory score on his July 2010 performance appraisal, the standard of just cause for termination was satisfied. Moreover, the Board found that, like in *Barrios*, inexperience was not a factor in his poor performance. The Board found that he was an “intelligent and capable individual, [] hardly ignorant of his dysfunctional characteristic,” and that because he had the capacity to respond to the problem and deal with his character trait, his misconduct represented willful or wanton misconduct.

10. After considering the record, I find that the findings and conclusions made by the Board below are free from legal error and supported by substantial evidence in the record. Therefore, the decision below is ***affirmed***.

**IT IS SO ORDERED.**

/s/ James T. Vaughn, Jr.

President Judge

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