

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

TYRONE JACOBS,)
) C.A. No. K11A-02-005 JTV
 Appellant,)
)
 v.)
)
 PERDUE FARMS, INC.,)
)
 Appellee.)

Submitted: October 5, 2011
Decided: January 31, 2012

Tyrone Jacobs, *Pro Se*.

Stephanie S. Habelow, Esq, Smith, Katzenstein & Jenkins, LLP, Wilmington,
Delaware. Attorney for Appellee.

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

VAUGHN, President Judge

Tyrone Jacobs v. Perdue Farms, Inc.

C.A. No. K11A-02-005 JTV

January 31, 2012

ORDER

Upon consideration of the parties' briefs and the record of the case, it appears that:

1. The claimant, Tyrone Jacobs, was employed full-time by Perdue Farms, Inc., as a general laborer/ chicken catcher from March 5, 2007 until he was terminated on June 18, 2010. He was incarcerated from June 13, 2010 through August 5, 2010. He attempted to call Perdue when he was first incarcerated, but the employer would not accept collect calls. He had a counselor in the prison call and leave a message with Perdue that he was incarcerated. Neither the claimant nor his counselor spoke to his supervisor, because they could not get a hold of him. When he was released from prison he went to Perdue and spoke with his manager who told him he had been discharged on June 18, 2010. Perdue had a policy of termination for job abandonment after three consecutive days of not showing up for work if the employee did not contact his or her supervisor or Human Resources Department during that time. According to Perdue's attendance policy, incarceration is not an excused absence. Perdue does not hold jobs for those that are incarcerated. The claimant had signed a document on March 5, 2007 indicating his receipt of the policy. The claimant did attempt to get his job back, but was denied re-employment because of the June 18, 2010 termination for job abandonment.

2. The claimant filed for unemployment benefits and on September 8, 2010 a Claims Deputy found that the claimant was discharged for just cause because he failed to report to work. An Appeals Referee affirmed that decision. The claimant then appealed to the Unemployment Insurance Appeal Board. It initially remanded

Tyrone Jacobs v. Perdue Farms, Inc.

C.A. No. K11A-02-005 JTV

January 31, 2012

the case for a further evidentiary hearing because Perdue was not present at the first meeting. At the second hearing with the same Appeals Referee, the decision of the Claims Deputy was again revisited. The Board then held a hearing and affirmed the Appeals Referee, finding that there was just cause for the claimant's termination.

3. The claimant contends that he never abandoned his job; that he did not violate Perdue's "no show" policy because he had called to tell them he was incarcerated; that his conduct does not conform with the definition of "abandonment;" that Perdue was retaliating against him because of a prior suit for a workplace related injury; that Perdue was given a lot of chances to present its case, and that the remand should not have been heard by the same Appeals Referee as heard the case initially.

4. Perdue contends that violating a company's policy or rule after the employee has received prior notice of such is just cause; that the claimant signed Perdue's attendance policy; that his responsibility was to contact his supervisor, and attempting to do so was not enough; that no one spoke directly with the supervisor; that Perdue had the burden of proof, which entitled it to opportunities to show why the claimant was not entitled to benefits; that the record more than satisfies the just cause standard; and, therefore, the Board's decision should be affirmed.

5. When reviewing decisions from the Board, the court is limited to consideration of the record which was before the administrative agency.¹ The court must determine whether the findings and conclusions of the Board are free from legal

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

Tyrone Jacobs v. Perdue Farms, Inc.

C.A. No. K11A-02-005 JTV

January 31, 2012

error and are supported by substantial evidence in the record.² Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.³ The court does not weigh the evidence, determine questions of credibility, or make its own factual findings.⁴ The reviewing court merely determines if the evidence is legally adequate to support the agency's factual findings.⁵ If there is substantial evidence and no mistake of law, the Board's decision must be affirmed.⁶

6. Pursuant to 19 *Del. C.* § 3314 an employee is ineligible to receive unemployment benefits if he or she has been terminated for just cause. 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

² *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.").

³ *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).

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

⁵ *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).

⁶ *City of Newark v. Unemployment Ins. Appeal Bd.*, 802 A.2d 318, 323 (Del. Super. 2002).

Tyrone Jacobs v. Perdue Farms, Inc.

C.A. No. K11A-02-005 JTV

January 31, 2012

employee's duties, or the employee's expected standard of conduct."⁷ "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"⁸ It does not require a showing of bad motive or malice.⁹

7. "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."¹⁰ This Court engages in a two-step analysis to determine whether just cause exists for terminating an employee who violates a work policy, "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."¹¹ "Knowledge of a company policy may be established where there is evidence of a written policy, such as an employer's handbook, or where an employee has been previously warned regarding objectionable conduct."¹² In the *Wilson* case, the employee used a company

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

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

⁹ *Id.*

¹⁰ *Wilson v. Unemployment Ins. Appeal Bd.*, 2011 WL 3243366, at *2 (Del. Super. July 27, 2011) (quoting *McCoy v. Occidental Chem. Corp.*, 1996 WL 111126, at *3 (Del. Super. Feb. 7, 1996)).

¹¹ *Wilson*, 2011 WL 3243366, at *2 (quoting *McCoy*, 1996 WL 111126, at *3).

¹² *McCoy*, 1996 WL 111126, at *3.

Tyrone Jacobs v. Perdue Farms, Inc.

C.A. No. K11A-02-005 JTV

January 31, 2012

truck for personal use, although he testified at the hearing that it was only because his car ran out of gas.¹³ Because the policy was reasonable and he knew of the policy before breaking it, there was just cause for his termination.

8. After considering the record, I am satisfied that the Board's decision is amply supported by substantial evidence and is free from legal error. The claimant was aware of Perdue's attendance policy. He experienced an unexcused absence of almost two months due to his being incarcerated. While this absence may be viewed as involuntary because it is due to incarceration, I am satisfied that it is within the permissible discretion of Perdue to define an unexcused absence caused by incarceration as a job abandonment. Under these circumstances, just cause for the claimant's termination existed.

9. Therefore, the decision below is *affirmed*.

IT IS SO ORDERED.

 /s/ James T. Vaughn, Jr.
President Judge

cc: Prothonotary
Order Distribution
File

¹³ *Id.* at *1.