

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JONATHAN SANN,	§
	§
Appellant Below-	§ No. 516, 1999
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
ACCURATE OFFICE MACHINES,	§ in and for New Castle County,
UNEMPLOYMENT INSURANCE	§ C.A. No. 99A-04-004
APPEAL BOARD,	§
	§
Appellees Below-	§
Appellees.	§

Submitted: February 11, 2000

Decided: March 24, 2000

Before **VEASEY**, Chief Justice, **WALSH**, and **BERGER**, Justices.

ORDER

This 24th day of March 2000, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The appellant, Jonathan Sann, filed this appeal from a Superior Court order affirming a decision of the Unemployment Insurance Appeal Board. The Board ruled that Sann was not entitled to unemployment benefits because he had been discharged for just cause by the appellee, Accurate Office Machines ("Accurate"). Accurate has filed a motion to affirm the Superior Court's

decision on the ground that the issue on appeal is factual, and there is substantial evidence to support the Board's decision.¹

(2) Sann had been employed by Accurate as an "outside salesman." Accurate discharged Sann on several grounds, including reporting to work smelling like alcohol, not maintaining a valid driver's license, and excessive absenteeism. At a hearing to determine Sann's right to unemployment benefits, Accurate presented the testimony of several witnesses to support its claim that Sann had been discharged for just cause. The Board credited this testimony and ruled that Sann had been discharged for just cause and thus was not entitled to unemployment benefits. On appeal to the Superior Court, Sann argued that Accurate's witnesses were not credible, and their testimony should not have been given any weight because it was not substantiated by written documentation. The Superior Court found that it was within the Board's discretion to credit the testimony of Accurate's witnesses and found substantial evidence to support the Board's findings of fact.

¹On February 4, 2000, Sann filed a document entitled, "Motion to Quash Appellee's Motion to Affirm," which apparently is a response to Accurate's motion. A response to a motion to affirm is not permitted unless requested by the Court. *See* Supr. Ct. R. 25(a). Accordingly, because the Court did not request a response, Sann's document is hereby stricken pursuant to Supreme Court Rule 34. Furthermore, Accurate's response to Sann's Motion to Quash also was not considered by the Court in deciding the motion to affirm.

(3) In his opening brief on appeal to this Court, Sann raises a number of issues that he did not raise in the Superior Court. This Court, however, will not consider for the first time on appeal issues that were not raised to the trial court in the first instance.² Accordingly, the only issue that is appropriately before us is whether the Board erred in relying upon Accurate's witnesses even though their testimony was not substantiated by written documentation.

(4) This Court's appellate review of the decision of an administrative board is limited and mirrors that of the Superior Court. Our function in this case is to determine whether the Board's decision is supported by substantial evidence and is free from legal error.³ Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.⁴ Based on the record presented, we find that there was substantial evidence to support the Board's decision. Moreover, we do not find any legal error or abuse in the Board's decision to deny Sann unemployment benefits. Consequently, we find it manifest on the face of Sann's opening brief that this appeal is without merit.

²Supr. Ct. R. 8

³*See Public Water Supply Co. v. DiPasquale*, Del. Supr., 735 A.2d 378, 380-81 (1999).

⁴*See Streett v. State*, Del. Supr., 669 A.2d 9, 11 (1995).

NOW, THEREFORE, IT IS ORDERED that the appellee's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ E. Norman Veasey
Chief Justice