

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

Terry Baker
110 North Railroad Avenue
Georgetown, DE 19947

Re: ***Baker v. Tech Solutions***
C.A. No. 07A-05-004-RFS

Date Submitted: November 13, 2007
Date Decided: January 4, 2008

Dear Mr. Baker:

You have appealed a decision of the Unemployment Insurance Appeal Board to the Superior Court. After review, the decision of the Board must be affirmed under the applicable principles of law.

BACKGROUND

You were employed for about a month with Tech Solutions (hereafter "Tech"). A company credit card was given to you for gasoline expenses for a company car. Between December 13 - 24, 2006, you used the credit card for personal expenses, including staying at a motel when the electricity in your residence failed. The credit card statement shows charges to Wal-Mart, 15 charges to various Food Lion stores and 2 charges for the Relax Inn. Tech did not authorize the charges which amounted to over \$975. You were discharged on or about December 27, 2006, and those charges were deducted from your final pay check.

The president of Tech, Douglas Church (hereafter "Church"), testified that he explained company rules to you that there was zero tolerance for making inappropriate expenditures of this nature. He said you acknowledged making poor decisions and were fired. However, you claim your remarks referred only to making a bad choice to work at Tech. You deny that Church had this conversation. You contend that an equity owner, Mr. Aaron Finney (hereafter "Finney"), told you on December 28, 2006 that the company was going in a different direction. You then decided to leave. Consequently, you feel that unemployment compensation should be awarded.

DISCUSSION

This Court will review the decisions of agencies to inquire whether they are supported by substantial evidence and are free from legal error *General Motors Corp. v. Fritz*, 2004 WL 2829053, at *2 (Del. Super. Ct.). The evidence underlying the decision need only be that which

“a reasonable mind might accept as adequate to support a conclusion.” *Id.*, quoting, *DABCC v. Newsome*, 690 A.2d 906, 910 (Del. 1996). However, the Court will not “weigh the evidence, determine questions of credibility, or make its own factual findings.” *Spicer v. Spicer Unlimited*, 2005 WL 914469, at *1 (Del. Super. Ct.), citing, *Boulevard Elec. Sales v. Webb*, 428 A.2d 11, 13 (Del. 1981).

There are three levels of administrative proceedings between the Claims Deputy, the Referee, and the Board. At every level, it was determined that Tech had just cause to discharge you for violating the company rule against unauthorized charges. While Tech did not appear at the last hearing with the Board, it was not obligated to be present. A major purpose of the Board is to listen as to why you disagreed with the Referee’s decision and to expand the record by additional evidence, if necessary. The Board can consider the administrative record from the earlier proceedings, including prior testimony from you and Church. 19 *Del.C.* § 3320(a); *Boughton v. Division of Unemployment Ins. of Dep’t. of Labor*, 300 A.2d 25 (Del. Super. Ct.1972).

The question presented was whether Tech had just cause to terminate you for violation of its company rule. “Just cause” means 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.” *Avon Prods., Inc. v. Wilson*, 513 A.2d 1315 (Del. 1986). Tech had the burden to show this by a preponderance of the evidence; the standard simply means on which side the greater weight of the evidence is found.

Church’s testimony is in direct conflict with your position, although you do admit the credit card expenses were reimbursed. You claim Church did not encounter you, and you decided to part ways based on Finney’s casual comments. The Board could properly decide against you as Church was the president and your supervisor. Also, in your email of Friday, February 9, 2007 to the Department of Labor, you stated: “Aaron is a gentleman who has some ownership in the company. On the same day (12/27/06) as I was laid off by one owner, he told me that he had been looking forward to working with me.” The obvious reference is to Church as the person who terminated you on 12/27/06. Later, you also disputed the date, claiming 12/28/06 as your last experience with Tech and Finney. The greater weight of evidence could reasonably be seen to be with Church’s version that you were fired for improper use of the credit card.

In the expanded record before the Board, you elaborated on details of your conversation with Finney. You did not call Finney as a witness. The Board was correct that Finney’s alleged conversation would be hearsay and that a decision could not rest on this basis alone. *Baker v. Hospital Billing & Collection Services, Ltd.*, 2003 WL 21538020 (Del. Super. Ct.).

Also, you have a laundry list of complaints about your dissatisfaction with Tech and its general business operations. None of this is pertinent to the precise question presented to the Board. The Board was required to keep its eye on the issue without getting into a free-for-all discussion.

CONCLUSION

Considering the foregoing, the Board's decision is hereby affirmed.

IT IS SO ORDERED

Very truly yours,

Richard F. Stokes

Original to Prothonotary
cc: Tech Solutions
UIAB