

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

WILLIAM C. BISHOP,)
) C.A. No. 04A-04-005 JTV
 Appellant,)
)
 v.)
)
 BRUCE TREXLER and)
 UNEMPLOYMENT INSURANCE)
 APPEALS BOARD,)
)
 Appellees.)

Submitted: October 6, 2004

Decided: January 28, 2005

William C. Bishop, Cheswold, Delaware. *Pro se.*

Bruce Trexler, Dover, Delaware. *Pro se.*

*Upon Consideration of Appellant's Appeal
Of Decision of Unemployment Insurance Appeal Board*

AFFIRMED

VAUGHN, President Judge

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ORDER

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

1. William Bishop ("the claimant") is appealing a decision of the Unemployment Insurance Appeal Board ("the Board"). The claimant was employed by Bruce Trexler d/b/a Trexler Towing ("the employer") from November 15, 2002 until December 22, 2003. The claimant worked as a tow truck driver and as such he was required to have a valid license. The claimant's employment was terminated after the employer received information from the Dover Police Department that he was driving without a valid driver's license.

2. Following his termination, the claimant filed for unemployment benefits and the Claims Deputy found he was disqualified from receiving benefits because he had been terminated for just cause. On appeal, the Appeals Referee reversed the decision of the Claims Deputy and found that the termination was without just cause because there had been no willful or wanton conduct on the part of the claimant. The Referee also found that the employer knew that the claimant was driving without a license and, nevertheless, continued to allow him to drive the tow truck. Bruce Trexler was not present at the Appeals Referee hearing. His office manager, Paula Castle, testified as an employer representative. The employer appealed the decision of the Appeals Referee and a hearing was held before the Board. Bruce and Karen Trexler¹

¹ It appears from the record that Karen Trexler was also employed at the business or at the very least assisted in the day to day affairs of the business.

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were present and testified at the hearing. The Board determined that the employer reasonably believed the claimant did not have a valid license and that he was discharged for just cause. The Board reversed the Referee and denied unemployment benefits.

3. The limited function of this Court in reviewing an appeal from the Unemployment Insurance Appeal Board is to determine whether the Board's decision is supported by substantial evidence.² Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.³ The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.⁴ In other words, the Board, not the court, determines the credibility of the witnesses, the weight to be given their testimony, and the inferences to be drawn therefrom.⁵ The court merely determines if the evidence is legally adequate to support the agency's factual findings.⁶ Therefore, if there is substantial evidence for the Board's decision, the decision will be affirmed.

² *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66-67 (Del. 1965); *General Motors v. Freeman*, 164 A.2d 686, 688 (Del. 1960).

³ *Oceanport Industries, Inc. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del. 1994); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super. Ct. 1986), *appeal dismissed*, 515 A.2d 397 (Del. 1986).

⁴ *Johnson*, 213 A.2d at 66.

⁵ *Behr v. Unemployment Insurance Appeal Board*, 1995 WL 109026 (Del. Super.).

⁶ 29 Del. C. § 10142(d).

4. The Board properly defined the standard for the hearing as follows:

In a discharge case, the employer has the burden of proving by a preponderance of the evidence that the claimant was terminated for just cause. A “preponderance of the evidence” is defined to mean “the side on which the greater weight of evidence is found.”⁷ 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.”⁸

5. The claimant argues that he is entitled to receive unemployment benefits since he was unaware that his driver’s license was suspended and because he was told he could have his job back once the matter was resolved.⁹ The claimant’s arguments on appeal go to the merits of his unemployment claim. He does not make any allegation that the decision of the Board was unsupported by the record. It is not the role of this Court to make findings of fact. The Board was in a better position to make findings based on the testimony of witnesses and the evidence presented. This Court’s review is limited to a determination of whether the decision of the Board was

⁷ *Bishop v. Trexler*, UIAB Appeal Docket No. 430087 (Mar. 31, 2004), at 2, *rev’g* Decision of Appeals Referee (Feb. 24, 2004), (quoting *Taylor v. State*, 2000 WL 313501, at *2 (Del. Supr.)).

⁸ *Id.* at 2 (quoting *Majaya v. Sojourner’s Place and Unemployment Ins. Appeal Bd.*, 2003 WL 21350542 (Del. Supr.)).

⁹ The position is no longer open because the employer filled it several days after the claimant was terminated.

free from legal error and supported by substantial evidence.

6. Based upon the evidence presented at the hearing, the Board concluded that there was insufficient evidence to suggest the employer knew the claimant's license was suspended but still allowed him to drive. The Board listened to the testimony of Bruce Trexler and his wife who both testified that they did not know the claimant's license was suspended until the day he was stopped by the Dover Police. Once they were advised by the police that the claimant did not have a valid driver's license, they terminated his employment. Although the claimant testified that he had previously notified the employer of the problem with his license,¹⁰ the Board had discretion to give more weight to the testimony of Bruce and Karen Trexler. The Board also concluded that failure to have a valid driver's license by one employed as a tow truck driver is just cause for terminating the person's employment.

7. The Board determined that the employer met its burden of proof by showing just cause for discharging the claimant. While the Appeals Referee found differently, he did not have the benefit of hearing the testimony of Mr. and Mrs. Trexler who were not present at that hearing.

8. The decision of the Board is supported by substantial evidence in the record and free of legal error.

¹⁰ This argument is inconsistent with the claimant's argument that he was not aware his license was suspended. If the claimant was not aware of the suspension, he could not have informed the employer of it.

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9. Accordingly, the decision of the Board is **affirmed**.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

President Judge

oc: Prothonotary
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