

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
1 THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947
(302) 856-5257

January 17, 2012

Willie Davis, III
1204 Caitlins Way
Millsboro, Delaware 19966

Re: *Davis v. Mountaire Farms*;
C.A. No. S11A-01-008

On Appeal from the Unemployment Insurance Appeal Board: AFFIRMED

Date Submitted: January 5, 2012

Date Decided: January 17, 2012

Dear Mr. Davis:

Willie Davis, III appeals the decision of the Unemployment Insurance Appeal Board (“the Board”) to dismiss Mr. Davis’ appeal from an Appeals Referee’s determination that Mr. Davis had been discharged from his place of employment for just cause in connection with that employment. The Board’s decision is affirmed for the reasons stated below.

Nature and Stage of the Proceedings

Mr. Davis was employed by Mountaire Farms (“Employer”) as a truck driver for approximately two years until he was terminated on September 14, 2010. A Claims Deputy reviewed Mr. Davis’ application for unemployment benefits and determined Mr.

Davis had been terminated for just cause and was disqualified from the receipt of benefits. Mr. Davis appealed that determination and a hearing was held before an Appeals Referee on November 4, 2010. By way of written decision mailed November 12, 2010, the Appeals Referee found that Mr. Davis had failed to conduct a pre-inspection check of the truck he was operating on September 14, 2010. As a result of his failure to conduct the check, the boom attached to the truck came loose and caused significant damage to the company truck and a power line. The Appeals Referee also found Mr. Davis failed to report the accident to Employer and left the scene of an accident. Mr. Davis' failure to inspect the boom and the boom alarm prior to driving was a violation of Employer's company policy. Employer conducted an internal investigation and determined that the boom alarm was not functioning and Mr. Davis should have realized it was not functional. The Appeals Referee found the Employer's witnesses to be credible. The Appeals Referee affirmed the Claims Deputy's decision, concluding Employer had established by a preponderance of the evidence that it discharged Mr. Davis from employment for just cause in connection with his work.

Mr. Davis filed an appeal of the Appeals Referee's decision with the Board. A hearing date was set for January 11, 2011. Mr. Davis failed to appear at the hearing and the Board dismissed his appeal. Mr. Davis appeals that dismissal to this Court.

Discussion

When reviewing the decisions of the Board, this Court must determine whether

the Board's findings and conclusions of law are free from legal error and are supported by substantial evidence in the record.¹ "Substantial evidence" is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."² The Court's review is limited: "It is not the appellate court's role to weigh the evidence, determine credibility questions or make its own factual findings, but merely to decide if the evidence is legally adequate to support the agency's factual findings."³

Section 3314 of Title 19 of the Delaware Code provides, in pertinent part, that one shall be disqualified for unemployment benefits if he has been "discharged from [his] work for just cause in connection with [his] work."⁴ "Generally, the term 'just cause' refers to a wilful or wanton act in violation of either the employer's interest, or of the employee's duties, or of the employee's expected standard of conduct."⁵ Where a decision to terminate an employee is based upon misconduct, the employer has the burden of

¹ *Unemployment Ins. Appeal Bd. v. Martin*, 431 A.2d 1265 (Del. 1981); *Pochvatilla v. U.S. Postal Serv.*, 1997 WL 524062 (Del. Super.); 19 Del. C. § 3323(a) ("In any judicial proceeding under this section, the findings of the [Board] 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.").

² *Gorrell v. Division of Vocational Rehab.*, 1996 WL 453356, at *2 (Del. Super.).

³ *McManus v. Christiana Serv. Co.*, 1197 WL 127953, at *1 (Del. Super.).

⁴ 19 Del. C. § 3314(2).

⁵ *Abex Corp. v. Todd*, 235 A.2d 271, 272 (Del. Super. 1967).

establishing the misconduct.⁶

On appeal, Mr. Davis attempts to revisit the evidence presented below and states that he did, in fact, inspect his truck prior to driving it on September 14, 2010, and did not notice anything wrong. Further, Mr. Davis notes he was “proven innocent”⁷ of leaving the scene of an accident; therefore, the traffic charge for leaving the scene of an accident should not have been considered by the tribunal below. In short, Mr. Davis argues the Appeals Referee’s decision is not supported by substantial evidence.

Section 3322 of Title 19 of the Delaware Code provides, “[J]udicial review [of a Board decision] ... shall be permitted only after any party claiming to be aggrieved thereby has exhausted all administrative remedies as provided by this chapter.”⁸ This Court is without jurisdiction to hear the merits of a case where a party has not exhausted his administrative remedies because he failed to appear at a Board hearing that he requested.⁹ Because Mr. Davis does not appeal the Board’s exercise of discretion in dismissing his

⁶ *McCoy v. Occidental Chem. Corp.*, 1996 WL 111126, at *3 (Del. Super. Feb. 7, 1996).

⁷ It appears from the record that the charge was dropped.

⁸ 19 Del. C. § 3322(a).

⁹ *Jackson v. Murphy Marine Servs., Inc.*, 2002 WL 1288791, at *1 (Del. Super.); compare *Filanowski v. Port Contractors, Inc.*, 2007 WL 64758 (Del. Super.) (finding the appeal not procedurally barred because (a) the party who failed to appear at the Board hearing was not the party aggrieved by the Appeals Referee’s decision and (b) the Board did not dismiss the appeal but heard evidence and decided the matter on the merits).

appeal thereto, there is no issue properly before the Court at this time.

Conclusion

In light of the foregoing, the Board's dismissal of Mr. Davis' appeal from the Appeals Referee's decision is AFFIRMED.

IT IS SO ORDERED.

Very truly yours,

/s/ T. Henley Graves

oc: Prothonotary
cc: Unemployment Insurance Appeal Board
Mountaire Farms