IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

IRIS JOYCE DOBNACK,	)	
	)	
Claimant-Appellant,	)	
	)	
v.	)	C.A. No. 02A-04-13 JRS
	)	
COLONIAL SECURITY SERVICE,	)	
	)	
Employer-Appellee,	)	
	)	
and	)	
	)	
UNEMPLOYMENT INSURANCE APPEAL BOARD,	)	
	)	
	)	
Appellee.	)	

Submitted: October 24, 2002
Decided: January 23, 2003

O R D E R

This 23rd day of January, 2003, upon consideration of the *pro se* appeal of Iris Joyce Dobnack ("Ms. Dobnack") from the decision of the Unemployment Insurance Appeal Board (the "Board"), dated April 10, 2002, rejecting her application for benefits, the Appellant's brief and the record below, it appears to the Court that:

1. Colonial Security Service ("Colonial Security") employed Ms. Dobnack from April 2001 to December 2001 as a security guard at Brandywine Park

Condominiums. On December 24, 2001, Charles Grimes ("Mr. Grimes") announced that Tamatha Burress would replace him as the new supervisor at the Brandywine Park Condominiums and that there might be some changes in the employee schedules. The parties disagree on Ms. Dobnack's response to this announcement. Colonial Security presented witnesses who stated that Ms. Dobnack complained loudly and used profanity. Ms. Dobnack denies being loud and abusive, but she admits that she was "mad" when Mr. Grimes told her that her hours would be reduced.[1] Both parties agree that Ms. Dobnack voluntarily left the job site without authorization before the end of her shift.

2. According to a representative of Colonial Security, Ken Farrell ("Mr. Farrell"), and Colonial Security's disciplinary report, Ms. Dobnack was terminated for insubordination, leaving her post without authorization, and abusive language and behavior, effective as of December 24th. Approximately a week later, she contacted Samuel Chickadel ("Mr. Chickadel"), the Vice President of Colonial Security, who indicated to Ms. Dobnack that he might be able to offer some weekend work to her. Ms. Dobnack continued to communicate with Colonial Security, but she was never re-hired in any capacity.

[1]D.I. 4, at 47.

3. Ms. Dobnack filed a request for benefits with the Delaware Department of Labor, Division of Unemployment Insurance on January 6, 2002. The Claims Deputy denied her request under Title 19, Section 3315(2) of the Delaware Code,[2] finding that Ms. Dobnack "was terminated for insubordination, profanity, and leaving her post."[3] The Claims Deputy concluded that "the employer had just cause to terminate the claimant."[4] Ms. Dobnack appealed the Deputy's findings. In the hearing before the Appeals Referee, Colonial Security did not present any witnesses to the incident on December 24th. Accordingly, the Referee accepted Ms. Dobnack's testimony and granted Ms. Dobnack's request for benefits. Colonial Security then appealed to the Board. At this hearing, Colonial Security offered the testimony of three witnesses to the events of December 24th. To rebut this evidence, Ms. Dobnack testified on her own behalf and presented the testimony of her ex-husband, John Dobnack. The Board found Colonial Security's witnesses more persuasive and reversed the Referee's decision granting benefits. The Board concluded that the "claimant's behavior rose to the level of willful or wanton conduct and provided the employer with just cause for claimant's discharge."[5]

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[2]DEL. CODE ANN. tit. 19, § 3315(2)(1995).

[3]D.I. 4, at 3.

[4]*Id.*

[5]*Id.* at 58.

4. In the current appeal, Ms. Dobnack disputes the Board's finding that she was discharged for "just cause."[6] Instead, she contends that she quit her job and that she had just cause to do so. Specifically, she argues that she was justified in leaving her job when she was advised that her work hours would be substantially reduced by the new management. She also contends that the Board's decision was based solely upon hearsay. And she questions the absence of certain witnesses from the hearing.

5. The role of the Court when reviewing an appeal from the Board is well settled. The Court reviews the Board's decision to determine whether its factual findings are supported by substantial evidence and reviews its ultimate decision to ensure that it is free from legal error.[7] Substantial evidence has been defined as relevant evidence that a reasonable mind might accept as an adequate basis to support a conclusion.[8] Substantial evidence requires "more than a scintilla but less than a preponderance" of evidence to support the finding.[9] The Court does not weigh

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[6]Because the claimant is a *pro se* litigant, the Court has granted her more leniency in articulating the legal arguments in support of her claim. *See Jackson v. Unemployment Ins. Appeal Bd.*, 1986 Del. Super. LEXIS 1367, at *4 (holding that Superior Court may give a *pro se* litigant leniency to allow the case to be fully and fairly heard).

[7]*Diamond Materials v. Manganaro,* 1999 Del. Super. LEXIS 274, at *5.

[8]*Oceanport Indus. v. Wilmington Stevedores,* 636 A.2d 892, 899 (Del. 1994).

[9]*Johnson v. Delaware Car Co.*, 1995 Del. Super. LEXIS 275, at *5.

evidence, assess credibility, or make independent factual findings.[10] The Board's findings in these evidentiary matters are considered conclusive.[11]

6. As a part of its findings, the Board adopted the Referee's conclusion that Ms. Dobnack was terminated (as opposed to voluntarily separating from her employer) and that Section 3315(2) governs Ms. Dobnack's case. Under Section 3315(2), an employee is not qualified to receive benefits "[f]or the week in which the individual was discharged from his work for just cause in connection with the individual's work and for each week thereafter until the individual has been employed in each of 4 subsequent weeks."[12] "Just cause" is defined as a "wilful or wanton act in violation of either the employer's interest, or of the employee's duties, or of the expected standard of conduct."[13] The employer has the burden to prove that the employee was discharged for "just cause" by a preponderance of the evidence.[14] Alternatively, if the Board had found that Ms. Dobnack quit her job, the Board would have applied Section 3315(1), which only allows the claimant to recover benefits if she carries the burden of proving that she voluntarily terminated her employment for

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

[11] *Morgan v. Anchor Motor Freight, Inc.*, 506 A.2d 185, 188 (Del. Super. 1986).

[12] DEL. CODE ANN. tit. 19, § 3315(2)(1995).

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

[14] *Brighton Hotels, L.L.C. v. Gennett*, 2002 Del. Super. LEXIS 372, at *6.

"good cause."[15] "Good cause" is a reason that "would justify one in voluntarily leaving the ranks of the employed and joining the ranks of the unemployed." Some examples of "good cause" to quit include nonpayment of wages, a substantial reduction in wages or hours,[16] or a substantial deviation from the original terms of employment.[17]

7. The Board's factual finding that Ms. Dobnack was terminated is supported by substantial evidence. The Board accepted Colonial Security's version of the facts as true. Mr. Farrell asserted that Ms. Dobnack was discharged for insubordination, leaving the work site, and abusive language. Her termination was documented in a disciplinary action report, which was entered as an exhibit in the Referee's hearing. The Court concludes that the substantial evidence in the record supports the Board's

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[15]DEL. CODE ANN. tit. 19, § 3315(1)(1995).

[16]The Court notes that an actual reduction in Ms. Dobnack's hours (not an announcement of a potential reduction) might have been a relevant factor in the Court's analysis if Ms. Dobnack had quit her job. *See Smith v. The Placers, Inc.*, 1993 Del. Super. LEXIS 483, at *7-8 (considering briefly whether employee's schedule change constituted a substantial reduction in her hours); *Benson v. Jake's Supermarket*, 1985 Del. Super. LEXIS 1222, at *9-10 (remanding to the Board to determine what portion of the employee's reduced hours was attributable to the employer's cutbacks, which may constitute "good cause"). The record in this case indicates that Mr. Grimes advised certain employees that new management may reduce the hours of security guards working at the Brandywine Park site. Ms. Dobnack's work schedule was not actually reduced at that time, however. Even if the Board had accepted Ms. Dobnack's contention that she quit her job, the scenario presented in these facts would not have given her "good cause" to have done so.

[17]*Laime v. Casapulla's Sub Shop*, 1997 Del. Super. LEXIS 324, at *12.

finding that Ms. Dobnack was discharged.[18]

8. Three witnesses at the scene of the December 24th incident described Ms. Dobnack's outburst and subsequent exit from the workplace. Ms. Dobnack herself admits to being "mad" for having her hours reduced and to leaving the job site without express permission from Mr. Grimes. This testimony is more than adequate to support the Board's finding that Ms. Dobnack reacted in a loud and abusive manner to Mr. Grimes' announcement of the new supervisor and left her post without permission.

9. Delaware courts consider the use of obscenity without provocation to be wilful and wanton misconduct, establishing "just cause" for termination.[19] And a single instance of misconduct is sufficient to establish "just cause."[20] The substantial

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[18]The Court acknowledges Ms. Dobnack's testimony regarding Mr. Chickadel's statement that he might be able to offer her weekend work when she contacted him after her termination. The Court does not view this attempt to regain employment with Colonial Security as significant in analyzing whether this case is a "discharge" case or a "voluntary separation" case. If anything, Ms. Dobnack's unsuccessful attempts to regain employment only bolster the Board's finding that Ms. Dobnack was discharged. *See Hines v. Unemployment Ins. Appeal Bd.*, 1984 Del. Super. LEXIS 779, at *3 (finding that employee's attempts to reach employer for another assignment was contrary to the Board's conclusion that the employee intended to quit).

[19]*See Messina v. Future Ford Sales*, 1997 Del. Super. LEXIS 184, at *7 ("Delaware Courts have recognized that "where there is no justifiable provocation for the impending obscenity, it may properly be classified as wilful misconduct.")(citing *Dozier v. Uncle Willie's Deli,*1992 Del. Super. LEXIS 527); *Hundley v. Riverside Hosp.*, 1993 Del. Super. LEXIS 412, at *21 (classifying an employee's outburst as wilful and wanton misconduct, giving the employer "just cause" to terminate the employee).

[20]*Peninsula United Methodist Homes v. Crookshank,* 2000 Del. Super. LEXIS 458, at *10.

evidence supports the Board's conclusion that Mr. Grimes did not provoke Ms. Dobnack in any manner. Therefore, by presenting testimony of Ms. Dobnack's unprovoked outburst, Colonial Security has met its burden to demonstrate that Ms. Dobnack was fired for "just cause."

10. Ms. Dobnack's last two arguments may be summarily rejected. She first claims that the Board based its decision on hearsay. Under Delaware law, the Board may not base its decision solely on hearsay; hearsay evidence is permissible if it accompanies other probative evidence sufficient to support the finding.[21] Here, the Board did not rely solely upon hearsay; it also relied upon the direct testimony of Colonial Security's three witnesses to derive the facts necessary to reach its decision. In addition, Ms. Dobnack questions the absence of Jack Monaco, a representative of Brandywine Park Condominiums, and other alleged witnesses to the December 24th incident, from the hearings before the Board and the Referee. In hearings before the Board and the Referee, each party may present their case as they choose. To prevail, the parties must meet the evidentiary standards articulated in Section 3315(2) and any other applicable sections of the Delaware Code. Neither party is required to present

[21] *See Larkin v. Gettier & Assocs.*, 1997 Del. Super. LEXIS 481, at *9 ("Although it is well-settled in Delaware that hearsay evidence is permissible in certain instances in administrative hearings, the administrative board may not rely upon such evidence as the sole basis for its decision.").

certain witnesses or certain evidence. The absence of a witness or witnesses from the hearings, by itself, is not a basis to question to the Board's findings.

11. Based on the foregoing, the decision of the Board denying Ms. Dobnack's benefits is **AFFIRMED**.

IT IS SO ORDERED.

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Judge Joseph R. Slights, III

Original to Prothonotary

cc: Iris Joyce Dobnack
Joseph J. Longobardi, III, Esquire
Stephani J. Ballard, Esquire