

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

IVAN EDMONDS,)
Appellant,)
v.) C.A. No. N12A-02-001-PLA
KELLY SERVICES and)
UNEMPLOYMENT INSURANCE)
APPEAL BOARD,)
Appellees.)

ON APPEAL FROM THE
UNEMPLOYMENT INSURANCE APPEAL BOARD
AFFIRMED

Submitted: June 27, 2012

Decided: July 2, 2012

This is a *pro se* appeal filed by Ivan Edmonds (“Edmonds”) from a decision of the Unemployment Insurance Appeal Board (“the Board”) affirming a determination by the Appeals Referee denying Edmonds unemployment benefits. The Board ruled that Edmonds, a temporary employee through Kelly Services, was terminated from his employment for just cause after he presented claims for payment for work on days that he did not work and was not even present at his employer’s place of business.

Having reviewed the transcripts and the record in this case and the decisions of the Appeals Referee and the Board, the Court concludes that the decision of the Board should be affirmed.

Factual and Legal Background

Edmonds, who worked for Kelly Services, a temporary agency, was assigned to work in the accounts payable section of the Wilmington Trust Company beginning in September 2010. He was terminated from this employment on June 6, 2011 when Wilmington Trust discovered that he had falsified his time cards. Specifically, Edmonds did not work on May 23rd, 24th, or 27th of 2011 but recorded that he had worked eight hours on each of those days.

At the hearing, Edmonds did not deny that he did in fact submit time cards for days the he did not work but testified that his former supervisor allowed him to do so. He claimed that his supervisor, who was a vice president of Wilmington Trust Company, told him that if he needed time off for sickness or personal reasons, he would be paid for that time. During the time he was supervised by this individual, Edmonds concedes that he took off approximately ten days and for each of those days he submitted records stating that he worked a full day. At least until the practice was discovered, Edmonds was in fact paid for time he did not work.

Edmonds continued this practice even after his former supervisor left Wilmington Trust's employ. Not surprisingly, when his scheme was detected, he was discharged for submitting false time slips.

Edmonds thereafter filed a claim for unemployment benefits with the Delaware Department of Labor. After the claims deputy determined that he had been discharged for cause, he filed an appeal to the Department Appeals Referee. Following hearings that were conducted on July 19, 2011 and November 1, 2011, the Referee concluded that Edmonds' termination was for just cause and affirmed the deputy's findings.

Upon appeal, the Board affirmed the Referee's decision, holding that Edmonds' behavior was "the equivalent of theft of time and in direct opposition with the Employers' interest and standard of conduct." In so doing, the Board determined that Edmonds' assertions that his prior supervisor, "Christopher", would pay him for days he did not actually work "is not credible." The Board held that, as a temporary employee, Edmonds was not entitled either to paid vacation or sick leave, and his Employer had just cause to terminate him pursuant to 19 *Del.C.* §3314(2). He was thereby disqualified from the receipt of unemployment benefits.

Despite the thorough and comprehensive explanations for why it was wrong to falsify time records in both the decisions by the Referee and by the

Board, Edmonds still appears not to comprehend the significance of his dishonesty -- whether sanctioned or not -- as he has now filed a *pro se* appeal to this Court.

As best as the Court can discern from a reading of his Notice of Appeal, Edmonds appears to persist in challenging the finding of just cause for his termination. His entire notice of appeal states simply that “I was always paid for time off.”

Thus, Edmonds still insists that it was acceptable for him to falsify time cards, and to be paid for work that he did not do, simply because his supervisor approved of the practice. Indeed, Edmonds does not deny that he did in fact receive compensation even when he was not working, but seems to suggest that this dishonest practice was compatible with his employer’s interests because his supervisor -- who is no longer employed by Wilmington Trust and was not called to testify to confirm this arrangement - - apparently allowed it.

Standard and Scope of Review

In considering appeals from the Industrial Accident Board, the Superior Court’s scope of review is limited to correcting errors of law and determining whether substantial evidence exists in the record to support the

Board's decision.¹ Substantial evidence means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."² On appeal, the Superior Court "does not weigh the evidence, determine questions of credibility, or make its own factual findings."³ Rather, the Court must give deference to the "experience and specialized competences of the Board" and must take into account the purposes of the Workers' Compensation Act.⁴ The amount of attorneys' fees awarded in connection with issues on which a claimant is successful is reviewed for abuse of discretion.⁵ Absent an abuse of discretion or an error of law, this Court will not disturb an award of attorneys' fees. The Board commits an abuse of discretion when it so ignores "recognized rules of law or practice" as to produce an injustice.⁶ If the record reveals that the Board based its decision on improper or inadequate grounds, an abuse of discretion has occurred and the Court must reverse the decision.

¹ *Histed v. E.I. Du Pont de Nemours & Co.*, 621 A.2d 340, 342 (Del. 1993); *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

² *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981).

³ *Hall v. Rollins Leasing*, 1996 WL 659476, at *2 (Del. Super. Oct. 4, 1996) (citing *Johnson*, 213 A.2d at 66).

⁴ *Histed*, 621 A.2d at 342.

⁵ *Friebel v. Nat'l Glass & Metal*, 2004 WL 2829050, at *5 (Del. Super. Apr. 30, 2004).

⁶ *Lofland v. Econo Lodge*, 2009 WL 3290450, at *2 (Del. Super. Aug. 31, 2009).

Decision

In a discharge case, the employer has the burden of proving by a preponderance of the evidence that a claimant was terminated for “just cause,” which 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.”⁷ In this Court’s judgment, the employer plainly met its burden of establishing that Edmonds was terminated for just cause and the Board’s decision is supported by substantial evidence.

Edmonds candidly admits that he was paid for services he did not render to his employer, and he agrees that, although he was not present at his workplace on May 23rd, 24th, or 27th of 2011, he nevertheless submitted time cards seeking payment for full-time work on those days. He seems to believe that, because his previous supervisor apparently allowed him to falsify these requests for pay, he is somehow excused from his own dishonest behavior. He submits that his termination was not for conduct in violation of his employer’s interest.

Edmond’s claim that his supervisor sanctioned such a practice is a claim that this Court finds dubious at best. In any event, the Board’s

⁷*Majaya v. Sojourners Place* 2003 WL 21350542 at *4 (Del Super. June 6, 2003) citing *Avon Products, Inc. v. Wilson*, 513 A.2d 1315 (Del. 1986).

decision specifically found that this assertion by Edmonds was “not credible” and it is within the exclusive purview of the Board to judge the credibility of the witnesses. Even absent this precisely articulated credibility finding by the Board, there is simply no merit to Edmond’s argument that his dishonesty should be excused because he got away with it in the past. Under any circumstances, accepting compensation for hours of employment that were never provided simply cannot be considered to conform to any employer’s “expected standard of conduct,” whether sanctioned by a supervisor or not.

Accordingly, since the decisions of the Appeals Referee and the Board are supported by substantial evidence, the decision of the Unemployment Insurance Appeal Board is hereby **AFFIRMED**.

IT IS SO ORDERED.

/s/ Peggy L. Ableman

PEGGY L. ABLEMAN, JUDGE

Original to Prothonotary
cc: Ivan Edmonds
Caroline Lee Cross, Esquire
Kelly Services