

**SUPERIOR COURT
of the
STATE OF DELAWARE**

Susan C. Del Pesco
JUDGE

NEW CASTLE COUNTY COURTHOUSE
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Submitted: September 24, 2004
Decided: January 3, 2005

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Re: *Victoria Granison, Appellant-Claimant Below v. Roizman & Company, Appellee-Employer Below and Unemployment Insurance Appeal Board* - Civil Action No. 04A-02-006 SCD

Upon appeal from the decision of the Unemployment Insurance Appeal Board denying certain unemployment benefits—**AFFIRMED**

Dear Counsel:

Claimant Victoria Granison (“Granison”) was terminated from her employment at Roizman and Company (“Roizman”) on or about October 7, 2003. Shortly thereafter, Granison filed an application for benefits with the Unemployment Insurance Division. By Notice of Determination dated October 24, 2003, Granison was informed that she was disqualified for benefits because she was discharged for cause.

Granison appealed the determination. A hearing was held on November 10, 2003, with both parties presenting their cases. The Appeals Referee's affirmed the decision disqualifying Granison for receipt of benefits, holding that Granison was discharged for just cause, insubordination.¹

Granison appealed the Referee's Decision to the Appeal Board. A hearing was held January 7, 2004, before a four-member panel of the Board of Review. After consideration of the evidence, two members of the Board agreed with the Referee's decision and two members disagreed.² When there is a tie, the immediately preceding administrative decision controls.³ The result is that the Referee's Decision of November 12, 2003, finding Granison was discharged for just cause, was affirmed. On February 25, 2004, Granison filed this appeal. Granison filed a paper which this Court considers her opening brief on May 19, 2004. Roizman filed a response July 15, 2004. No a reply brief has been filed.

The facts as found by the Referee are as follows. Granison worked for Roizman as a program coordinator at Neighborhood Network Center ("NNC") from August 18, 2003, until October 7, 2003. During her period of employment, Granison demonstrated a "continuing pattern in matters small and large of insubordination."⁴ Granison ignored her supervisor's directives relating to a volunteer who appeared to be under the influence of drugs.⁵ In derogation of her supervisor's orders, Granison did not tell the volunteer she could no longer

¹ Record (Docket # 7) at p. 15 (hereinafter "R. at ___").

² *Id.* at 76.

³ *Warrington v. State Personnel Comm'n*, 1994 WL 387028 at *3 (Del. Super.)

⁴ R. at 15.

⁵ *Id.* at 14.

volunteer and Granison did not refer the volunteer to a drug program.⁶ On at least two occasions, Granison refused to provide the overtime hours she had worked when requested to do so by her supervisor.⁷ As a result of her pattern of insubordinate behavior, Granison was discharged from her work for cause in connection with her work.

On appeal, Granison argues factual matters. She claims that the accusations of misconduct are false. She says she resolved the situation with the volunteer whom she later determined was not under the influence of drugs. She claims there was no process for referring a volunteer for service. She believes she handled the situation with the volunteer appropriately, based on NNC's objective of preparing residents to enter the workforce. She further argues that when her supervisor requested her overtime hours, she responded that she did not want to be compensated and was donating the hours to benefit the residents. She also contends that the NNC director was verbally and physically aggressive towards her during her termination. Granison argues her termination was unwarranted and she is, therefore, entitled to benefits.

Roizman counters that there is substantial evidence to support the Referee's decision that there was just cause for terminating Granison's employment. The Referee acknowledged that there were areas of conflict in the testimony, but ultimately found the employer's testimony regarding Granison's conduct to be more credible. Roizman points out that Delaware courts have consistently held that insubordination constitutes just cause for termination.⁸

This Court has limited appellate review of a decision from an administrative agency. On

⁶ *Id.*

⁷ *Id.* at 15.

⁸ *McNeill v. Unemployment Ins. Appeal Board and Delaware Park*, 2003 WL 21001004 at *3 (Del. Super.); *Diamond State Port Corp. v. Ferguson*, 2003 WL 168635 at *3 (Del. Super.); *Foraker v. Diamond State Recycling*, 2001 WL 1398601 at *2-3 (Del. Super).

appeal, this Court determines whether the agency's decision is supported by substantial evidence and is free from legal error.⁹ Substantial evidence is such relevant evidence that a reasonable mind would accept it as adequate to support a conclusion.¹⁰ This Court does not act as the trier of fact nor does it have authority to weigh the evidence, weigh issues of credibility, or make factual conclusions.¹¹ Therefore, given an agency's specialized competence, this Court merely reviews whether the findings made by that agency are adequately supported by the evidence.¹²

I find there is sufficient evidence in the record to support the Referee's finding that Granison was insubordinate and, that Roizman had just cause for terminating her employment. This is an issue of the credibility of the witnesses, and this Court does not have authority to weigh issues of credibility.¹³ A finding of insubordination is sufficient substantial evidence to support a denial of unemployment compensation benefits.¹⁴

I find the Referee's Decision is supported by substantial evidence. As the Board did not either affirm or reverse the Referee's Decision, the Referee's Decision controls.¹⁵ The Decision of the Referee is AFFIRMED.

IT IS SO ORDERED.

⁹*Devine v. Advanced Power Control, Inc.*, 663 A.2d 1205, 1209 (Del. Super. 1995) (citing *General Motors Corp. v. Freeman*, 164 A.2d 686, 688 (Del. 1960); *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965); *General Motors Corp. v. Jarrell*, 493 A.2d 978, 980 (Del. Super. 1985)).

¹⁰ *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super. 1986).

¹¹ *Johnson*, 213 A.2d at 66.

¹² DEL. CODE ANN. Tit. 29 §10142(d) (1997).

¹³ *Johnson*, 213 A.2d at 66.

¹⁴ See n.8.

¹⁵ *Warrington*, 1994 WL 387028 at *3; see also R. at 81.

Very truly yours,

Susan C. Del Pesco

Original to Prothonotary
xc: Unemployment Insurance Appeal Board