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

James J. Johnson
1007 John Street
Salisbury, Maryland 21804

**Re:** ***Johnson v. Mountaire Farms***
**C.A. No. S11A-05-007**

On Appeal from the Unemployment Insurance Appeal Board: AFFIRMED

Date Submitted: January 5, 2012
Date Decided: January 17, 2012

Dear Mr. Johnson:

James Johnson appeals the decision of the Unemployment Insurance Appeal Board ("the Board") that affirmed an Appeals Referee's determination that Mr. Johnson 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. Johnson worked for Mountaire Farms ("Employer") for seventeen months as a driver when he was terminated on December 16, 2010. A Claims Deputy reviewed Mr. Johnson's application for unemployment benefits and determined Mr. Johnson had been terminated for just cause. Therefore, Mr. Johnson was disqualified from the receipt of

benefits. Mr. Johnson appealed that determination and a hearing was held before an Appeals Referee on February 10, 2011.

Roland Palmer testified for Employer. He stated Mr. Johnson was terminated for insubordination because he refused to follow reasonable instructions given by management. Mr. Johnson was responsible for picking up chickens and delivering them to the plant. When Mr. Johnson arrived at the plant with his first load of the day on December 16, 2010, the assistant manager, David Nuse, approached Mr. Johnson and reminded him he had one more load of chickens to deliver. Mr. Johnson stated he was done for the day and refused to take out his additional load as directed. Mr. Nuse advised Mr. Johnson he would be terminated if he refused to run this additional load. Mr. Johnson continued to refuse to run this load and, as a result, he was terminated. Mr. Palmer testified Mr. Johnson was the only professional commercial driver that did not complete his shift that day. The load that Mr. Johnson refused was given to another driver who did not experience any problems with pick up and transport of the load. Mr. Palmer acknowledged that it was "a little bit snowy" that day. However, Mr. Palmer stated that the company consistently surveyed the weather and evaluated whether it was safe to drive. The company has concluded it was safe to drive at the time Mr. Johnson was directed to pick up an additional load of chickens.

Mr. Palmer addressed Mr. Johnson's assertion that he had informed Mr. Nuse about an accident Mr. Johnson had earlier in the day while driving Employer's truck. Mr.

Palmer stated that if, in fact, there had been an accident, Mr. Johnson was under a workplace obligation to report the accident and to contact Mr. Nuse concerning the same when he returned to the plant. Mr. Palmer testified that there was no damage to the truck that would indicate an accident took place.

Mr. Nuse also testified on behalf of Employer. Mr. Nuse avers Mr. Johnson did not advise him of any accident. Nor did he complain about the driving conditions to Mr. Nuse. Mr. Nuse states Mr. Johnson came in with his load and informed Mr. Nuse he was done for the day. At that point, Mr. Nuse advised Mr. Johnson that he had one more load to haul. Mr. Johnson told Mr. Nuse he was done. Mr. Nuse told Mr. Johnson he would be terminated if he refused to pick up the additional load. Mr. Johnson said, "It was nice knowing you," or words to that effect. The interaction between Mr. Nuse and Mr. Johnson took place at approximately four o'clock in the afternoon. Mr. Johnson had started his shift at one o'clock in the afternoon and would normally be expected to work until seven or eight o'clock in the evening.

Mr. Johnson testified on his behalf. He stated that, on his way to the plant with his full load, the truck slid off the road into the yard of a homeowner and became stuck. Mr. Johnson worked at it until he was able to dislodge the truck. He acknowledged he did not report the incident to the homeowner because it was his belief that Employer would contact the homeowner. Mr. Johnson produced a light plug that he testified he found at the scene approximately two weeks after the alleged accident. He stated he

believes this light plug came from his truck and is evidence of the accident. Mr. Johnson testified he told Mr. Nuse that the weather was "too bad out there" and that he was not going back out on the road. Mr. Johnson stated he told Mr. Nuse that he ran off the road onto someone's property and Mr. Nuse could probably expect a call about the incident. Mr. Nuse advised Mr. Johnson he still had another load to run and Mr. Johnson replied that it was not safe for him to do so. Mr. Johnson testified

he was not terminated, Mr. Nuse merely told him not to return to work and he followed Mr. Nuse's instructions as required.

Mr. Johnson submitted to the Appeals Referee Section 392.14 of the Federal Motor Carrier Safety Regulations, which reads:

> **Hazardous conditions; extreme caution.**
>
> Extreme caution in the operation of a commercial motor vehicle shall be exercised when hazardous conditions, such as those caused by snow, ice, sleet, fog, mist, rain, dust, or smoke, adversely affect visibility or traction. Speed shall be reduced when such conditions exist. If conditions become sufficiently dangerous, the operation of the commercial motor vehicle shall be discontinued and shall not be resumed until the commercial motor vehicle can be safely operated. Whenever compliance with the foregoing provisions of this rule increases hazard to passengers, the commercial motor vehicle may be operated to the nearest point at which the safety of passengers is assured.

Mr. Johnson stated that it was sleeting that day and the sleet obscured his vision. He testified cars were "all over the place" on Route 50.

During cross-examination of Mr. Johnson, Mr. Palmer noted that, if the light plug had, indeed, come from one of Employer's trucks, that truck would have to have been serviced before it was returned to the force. Mr. Johnson admitted the conversation he had with Mr. Nuse when returning the truck was extremely short.

At the conclusion of the hearing, the Appeals Referee stated that she was going to take a look at the National Weather Service report for the day in question as well as at the law for commercial drivers. She noted she had some concerns about the accident or

alleged accident and that she would carefully review the testimony presented at the hearing.

By way of written decision mailed on February 11, 2011, the Appeals Referee affirmed the Claims Deputy's determination that Mr. Johnson was disqualified from the receipt of benefits. Mr. Johnson appealed to the Board and the Board held a hearing on March 22, 2011.

At the Board hearing, Mr. Johnson supplemented the existing record with the submission of a blog post from "SBYNEWS", a blog run out of Salisbury, Maryland that purports to be "DelMarVa's Premier Source for News, Opinion, Analysis, and Human Interest."[1] The blog post advised drivers not to drive unless necessary on December 16, 2010. Mr. Palmer objected to the authenticity of the blog post.

Mr. Johnson also testified that the union agreement provides that Employer should have provided a discharge notice to him immediately. Mr. Johnson cited again to the Federal Motor Carrier Safety Regulations.

By way of decision mailed on May 11, 2011, the Board affirmed the Appeals Referee's decision. Mr. Johnson filed a timely appeal with 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

[1] SBYNEWS, http://sbynews.blogspot.com (last visited Jan. 12, 2012).

substantial evidence in the record.[2] "Substantial evidence" is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[3] 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."[4]

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."[5] "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."[6] Where a decision to terminate an employee is based upon misconduct, the employer has the burden of

---

[2] *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.").

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

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

[5] 19 *Del. C.* § 3314(2).

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

establishing the misconduct.[7]

The Board held:

> In this case, the Employer established that [Mr. Johnson] is a truck driver, who was hired to bring loads of live chickens from farms to the plant for processing. The delivery of the chickens in a timely manner is crucial to the Employer's ability to meet its production schedules. [Mr. Johnson] was discharged when he refused his manager's directive that he go out and pick up a load of chickens. [Mr. Johnson] acknowledged that his manager gave him the order and he refused, asserting the roads were not safe. The Employer presented credible evidence to establish that its staff was satisfied that the road conditions at the time [Mr. Johnson] refused to drive were not unsafe. In fact, another driver made the pickup and delivery after [Mr. Johnson] refused and walked off the job. Furthermore, the evidence establishes that [Mr. Johnson] acknowledged that he was warned that if he left and did not pick up the chickens, he would be discharged.
>
> [Mr. Johnson] later told Human Resources that he knew the roads were unsafe because he had an accident earlier that morning. [Mr. Johnson] testified before the Referee that he lost control of his truck and slid into a yard, causing damage to the truck. He admitted that he did not inform the company of the incident.
>
> The Referee found that [Mr. Johnson's] refusal to carry out the manager's directive demonstrates a reckless indifference to the duties of his job and rises to a level of willful or wanton misconduct. This Board agrees that the Employer presented substantial evidence to support that conclusion. The evidence also establishes that the refusal to pick up the chickens was in violation of the Employer's interest. [Mr. Johnson] was aware that the operation of the plant, and the Employer's ability to satisfy its obligations to its other employees and its customers depended upon the [Mr. Johnson's] performance of his duties. He was also aware that the consequence of his refusal would be loss of his job. In spite of all of these facts, he walked off the job, and another employee completed the delivery without incident.

---

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

> [Mr. Johnson] attempted to justify his refusal to drive by stating that the road conditions were such that he lost control of the truck and slid off the road. He did not report this incident to his employer, and there is no credible evidence in the record that he had such an accident on the morning of his termination. Either it did not happen as he described, or it did occur, and he did not report it to his employer. Either [he] had an accident and did not report it, or he lied about losing control of the truck and sliding off the road. Either scenario is evidence of a willful or wanton act in violation of his employer's interest. The totality of the circumstances provides substantial evidence of just cause for [Mr. Johnson's] discharge from his position as a driver for the company.

On appeal, Mr. Johnson argues the Board did not consider federal law when considering whether he was terminated for just cause. Although the Board did not specifically address the federal regulations cited by Mr. Johnson, the Board found that Employer was satisfied that the roads were safe and, furthermore, the Employer's road safety determination was supported by the fact that the additional load was picked up and hauled by another driver without incident or

complaint. This Court will not revisit evidence presented below. The Court is satisfied that the Board's decision is supported by substantial evidence and free from legal error.

**Conclusion**

In light of the foregoing, the Board's decision finding Mr. Johnson was terminated for just cause in connection with his employment is AFFIRMED.

IT IS SO ORDERED.

Very truly yours,

T. Henley Graves

oc: Prothonotary
cc: Unemployment Insurance Appeal Board
Mountaire Farms