IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

MARIANA JULES-HALL,	)	
	)	
Appellant,	)	
	)	
v.	)	C.A. No. 05A-10-004-JRJ
	)	
CASH SYSTEMS, INC., and the UNEMPLOYMENT INSURANCE APPEALS BOARD,	)	
	)	
Appellees.	)	

ORDER

AND NOW, TO WIT, this 13th day of June, 2006, the Court having duly considered Claimant's letter constituting her Opening Brief and the Appellees' Response Brief, **IT IS HEREBY ORDERED THAT**:

1. The scope of this Court's review on appeal from the Unemployment Insurance Appeals Board ("UIAB" or "Board") is limited to an examination of the record for errors of law and a determination of whether substantial evidence exists in the record to support the Board's findings of fact and conclusions of law.[1] "Substantial evidence" is defined as such relevant evidence as a reasonable mind

[1] *Robinson v. Metal Masters, Inc.*, 2000 Del. Super. LEXIS 264; *Histed v. E.I. DuPont de Nemours & Co.*, 621 A.2d 340, 342 (Del. 1993); *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

might accept as adequate to support a conclusion.[2] On appeal, the Court does not "weigh the evidence, determine questions of credibility, or make its own factual findings."[3] The Court reviews the case to determine if the evidence is legally adequate to support the agency's factual findings.[4] When reviewing the Board's findings, the reviewing Court should accept those findings, even if acting independently, the reviewing Court would reach contrary conclusions.[5] Only where no satisfactory proof exists to support the factual finding of the Board may the Superior Court overturn it.[6]

2. In its decision, the Board relies on *McCoy v. Occidental Chemical Corp.*[7] McCoy identifies the statutory authority for a just cause termination as 19 *Del. C* § 3314(2).[8] The *McCoy* decision states that a "[v]iolation of a reasonable company rule may constitute just cause for discharge, but the employee must be aware that the policy exists and may be cause for discharge."[9] The two-prong analysis identified in the Board's decision is: (1) whether a policy existed, and, if so, what conduct was prohibited, and (2) whether the employee was apprised of the policy

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[2] *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981); *Consolo v. Federal Maritime Commission*, 383 U.S. 607, 620 (1966).
[3] *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).
[4] *ILC of Dover, Inc. v. Kelley*, 1999 Del. Super LEXIS 573, at *3.
[5] *H & H Poultry v. Whaley*, 408 A.2d 289, 291 (Del. 1979).
[6] *Johnson*, 213 A.2d at 64.
[7] *McCoy v. Occidental Chemical Corp.*, 1996 WL 111126 (Del. Super.).
[8] The *McCoy* decision refers to section 3315(2) of Title 19, which was subsequently amended to reverse sections 3314 and 3315. The operative language on just cause termination now appears at section 3314(2).
[9] *McCoy*, at *3. *See also Parvusa v. Tipton Trucking Co., Inc.*, Del. Super., C.A. No. 92A-12-009, Cooch, J. (Dec. 1, 1993) (Mem. Op.).

and, if so, how he was made aware. In *McCoy*, the Claimant argued that the employer's failure to warn him that a specific violation could lead to termination should not support a finding of just cause. The Claimant in *McCoy* was terminated for a safety violation which followed several months of documented inadequate performance and the issuance of a warning that termination was a possible consequence if the Claimant's performance did not improve.[10]

3. The Claimant in this case acknowledges that she was aware of her employer's policy:

> Delaware Park and [the] Delaware State Gambling Commission has [sic] a $500 per day limit on one credit card, but a customer can used [sic] more than one credit card as long as it does not exceed $500.[11]

While she does not address her violation of this policy in her Opening Brief, Claimant acknowledged the violation in the record below.[12] The bulk of Claimant's Opening Brief on appeal addresses allegations that are wholly irrelevant to the Court's analysis on appeal. It is manifestly clear from the record below that the Claimant was fully aware of her employer's policy, and that she, herself, acknowledged she violated the policy. The Claimant here received a

[10] *McCoy*, at *4.
[11] Appellee's Opening Brief, p. 1.
[12] Record, p. 1 ("Claimant admits that she did dispense cash more than the allowable amount"), and pp. 43 (Line 18) to 44 (Line 2).

"Third and Final Warning" from her employer on October 8, 2004. That warning states:

> Please be advised that this is your **Final Warning**. Any further occurrences will result in your termination. I will be closely monitoring your performance in this matter.

The warning bears her signature and her signature constitutes an acknowledgment of receipt. The Claimant acknowledged receipt of this warning again during the Appeals Referee hearing. Notwithstanding this "Final Warning," and fifteen days after receiving it, the Claimant engaged in conduct that she knew to be in violation of her employer's policy, as well as the similar policies of Delaware Park and the Delaware State Gambling Commission. Accordingly, by her conduct, Ms. Hall has met the standards set forth in *McCoy* for a just cause termination due to a violation of a known and established employer policy, and the Board's finding is supported by substantial evidence and free of legal error. Consequently, the Board's decision is **AFFIRMED**.

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Jan R. Jurden, Judge

cc: Mariana Jules-Hall
G. Kevin Fasic, Esq.