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

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| SANDRA K. KLINE,<br>Appellant,<br><br>v.<br><br>SUPER FRESH FOOD MARKETS, INC.;<br>UNEMPLOYMENT INSURANCE APPEAL BOARD,<br>Appellees. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | C.A. No.: 09A-04-006 FSS |

Submitted: November 16, 2009
Decided: February 4, 2010

**ORDER**

**Upon Employee's Appeal From the**
**Unemployment Insurance Appeal Board – *AFFIRMED***

1. Sandra Kline appeals the Unemployment Insurance Appeal Board's denial of unemployment benefits. Beginning in May 2001, Kline worked as a grocery clerk at Super Fresh, a supermarket. Kline was fired on October 10, 2008, for using outdated coupons at a self-checkout register and writing rain checks for herself for products not available, in violation of company policy.

2. On October 30, 2008, the Division of Unemployment Insurance of the Delaware Department of Labor concluded that Super Fresh did not meet its burden of proving that Kline was discharged for just cause. Accordingly, the Division held that Kline was eligible for benefits.

3. In November 2008, Super Fresh appealed the Division's decision, and a hearing was held on December 11. The chief appeals referee concluded that Kline was terminated for just cause, and thus, was disqualified from receiving benefits under 19 *Del. C.* § 3314(2). Kline appealed the referee's decision on December 15, 2008.

4. A hearing before the Board was held on March 25, 2009. The Board affirmed the referee's denial of benefits.[1] The Board, in its April 6, 2009 decision, concluded that Kline "knew the policies of Employer and willfully and wantonly disregarded them by using expired coupons on two separate occasions[,]" resulting in a loss of approximately $53.50 to the store. The Board noted Kline's argument "that the expired coupons do not match up[,]" but found that "the overwhelming credible evidence presented by the Employer below contradicts this statement."

5. Kline subsequently filed this timely appeal on August 25, 2009. On November 5, 2009, the court issued a final delinquent brief notice, due to Super Fresh's failing to file an answering brief. Accordingly, the court will decide the

[1] *See* 19 *Del. C.* § 3314(2) ("An individual shall be disqualified for benefits: . . . [f]or the week in which the individual was discharged from the individual's work for just cause in connection with the individual's work and for each week thereafter[.]").

issues based on the papers that have been filed.[2]

6. Although in outline form and not in conformity with Superior Court Civil Rule 107(e)'s requirements, Kline raises a number of issues on appeal. First, she contends that "Superfresh was not represented by an Attorney at the U.I.A.B. hearing[,]" and that "Delaware Law requires corporations to be represented by a lawyer." Second, Kline claims that the "Board refused evidence offered by Claimant[,]" that "[c]oupon[s] submitted by Employer were fraudulent[,]" and that Kline did not violate the employee policy. Third, Kline claims that Super Fresh did not file its November 2008 appeal in a timely fashion. Fourth, Kline argues that Super Fresh claims to have a certain "sorting system for coupons," when it in fact does not have any sorting system. Fifth, Kline appears to contend that the employer's representative inaccurately testified regarding Kline's failed attempts to have her union file grievances against the employer. Finally, Kline asserts that the "[t]ranscripts were not submitted to the Superior Court in their entirety."

7. When analyzing an appeal from the Board, the function of the court "is limited to a determination of whether there was substantial evidence sufficient to support the [Board's] findings."[3] Substantial evidence is "'such relevant

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[2]Super. Ct. Civ. R. 107(f).

[3]*Unemployment Ins. Appeal Bd. v. Duncan*, 337 A.2d 308, 309 (Del. 1975).

evidence as a reasonable mind might accept as adequate to support a conclusion.' On appeal, the court does not weigh evidence, determine questions of credibility, or make its own factual findings."[4] The court will affirm the Board's decision "[i]f there is substantial evidence and no legal error[.]"[5] In addition, "when the Board adopts the factual findings of an Appeals Referee, this Court will also review the Appeals Referee's findings of fact and conclusions of law."[6]

8. Additionally, when reviewing a procedural decision, as opposed to a factual decision, the court "must consider whether [the Board] abused its discretion[.]"[7] There is no abuse of discretion unless the decision "'is based on clearly unreasonable or capricious grounds' or 'the Board exceeds the bounds of reason in view of the circumstances and ha[s] ignored recognized rules of law or

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[4]*Coury v. Lowe's Home Ctrs., Inc.*, 2009 WL 3290730, at *3 (Del. Super. Aug. 31, 2009) (Vaughn, P.J.).

[5]*Atlantis Commc'ns v. Webb*, 2004 WL 1284213, at *2 (Del. Super. May 28, 2004) (Silverman, J.); *see also Johnson v. Chrysler Corp.*, 213 A.2d 64, 67 (Del. 1965) ("Only when there is no satisfactory proof in support of a factual finding of the Board may the Superior Court . . . overturn it.").

[6]*Majaya v. Sojourners' Place*, 2003 WL 21350542, at *4 (Del. Super. June 6, 2003) (Cooch, J.).

[7]*Hartman v. Unemployment Ins. Appeal Bd.*, 2004 WL 772067, at *2 (Del. Super. Apr. 5, 2004) (Cooch, J.) (citing *Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991)); *see also Sheppard v. GPM Invs., LLC*, 2008 WL 193317, at *1 (Del. Super. Jan. 23, 2008) (Stokes, J.).

practice so as to produce injustice.'"[8]

### A. *Super Fresh's Lack of Counsel at Hearing*

9. Kline claims that Delaware law requires corporations to be represented by counsel, as opposed to an employee. The court has held that "though corporations must be represented by an attorney in court proceedings, a non-attorney employee may represent the employer at an administrative hearing."[9] "It is not unusual for the employer to have a [non-attorney] representative to counter the Claimant[.]"[10] Accordingly, it was appropriate for Super Fresh's store manager to represent Super Fresh during the Board hearing.

### B. *The Board's Alleged "Refusal" of Evidence*

10. Kline next contends that the Board "refused" evidence she attempted to submit during the hearing. Kline submitted two documents. First, she submitted a charge of discrimination she filed against Super Fresh on November 10,

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[8]*Hartman*, 2004 WL 772067, at *2 ("Absent an abuse of discretion, the Court must affirm the judgment of the [Board].").

[9]*Caldwell Staffing Servs. v. Ramrattan*, 2003 WL 194734, at *3 (Del. Super. Jan. 29, 2003) (Babiarz, J.); *see also Brainard v. Chrysler Corp.*, 1995 WL 339032, at *2 (Del. Super. Feb. 14, 1995) (Del Pesco, J.). *Cf. Marshall-Steele v. Nanticoke Mem'l Hosp., Inc.*, 1999 WL 458724, at *5 (Del. Super. June 18, 1999) (Graves, J.) (holding that a non-employee, non-attorney could not represent an employer before the Industrial Accident Board).

[10]*Palmer v. Lenfest Group*, 2000 WL 303315, at *3 (Del. Super. Feb. 4, 2000) (Quillen, J.).

2008, for allegedly terminating her based on gender discrimination and for retaliatory purposes. Second, Kline submitted a letter from her union regarding the union's failed attempts to have Super Fresh reconsider her termination and the union's dropping Kline's case "based upon the facts presented . . . and the current contract language."

11. Kline also attempted to move into evidence copies of receipts from October 2008. She agreed, however, that identical copies were already admitted. Specifically, the Board instructed Kline to look at copies of the receipts already admitted and asked, "If you could just verify that this is, in fact, what you were trying to get at[,]" to which she responded, "Yes this is it." Thus, the Board refused to admit the copies, which were merely cumulative.

12. At no point did the Board refuse to admit an item into evidence, other than the copies of the receipts. Instead, the Board asked several times if there was "anything else [Kline] wish[ed] to tell the board" and if the parties wished to enter anything into evidence.

### C. *Allegedly Fraudulent Coupons*

13. Kline also asserts that the "[c]oupon[s] submitted by Employer were fraudulent." As mentioned, the Board found that, while Kline argued the

"expired coupons [did] not match up . . . the overwhelming credible evidence presented by [Super Fresh] contradicts this statement."

14. The court has reviewed the record carefully, including receipts from October 6 and 8, 2008, expired coupons, and copies of rain checks. The Board's conclusion was supported by substantial evidence.

**D. *Kline's Violation of the Employee Policy***

15. Next, Kline argues that she did not violate company policy. Super Fresh's associate purchase procedure, which Kline signed on May 7, 2001, states:

> ALL PURCHASES MUST BE AT FULL RETAIL, EXCEPT FOR REDUCED ITEMS ABAILABLE [SIC] TO ALL CUSTOMERS. ASSOCIATES MUST FOLLOW ALL COUPON REDEMPTION LIMITS AND PROCEDURES.
>
> . . . .
>
> ANY EMPLOYEE, REGARDLESS OF LENGTH OF SERVICE, WHO DISCOUNTS MERCHANDISE, WHO CONSUMES MERCHANDISE WITHOUT A VALID RECEIPT AND/OR TAKES MERCHANDISE FROM THE STORE WITHOUT A VALID PURCHASE RECEIPT(S) WILL BE TERMINATED.

16. The Board's conclusion that Kline violated the policy was based on the substantial evidence submitted by the parties. The signed, company policy

statement makes clear that employees who violate the store's coupon procedures will be fired, and the evidence was adequate to support the Board's determination.

**E. *Timing of Super Fresh's Appeal in November 2008***

17. Kline further argues that Super Fresh filed an appeal "nine days later than the appeal date of the hearing which is required by unemployment rules." On October 30, 2008, a claims deputy made the original determination that Kline was eligible for unemployment benefits. The written decision stated that it would become final on November 9, 2008, "unless a written appeal is filed. Your appeal must be received or postmarked on or before the date indicated. If the last date to file an appeal falls on a Saturday, Sunday or Legal Holiday, the appeal will be acceptable the next business day." November 9, 2008 fell on a Sunday, so Super Fresh had until November 10 to file a timely appeal. While Super Fresh's letter requesting an appeal was dated and faxed on November 10, the Division of Unemployment Insurance's Appeal Request Notification was stamped "RECEIVED DEPT OF LABOR 2008 NOV 18."

18. During the hearing, the Board concluded that "the employer's appeal was actually timely. It was faxed in on November 10th of 2008. At that time, that's a Monday. The last day to file an appeal was Sunday which would have been

the 9th making the appeal timely." While it is troubling that two documents–a November 24, 2008 notice of hearing and the referee's December 11, 2008 decision–refer to "November 18, 2008" as the "date of appeal," the Board did not abuse its discretion when deciding that the date of receipt via fax was enough to show that the appeal was timely.

### F. *Super Fresh's Coupon Sorting System*

19. During the December 11, 2008 hearing, Super Fresh explained the use of coupons at self-checkout registers:

> The coupons get dropped into a slot and then they're retrieved the following morning.
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> . . . .
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> [W]hen [employees] pull them out of the box we have all the coupons that were in the box that day. And when you pull them out they follow the sequence of the first ones put in verses [sic] the last ones put in. And when you got to that batch all these coupons . . . those match up to the receipt for that same day.
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> . . . .
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> It doesn't sort them individually but it sorts who put the last one in verses [sic] who put the first one in and then can run your, you can run a journal tape to show you all the orders . . . on that register for that day.

20. Kline contends that, although Super Fresh claims to have a coupon sorting system, it in fact does not. Aside from her own testimony, Kline

failed to present evidence to refute Super Fresh's description of how the coupons can be matched to a particular receipt. Kline explained:

> [M]y witnesses who still work for Super Fresh were supposed to be here today but I was told that they didn't want to jeopardize their job and I was told personally by them. So I don't have any witnesses. . . . I was going to question them about how the sorting system, if there is a sorting system which there really isn't.

Based on the employer's evidence and the lack of evidence presented by Kline, the Board's conclusion was reasonable.

### G. *Allegations Regarding Union Representative*

21. Kline further states that she "filed several grievances against John Rafter from 12-07 thru [sic] 9-08[,]" but that "Union representative Carol Waite, never arranged meetings for the grievances." Kline contends that at the hearing, "John Rafter stated that the grievances were dropped long before I was terminated which is not true."

22. During the hearing, Rafter testified:

> Carol Waite heard and saw the evidence, the testimony by myself and at the end of that, the union dropped the case. They didn't take it to arbitration. They didn't take it to a grievance. They didn't bother to file a grievance. They told myself and personnel that they would not be filing a grievance on this case. I can only imagine for lack of

merit.

23. Again, the court's role on appeal is not to determine questions of credibility or weigh evidence. Accordingly, the court cannot evaluate the truthfulness or accuracy of Rafter's testimony. The Board did that.

**H. *Transcripts Submitted to the Court***

24. Finally, Kline contends that the complete transcripts from the proceedings below were not submitted to the court. This contention is without merit, as it appears that the court received copies of the transcripts in their entirety. And, Kline has not identified in a helpful way what is missing.

For the foregoing reasons, substantial evidence was presented to support the Board's findings, and the Board did not abuse its discretion. Accordingly, the Board's April 6, 2009 decision denying benefits is **AFFIRMED**.

**IT IS SO ORDERED.**

/s Fred S. Silverman
Judge

cc: Prothonotary (civil)
Sandra K. Kline, *Pro Se*
John Rafter, Employer Representative
Phillip G. Johnson, Esquire