IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

MBNA AMERICA BANK, N.A.,	)	
	)	
Appellant,	)	
	)	
v.	)	
	)	
MARIA CAPELLA,	)	C.A. No: 02A-09-014 RSG
	)	
and	)	
	)	
UNEMPLOYMENT INSURANCE APPEAL BOARD	)	
	)	
Appellees.	)	

Submitted: February 5, 2003
Decided: April 15, 2003

Upon Appeal from a Decision of the Unemployment Insurance Appeal Board.
AFFIRMED.

Scott A. Holt, Esquire, Wilmington, Delaware, for Appellant MBNA America Bank, N.A..
Maria Capella, Pennsville, New Jersey, Appellee, *pro se.*
Stephani J. Ballard, Esquire, Wilmington, Delaware, for Appellee UIAB.

ORDER

MBNA America Bank, N.A. ("MBNA" or "Employer") is appealing a decision of the Unemployment Insurance Appeal Board ("UIAB" or "Board") in which the Board reversed the decision of the Appeals Referee and awarded benefits. Upon review of the parties submissions and the record below, the Court concludes that the Board's decision must be affirmed.

STATEMENT OF FACTS

Maria Capella ("Claimant") was employed by MBNA from April 14, 1987 through April 29, 2002, at which time she was terminated from her position as a risk control analyst III. According to MBNA's corrective action report, Claimant was fired for misconduct according to personnel policy 601. Specifically, Claimant disconnected 47 customer calls within the first ten seconds of receiving the calls between April 2, 2002 and April 14, 2002. On April 3, 2002, calls were taped for educational purposes and it was discovered that Claimant was disconnecting calls in less than ten seconds. As a result, the "Ten Second Report" was pulled for five business days which indicated that Claimant had released 47 of 410 calls or 11.4 percent between April 2, 2002 and April 14, 2002. On April 16, 2002, Claimant met with her manager, Brad Jones, who gave her an excellent six month review. The following day, the Department Manager, Bill Trench met with Claimant and told her that it would benefit her to admit what happened. Claimant took his advice and admitted that she disconnected the calls. On April 22, 2002, Melissa Rice of personnel and Bill Trench met with Claimant and told her that she did not need a lawyer. Claimant was terminated 45 minutes after arriving for work on April 29, 2002 and filed for unemployment benefits.

PROCEDURAL POSTURE

The record reflects that Claimant filed for unemployment benefits on April 28, 2002, as a result of being terminated from her job at MBNA. On May 23, 2002, the Claims Deputy made the determination that Claimant was disqualified from receipt of benefits because her actions rose to the level of willful misconduct. Claimant filed a timely appeal on June 5, 2002, and a hearing with an Appeals Referee ("Referee") was scheduled for July 18, 2002. The Referee

affirmed the decision of the Claims Deputy and found that appellant was discharged for just cause and is disqualified from the receipt of unemployment benefits.

Claimant filed a timely appeal of the Referee's decision with the UIAB on July 29, 2002, and a hearing was scheduled. On September 4, 2002, the Board held a hearing and issued a decision reversing the decision of the Referee. The Board found that Claimant was discharged from her work without just cause and awarded unemployment benefits, provided that she was otherwise qualified and eligible, beginning with the week that Claimant first filed a valid claim. In support of the reversal, the Board found that Claimant did not deliberately disconnect customer phone calls and, even if she had, MBNA would have been required to put Claimant on notice that her conduct would result in termination from her employment. While the Board did make note that the Referee was, in fact, correct that certain actions may permit an inference of willful or wanton conduct, it ultimately found that Claimant's conduct did not rise to that level. The Board's decision became final on September 22, 2002. MBNA filed a timely notice of appeal on September 27, 2002 from the decision of the UIAB on the grounds that (1) the decision was not supported by the evidence in the record; and, (2) the decision was incorrect as a matter of law.

ISSUES ON APPEAL

MBNA filed a timely appeal of the Board's decision raising two issues for review. First, employer argues that the Board's finding that Claimant did not intentionally disconnect customer callers is not supported by substantial evidence. Second, MBNA argues that the Board erred in it's decision requiring employer to put Claimant on notice that intentionally disconnecting customer calls would result in termination.

STANDARD OF REVIEW

The function of the reviewing Court is to determine whether the agency's decision is supported by substantial evidence.[1] Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[2] Substantial evidence requires "more than a scintilla but less than a preponderance" to support the finding.[3] The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.[4] It merely determines if the evidence is legally adequate to support the agency's factual findings.[5]

If the record below contains substantial evidence to support the findings of the Board, then that decision will not be disturbed.[6]

DISCUSSION

MBNA's first argument is that the Board's finding that Claimant did not intentionally disconnect customer callers is not supported by substantial evidence. However, the Board indicates in it's opinion that "even if the employer had met its burden of proving that claimant

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[1] *General Motors Corp. v. Freeman*, 164 A.2d 686, 688 (Del. 1960); *Johnson v. Chrysler Corp.,* 213 A.2d 64, 66-67 (Del. 1985).

[2] *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battisa v. Chrysler Corp.,* 517 A.2d 295, 297 (Del. Super. Ct. 1986), *app. dism.,* 515 A.2d 397 (Del. 1986).

[3] *Onley v. Cooch,* 425 A.2d 610, 614 (Del. 1981) (quoting *Cross v. Califano*, 475 F.Supp. 896, 898 (D. Fla. 1979)).

[4] *Johnson v. Chrysler Corp.,* 231 A.2d at 66.

[5] DEL. CODE ANN. tit. 29 § 10142(d) (1997).

[6] *Adams v. Nabisco,* 1995 WL 653435 (Del. Super. Ct.).

had deliberately released the calls early...this would not rise to the level of willful misconduct."[7] Based upon the Board's alternative finding, it appears to the Court that employer's first argument need not be reached. The issue is whether MBNA fired claimant with or without just cause which logically flows into employer's second argument.

MBNA's second argument is that the Board erred in it's decision requiring employer to put Claimant on notice that intentionally disconnecting customer calls would result in termination. In support of the second argument, MBNA alleges that despite the fact that they provided Claimant with an opportunity to explain her actions, there is no support for the Board's conclusion that MBNA was legally obligated to do so prior to terminating her for just cause. MBNA also takes issue with the Board's finding that Claimant was required to be notified that her actions could result in termination.

An employee may be denied unemployment benefits upon a finding that the employee was terminated for "just cause."[8] Under Delaware law, the burden is on the employer to show that the employee was terminated for just cause.[9] "Just cause" is defined as "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."[10] Wilful or wanton conduct requires a showing that one was conscious of one's conduct and recklessly indifferent of its consequences.[11] Every act that

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[7] *Capella v. MBNA America Bank,* UIAB Hearing No. 019256 (Sept. 4, 2002) at 2.

[8] *See* DEL. CODE ANN. tit. 19 § 3315(2) (1995).

[9] *Turlington v. Purdue,* 1996 WL 662954 (Del. Super. Ct.) (citing *Peninsula United Methodist Homes, Inc. v. Darby*, Del. Super., C.A. No. 95A-09-001, Lee, J. (April 4, 1996) (Letter Op.) at 3.

[10] *Avon Products, Inc. v. Wilson*, 513 A.2d 1315, 1317 (Del. 1986); *Abex Corp. v. Todd,* 235 A.2d 271 (Del. Super. Ct. 1967).

[11] *Coleman v. Dep't of Labor,*288 A.2d 285, 288 (Del. Super. Ct. 1972).

violates an employer's interest, the employee's duties or expected standard of behavior is not necessarily a wilful or wanton act.[12] Although Claimant's acts of disconnecting calls clearly would violate the employer's interests and the employee's expected standard of conduct, the Board accepted Claimant's testimony as credible that she did not deliberately release the calls early.[13] In the alternative, the Board found that even if MBNA had met its burden of proving that Claimant did release the calls early, this conduct would not rise to the level of wanton or willful misconduct.[14]

Employees are entitled to some notice that their performance is unacceptable before being discharged. This warning need not expressly state the ultimate consequences but must give notice of the impropriety of the acts.[15] Just cause includes notice to the employee in the form of a final warning that further poor behavior or performance may lead to termination.[16] MBNA admittedly does not make personnel policy 601 available to it's employees. There is no evidence that Claimant had a previous record of similar conduct. In Claimant's five years of employment with MBNA, she had previously only been given one verbal warning in February 2001 for an unrelated issue. In fact, Claimant was given an excellent six month review on April 16, 2002, less than two weeks before she was terminated.

Employer relies on the Supreme Court's decision in *Unemployment Ins. Bd. v. Martin,* to

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[12] *Kingswood Community Center v. Chandler,* 1999 WL 167772 (Del. Super. Ct.).

[13] *Capella v. MBNA America Bank,* UIAB Hearing No. 019256 (Sept. 4, 2002) at 2.

[14] *Id.*

[15] *Federal Street Financial Service v. Davies,* 2000 WL 1211514 (Del. Super. Ct.).

[16] *Pinghera v. Creative Home Solutions,* 2002 WL 31814887 (Del. Super. Ct.) (citing *Ortiz v. Unemployment Ins. Appeal Bd.*, 317 A.2d 100 (Del. 1974).

support its proposition that wilful or wanton, if sufficiently egregious, may justify dismissal without warning.[17] The facts of *Martin* are wholly distinguishable from the instant case because the employees in that case were given explicit warnings that if they chose to disobey an order not to be absent from work, they would be terminated. In this case, the Board found that Claimant's conduct, whether deliberate or not, does not rise to the level of wanton or wilful. The court finds that there is substantial evidence to support the finding of the Board.

Based on the foregoing reasons, the Board's decision awarding Claimant benefits is **AFFIRMED.**

IT IS SO ORDERED.

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The Honorable Richard S. Gebelein

Orig: Prothonotary
cc: Scott A. Holt, Esquire, Wilmington, Delaware.
Maria Capella, Pennsville, New Jersey.
Stephani J. Ballard, Esquire, Wilmington, Delaware.

[17] *Unemployment Ins. Bd. v. Martin*, 431 A.2d 1265 (Del. 1981)(holding that employees were terminated for just cause for a single act of misconduct because they had explicitly been warned that if they chose to disobey an order to remain at work they would be fired).