

NANTICOKE MEMORIAL HOSPITAL, : C.A. NO. 00A-06-002
INC., :
 :
 :
 Claimant below, Appellant, :
 :
 5. :
 :
 :
 TERRI STAFFORD and :
 UNEMPLOYMENT INSURANCE :
 APPEAL BOARD, :
 :
 :
 Appellees. :

Date Submitted: October 23, 2000
Date Decided: January 31, 2001

Vincent G. Robertson, Esquire, Griffin & Hackett, P.A., 116 West Market Street, P.O. Box 612, Georgetown, Delaware 19947, Attorney for Appellant Nanticoke Memorial Hospital, Inc.;

James J. Hanley, Esquire, Deputy Attorney General, Department of Justice, Carvel
State Office Building, 820 North French Street, 6th Floor, Wilmington, Delaware
19801, Attorney for Unemployment Insurance Appeals Board.

Bradley, Judge

BACKGROUND

This is an appeal of a decision of the Unemployment Insurance Appeals Board (“Board”) that found that Claimant, Terri Stafford (“Claimant” or “Stafford”), was discharged from employment as a nurse with the Nanticoke Memorial Hospital (“Employer” or “Hospital”) without just cause and that she was therefore entitled to unemployment benefits. The Board also has filed a brief in this matter regarding the timeliness of Claimant’s appeal.

NATURE AND STAGE OF THE PROCEEDINGS

Claimant first filed for unemployment benefits pursuant to 19 Del. C. § 3301, *et seq.* on October 31, 1999. A Claims Deputy determined that her Employer did not show just cause for her dismissal. Employer appealed this decision and an Appeals Referee (“Referee”) held a hearing on January 11, 2000, which Stafford failed to attend due to confusion as to the date and time. The Referee reversed the Deputy’s decision. Claimant appealed the Referee’s decision and the Board remanded the matter back to the Referee due to Claimant’s absence at the initial hearing. After another hearing, the Referee again found in favor of the Employer, and Claimant appealed to the Board, which reversed the Referee. It is Employer’s appeal from the Board that is before this Court pursuant to 19 Del. C. § 3323.

STATEMENT OF FACTS

Under 19 Del. C. § 3323, this Court must adopt the Board’s findings of fact if those findings are supported by evidence and in the absence of fraud. Because the Board adopted the findings of the Referee (though it weighed the findings differently) and because the witnesses’ testimony was consistent throughout the three hearings, this Court will base its decision on all of the facts in the three transcripts and in the official filings. Hubbard v. Unemployment Ins.

Appeal

Bd., Del. Supr., 352 A.2d 761 (1976). The Court may not consider additional facts contained in the parties' briefs that are not contained in the record.¹ Id. at 763.

¹Hospital, in its Reply Brief, objected to facts and innuendos contained in Claimant's Answering Brief but not mentioned or discussed at any of the hearings. This additional information may not be considered. Hubbard v. Unemployment Ins. Appeal Bd., Del. Supr., 352 A.2d 763 (1976).

The record indicates the following. Claimant was dismissed from her job as a registered nurse at Nanticoke Memorial Hospital for improper contact with a patient.² The patient, a 17-year-old female, was admitted for possible seizures to the Hospital on October 12, 1999, and first met Stafford on this date. She met Stafford a second time on October 26, 1999, when she was again admitted for seizures. The physicians determined that the patient suffered from pseudo seizures, which usually indicate the patient has suffered from physical and mental abuse. The patient revealed some of the details of past abuse she had suffered in her home environment to several members of the Hospital's staff, though she was most forthcoming to Stafford.³ Stafford encouraged the patient to tell this information to counselors at the Hospital, but the patient apparently would talk to the physician and counselors only when Stafford was present in the room. Because the patient said she was afraid to return home, her discharge was delayed for one

²Stafford had been employed at the Hospital for 13 years prior to her dismissal on November 3, 1999. She worked full time and was paid \$20.91 an hour.

³According to a report by Lori Jones, a social worker at the Hospital, the abuse involved the following:

Patient spoke of one occurrence of physical abuse inflicted by the mother's boyfriend of 2 years . . . who lives in patient's home with mother The patient also said that the boyfriend drinks "all the time." . . . Patient denied any sexual abuse at that time. She denied any suicidal ideation as well. . . . Mother felt that abuse situation with the boyfriend was in his self-defense because the patient was swearing at him and was going to slap him. Patient agreed that she and the boyfriend were having an argument during this occurrence. . . . Patient then admitted to being sexually abused by a friend of her late father who is currently in North Carolina.

The patient told Stafford that she was afraid to discuss her home situation because her mother ran a day-care facility out of her home and that information about abuse by the boyfriend could cause problems for her mother's business.

day and a discharge plan was developed by Lori Jones, a social worker for the Hospital.⁴ While the patient was still in the Hospital, she received initial counseling from the Delaware Department of Family Services and an adolescent crisis counseling group known as “Act Now.”

Both of these groups established plans for treating the patient after her discharge from the Hospital, including a direct intervention by Act Now with the patient’s mother and follow up visits from a social worker with the Department of Family Services. This type of discharge planning was standard protocol for the Hospital and Stafford was aware of the plans.

⁴The Court notes, though it was not discussed explicitly in the record, that the patient did not even spend the night at her home on the day that she was discharged. The record reflects that the patient left the Hospital on Thursday evening and spent the night at a friend’s house.

At the end of her shift, Stafford told the patient that if she needed help and had nowhere else to turn, that she could call Stafford at home. The patient was discharged the next day, Thursday, October 28, 1999, and began to call Stafford at home. The patient asked if she could stay with Stafford for the weekend. Stafford told her that she would have to get her mother's permission. The patient called Stafford later that day and said that her mother would allow her to stay wherever she wanted as long as the mother knew where she was. However, the mother later did not corroborate this story, and Stafford never spoke directly with the mother or obtained direct permission from the mother. The patient continued to call several more times that evening, at one point telling Stafford that she was planning to run away. Stafford tried to discourage the patient from running away, but told her that if she did, that she could stay with Stafford. Stafford further told her that she would pick up the patient after school on Friday, October 29. The patient continued to call until Stafford stopped answering the phone at 11 p.m. Although Stafford made no mention of it at the Referee hearing, Stafford informed the Board at the May 17 hearing that at some point after making the arrangements to pick up the patient from school she had called Delaware State Police Troop 5 to report that patient was planning to run away.⁵ Stafford also told the Board that by the time the patient went to school on Friday morning, the patient was planning to return to her mother to work things out and was not planning to stay with Stafford.

The patient's mother called the Hospital early in the morning of October 29 and informed

⁵Whether this event actually happened is unclear. It was not noted in either of the two Referee hearings and was first mentioned at the May 17, 2000, hearing before the entire Board. The details of the call, such as when it occurred and what, if any, action the State Police took, were not developed by Stafford or the Board.

the Hospital that her daughter was planning to stay with Stafford. The mother spoke with Lori Jones (“Jones”), the Hospital’s social worker, who later testified that the mother was “calm, but angry.” The mother also stated that Stafford had told the patient personal information about Stafford’s own children and their custody arrangements. The mother then called the school and requested that the school ensure that her daughter took the bus home and did not leave with anyone. The patient called Stafford later that night, at which point Stafford told her to stop calling and that Stafford was in trouble at work because of their communications.

The Hospital began to investigate the events soon after the mother’s phone call. To confirm the information gathered by Lori Jones, Nancy Oyerly (“Oyerly”), Stafford’s supervisor who is in charge of the pediatric unit, contacted the patient’s mother on Monday, November 1. She found that the mother was still upset and felt that Stafford was interfering in the mother-daughter relationship. Oyerly called Stafford at home to get her side of the story. Stafford worked her scheduled shifts on Sunday, October 31, and Tuesday, November 2. On November 2, Oyerly escorted Stafford to the office of James Brannon (“Brannon”), the Systems Director of Employee Services who is responsible for all of the Hospital’s human resource and personnel actions, so that they could get Stafford’s version of the events. Stafford requested that she have access to the patient’s chart for the meeting, but Oyerly refused and neither Brannon nor Oyerly reviewed it prior to Stafford’s dismissal. Also, Brannon admitted at the March 2 hearing that he did not have any knowledge of whether there were any patient complaints in Stafford’s file. After the meeting with Stafford, Brannon made the decision to terminate her employment. Brannon’s decision was reviewed by the Hospital’s management, but his decisions are generally considered final. Stafford was officially dismissed on November 3.

The Hospital dismissed Stafford for unprofessional conduct and because of concerns that her belief that she had done the right thing would lead to a similar situation in the future. However, Jones, Oyerly, and Brannon all testified that Stafford stated that she would never do such a thing again and that she realized she had acted wrongly. Although the Hospital had no official policy against employees giving personal contact information to patients, Brannon determined that Stafford acted in wilful disregard of the Hospital's interests. He also noted that her actions may have been contrary to the Standards of Nursing (in that she disregarded the discharge plan), although he did not report her to the Delaware Nursing Board.⁶

ANALYSIS OF APPELLANT'S CLAIMS

A. Was Claimant's appeal timely filed?

Employer argues that Claimant did not file the appeal from the Referee to the Board within the time limit specified in 19 Del. C. § 3318(b), which provides that a decision of a referee "shall be deemed to be the final decision of the Department of Labor unless within 10 days after the date of notification or mailing of such decision further appeal is initiated." The March 2, 2000 decision of the referee was mailed on March 7, 2000, and stated that Claimant

⁶Standard XII of the Clinical Standards of Professional Nursing Practices reads: Discharge Planning. Based on each patient's admission and on-going assessment, the RN/associate nurse initiates discharge planning, makes referrals to other health care providers and coordinates discharge self-care planning with patient/physician/family and/or significant others throughout hospitalization.

had until March 17, 2000 to file an appeal. The Claimant's notice of appeal was time-stamped by the Department of Labor on March 20.

The Unemployment Insurance Appeal Board, in its Answering Brief (which addressed only the question of timeliness) stated that the appeal was postmarked March 17. Thus, under 19 Del. C. § 3304, which reads, "When any notice, report or other document is required to be filed under this chapter and the same is forwarded by mail to the Department, the day of mailing shall be deemed to be the day of filing," the appeal was timely filed.

The Board's position on this matter is clearly correct under the provisions of Title 19 Chapter 33. The appeal was timely and the Board had jurisdiction to hear it.⁷

B. Is the Board's decision supported by substantial evidence?

The grounds for Claimant's dismissal were that her actions were inappropriate and could have led to liability for the Hospital, and that there was a possibility that she would repeat her actions. Hospital contends that Claimant is disqualified from receiving unemployment benefits under 19 Del. C. § 3315 because she was dismissed for "just cause." Just cause has been 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." Abex v. Todd, Del. Supr., 235 A.2d 271 (1967). The Hospital's claims that Claimant's conduct was inappropriate are supported by Claimant's own admissions and testimony by nearly all of the witnesses.

The Board adopted the Referee's findings of fact but weighed them differently in

⁷Since the timeliness is not an issue, this Court will not address the question of why the Hospital did not raise this issue before the Board.

reversing the Referee's decision. The Board, in its decision, stated:

The Board listened to the claimant's testimony and in the facts of this case, the Board would find that the claimant used poor judgement, but not that she engaged in wilful or wanton misconduct. The girl was no longer a patient and the problematic action did not occur on hospital property. The Board does not find that the claimant was recklessly indifferent to her conduct. Rather, the claimant was attempting to be helpful or responsive to the situation. The Board finds from the claimant's testimony that she was aware that others should have been responding to the problem but that the claimant offered her help as a last resort. She had called the State Police and was attempting, the Board believes, to limit her involvement. She was not indifferent to the consequences but she did exercise poor judgment by offering to allow the patient to stay at her place. Difficult situations result in difficult decisions. This, however, does not transform her decision into wilful or wanton misconduct.

This Court, in reviewing a decision of the Board pursuant to 19 Del. C. § 3323, is limited to making a determination of whether there is substantial evidence sufficient to support the Board's findings. Unemployment Ins. Appeal Bd. of Dep't of Labor v. Duncan, Del. Supr., 337 A.2d 308 (1975). If such evidence exists and the Board has made no error of law, its decision must be affirmed. Longobardi v. Unemployment Ins. Appeal Bd., Del. Super., 287 A.2d 690, 691 (1971). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Oceanport Ind. v. Wilmington Stevedores, Del. Supr., 636 A.2d 892, 899 (1994). This Court finds that there is substantial evidence to support the Board's findings and therefore upholds the Board's decision.

The question of whether there was just cause to dismiss Stafford was a close question, as demonstrated by the different decisions by the Deputy, Referee, and Board. She clearly acted against her better judgment and put the Hospital in a difficult position, but her poor decision is mitigated by her good intentions and by the fact that most of her actions took place off the

Hospital's property. This Court faces a situation similar to that presented in Wilmington Trust Company v. Gaines, Del. Super., C.A. No. 88A-AU-9, Gebelein, J. (Jan. 25, 1989), aff'd, Del. Supr., 565 A.2d 281 (1989) ("Gaines"), where the Court affirmed the Board's decision but noted that it would defer to the Board's judgment:

While the Board could have reviewed the evidence and concluded that claimant's actions were wilful and wanton, that conclusion would also have been supported by the evidence. It is not for this Court to review the evidence and substitute its judgment for that of the Board. The Board is entitled to determine the credibility of its evidence. There is sufficient evidence in the record to support the findings of the Board.

The present matter before this Court also could have been decided differently by the Board and the decision would still have been supported by substantial evidence.

The Court in Gaines found that the claimant used "poor judgment" but that the single incident of insubordination did not rise to the level of wilful and wanton. Whether or not a single act of misconduct can be just cause for dismissal depends entirely on the particular facts leading to dismissal. In Westvaco v. Gouge, Del. Super., C.A. No. 97A-03-015, Herlihy, J. (Aug. 14, 1997), the Court found there was no just cause when the act "was an isolated instance of poor judgment, not a pattern of misconduct." However, in Shaw v. Happy Harry, Inc., Del. Super., C.A. No. 92A-10-013, Alford, J. (Oct. 27, 1993), the Court decided that a cashier who kept money that was turned in as lost was dismissed for just cause because the nature of her job required honesty in dealing with money.

In the present matter, there was no pattern of misconduct on the part of Stafford. Thus the question becomes whether or not Stafford's act was an "isolated instance of poor judgment" or a wilful and wanton act that was contrary to the Hospital's interests. The Board chose the former interpretation and there is substantial evidence on the record to support this decision. All

of the witnesses to testify admitted that Stafford acknowledged that she had made a mistake and that she would never do it again. Her initial offer of assistance to the patient could have led to later problems, but it was not harmful in itself. The Board specifically noted in its decision that Stafford offered her help as a “last resort” and was trying to “limit her involvement.” Because of her eagerness to be of assistance to the patient, Stafford was blind to the possibility that her decision could have ultimately proven harmful to the patient and to the Hospital. Even Brannon was not convinced Stafford thought of the consequences at the time of her actions. This momentary lapse of reason, which did not arise out of maliciousness toward her patient or her employer, does not rise to the level of just cause for dismissal. There is substantial evidence on the record to support the Board’s conclusion that Stafford ultimately used poor judgment, but that her decision was not wilful and wanton.

CONCLUSION

For the foregoing reasons, the Court affirms the Board’s decision awarding unemployment benefits to Claimant.

E. Scott Bradley