

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
ONE THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947

January 15, 2008

Ms. Evon R. Robertson
4501 Dublin Hill Road
Bridgeville, Delaware 19933

**Re: Evon R. Robertson v. Easter Seals
C.A. No. 07A-07-002**

Date Submitted: October 24, 2007

Dear Ms. Robertson:

Ms. Evon R. Robertson (“Ms. Robertson”) appeals the decision of the Unemployment Insurance Appeals Board (“the Board”) that denied Ms. Robertson’s request for unemployment insurance benefits after she was terminated from her position of employment with Easter Seal Society (“Employer”). The Board denied Ms. Robertson’s request for benefits after concluding Employer had good cause to discharge Ms. Robertson. For the reasons set forth herein, the Board’s decision is affirmed.

Procedural & Factual Background

At the time of her termination on March 7, 2007, Ms. Robertson was employed as an employment specialist supervisor with Employer. Ms. Robertson had been with Employer for approximately fourteen years prior to her termination. Employer discharged Ms. Robertson from her position with the company because Ms. Robertson was in violation of the company’s “travel policy”. That policy requires all employees who drive an Easter Seals vehicle as their primary job responsibility to meet certain criteria. Among these criteria is the condition that the employee have

a motor vehicle report showing no more than four points or two moving violations within the previous three year period. After Employer pulled Ms. Robertson's driving record and discovered she had nine points on her license, Employer fired Ms. Robertson.

Ms. Robertson's request for unemployment benefits was denied by the reviewing Claims Deputy on March 26, 2007. Ms. Robertson appealed the Claims Deputy's decision and a hearing was held before an Appeals Referee on May 2, 2007. After taking testimony from Employer's representative and Ms. Robertson, the Appeals Referee upheld the Claims Deputy's determination by way of a written decision mailed May 4, 2007. Ms. Robertson appealed this decision to the Board. The Board heard testimony on June 13, 2007, from Employer's representative, Ms. Robertson, and another one of Employer's former employees. By way of written decision mailed June 29, 2007, the Board affirmed the Appeals Referee's decision. Ms. Robertson filed a timely appeal with this Court. Employer has elected not to take a position on Ms. Robertson's appeal and has not filed an Answering Brief.

Discussion

Standard of Review

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 substantial evidence in the record. *Unemployment Ins. Appeal Bd. v. Martin*, 431 A.2d 1265 (Del. 1981); *Pochvatilla v. U.S. Postal Serv.*, 1997 WL 524062 (Del. Super. Jun. 9, 1997); 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."). "Substantial evidence" is "such relevant evidence as a reasonable

mind might accept as adequate to support a conclusion”. *Gorrell v. Div. of Vocational Rehab.*, 1996 WL 453356, at *2 (Del. Super. July 31, 1996). 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.” *McManus v. Christiana Serv. Co.*, 1197 WL 127953, at *1 (Del. Super. Jan. 31, 1997).

Merits

Section 3314 of Title 19 of the Delaware Code provides, in pertinent part, that one shall be disqualified for unemployment benefits if she has been “discharged from [her] work for just cause in connection with [her] work.” 19 *Del. C.* § 3314(2). “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.” *Abex Corp. v. Todd*, 235 A.2d 271, 272 (Del. Super. 1967). Just cause may arise from an employee’s violation of a company policy of which she is aware. *Smoot v. Comcast Cablevision*, 2004 WL 2914287, at * 4 (Del. Super. Nov. 16, 2004).

In this case, Ms. Robertson testified she knew of Employer’s travel policy. Moreover, Ms. Robertson was aware that she had nine points on her license and that this point accumulation was a violation of Employer’s travel policy. Ms. Robertson’s sole argument on appeal is that she should be awarded unemployment benefits because another employee, whom Employer fired on the same day and for the same reason, was awarded unemployment benefits. That former employee, Robin Parker, testified at the Board hearing on June 13, 2007. Unfortunately, Ms. Parker’s case was not properly before the Board for review, nor is it before this Court. Employer terminated both women because their driving records were in violation of the travel policy. For reasons that are not before the Court for review, the Claims Deputy awarded benefits to Ms. Parker and Employer chose not to

appeal that decision. The Court can imagine a myriad of valid reasons that would explain why the Claims Deputy awarded benefits to Ms. Parker and Employer chose not to appeal the decision. Those reasons are irrelevant to the outcome of Ms. Robertson's request for benefits.

To the extent Ms. Robertson complains other employees were permitted to retain their positions of employment despite appearing to violate the travel policy, the Appeals Referee elicited testimony from Employer's representative that distinguished those employees' cases from Ms. Robertson's. Specifically, Employer's representative testified that Employer placed the other employees on probation, pending the removal of some of the points on the employees' driving records. In sum, Ms. Robertson has failed to present any evidence supporting her contention that Employer has unfairly held her to a higher standard than other employees.

Ms. Robertson violated a company policy of which she was aware. This policy – the travel policy – established a standard of conduct to which Ms. Robertson was expected to conform. Ms. Robertson's knowing violation of this policy constituted just cause for her termination and the denial of her request for unemployment benefits is supported by the record.

Conclusion

For the reasons set forth herein, the Board's decision denying unemployment insurance benefits to Ms. Robertson is affirmed.

Very truly yours,

/s/ T. Henley Graves

T. Henley Graves

cc: Prothonotary
Virginia Nobles, Easter Seals Disability Services
Unemployment Insurance Appeal Board