

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

CECLIA TORIBIO,	)	
	)	
Appellant,	)	
	)	C.A. No. 08A-02-001 PLA
v.	)	
	)	
PENINSULA UNITED	)	
METHODIST HOMES, INC.,	)	
and UNEMPLOYMENT	)	
INSURANCE APPEAL	)	
BOARD,	)	
	)	
Appellees.	)	

ON APPEAL FROM THE  
UNEMPLOYMENT INSURANCE APPEAL BOARD  
**AFFIRMED**

Submitted: October 10, 2008  
Decided: January 23, 2009

This 23rd day of January, 2009, upon consideration of the appeal of Cecilia Toribio (“Toribio”) from the decision of the Unemployment Insurance Appeal Board (“the UIAB”), it appears to the Court that:

1. Appellee Peninsula United Methodist Homes, Inc. (“PUMH”) operates several retirement care communities, including Cokesbury Village in Hockessin, Delaware, where Toribio began working as a housekeeping aide in June 2004. When she started working for PUMH, Toribio was

provided with PUMH's associate handbook and workplace violence prevention policy. Toribio signed forms acknowledging her receipt and understanding of both documents.<sup>1</sup>

2. In October 2005, Toribio received a written warning and a two-day suspension for allegedly pushing a co-worker's hands away from a time-clock as employees were clocking out for the day. The written warning, which was read to Toribio by a Spanish interpreter at the time it was issued, stated that Toribio had committed unwanted touching of a co-worker in violation of PUMH's associate handbook.<sup>2</sup>

3. Toribio was involved in another altercation at the time-clock on September 11, 2007. On this occasion, Toribio allegedly hit or shoved co-worker Don Coleman ("Coleman") before he could clock out ahead of her. Coleman's hand was bandaged as a result of a prior injury, and he claimed that Toribio knocked his bandaged hand away from the clock.<sup>3</sup> During PUMH's internal disciplinary investigation, five employees reported

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<sup>1</sup> Docket 5, at 33, 36. Toribio speaks and reads Spanish, but is not fluent in English. She received English-language versions of both the workplace violence prevention policy and the associate handbook, and it is unclear whether PUMH issues either of the documents in a Spanish-language version. However, Toribio has not disputed that she was notified of the policies outlined in both documents.

<sup>2</sup> *Id.* at 37, 93-94.

<sup>3</sup> *Id.* at 89.

witnessing Toribio strike or “hip” Coleman, and several described the force used as sufficient to cause Coleman to move or stumble.<sup>4</sup>

4. Toribio’s employment was terminated on September 13, 2007. According to PUMH, Toribio was discharged based upon her actions on September 11, 2007, and her previous history of aggression towards co-workers, which violated its associate handbook and workplace violence prevention policy.<sup>5</sup>

5. Toribio filed for unemployment benefits with the Department of Labor (DOL) following her termination, and PUMH contested her claim. Toribio maintained that her discharge was unjustified because she was falsely accused of hitting Coleman. A DOL Claims Deputy determined that Toribio was ineligible for benefits under 19 *Del. C.* § 3314(2) because PUMH had demonstrated just cause to discharge Toribio for misconduct.<sup>6</sup> Toribio timely appealed this decision. At a hearing before an Appeals Referee, PUMH failed to offer any eyewitness testimony regarding the

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<sup>4</sup> *Id.* at 12-18.

<sup>5</sup> In relevant part, the associate handbook categorizes “[a]ssault or attempted assault” and “[a]ny violation of the company’s Workplace Violence Prevention Policy” as Group III violations providing grounds for immediate termination. *Id.* at 35. PUMH’s Workplace Violence Prevention Policy defines “workplace violence” as “a single behavior or a series of behaviors which constitute actual or potential assault, battery, harassment, intimidation or similar actions . . . .” *Id.* at 34.

<sup>6</sup> *Id.* at 24-25.

incidences of Toribio's alleged aggression against co-workers. The Appeals Referee noted that "this tribunal cannot rely solely on hearsay to determine that the claimant disregarded the employer's interests or the standard of conduct expected of employees."<sup>7</sup> Accordingly, the Appeals Referee found that PUMH had not met its burden of proof to show just cause and reversed the Claims Deputy's determination.

6. PUMH appealed the Appeals Referee's decision. A hearing was held before the UIAB on January 2, 2008. PUMH presented new testimony from Coleman recounting that Toribio had hit his injured hand at the time clock. Another PUMH employee who witnessed the encounter also testified to corroborate Coleman's version of events. Toribio denied that Coleman had stitches and denied touching his hand. In its decision, the UIAB noted that, although the witness statements collected by PUMH as part of its internal investigation were hearsay and insufficient to show just cause when standing alone, they could be considered in light of the new testimony offered by PUMH. After considering the record below and the additional evidence presented at the hearing, the UIAB reversed the Appeals Referee's decision and found Toribio ineligible for benefits.<sup>8</sup>

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<sup>7</sup> Docket 5, at 31.

<sup>8</sup> *Id.* at 74-78.

7. Toribio filed a *pro se* appeal of the UIAB's decision to this Court on February 1, 2008. In her brief, Toribio reiterates her allegations that Coleman and other PUMH employees were lying. She therefore claims that the UIAB's decision "wasn't [fair] or right."<sup>9</sup>

8. In response, PUMH urges this Court to affirm the UIAB's decision. PUMH contends that the UIAB's decision was supported by substantial evidence that PUMH terminated Toribio for just cause and was free from legal error.

9. This Court's appellate review of decisions of the UIAB is limited. The Court's function is to determine whether the UIAB's findings and conclusions are supported by substantial evidence and free from legal error.<sup>10</sup> The substantial evidence standard is satisfied if the UIAB's ruling is supported by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."<sup>11</sup> The Court does not weigh evidence, decide questions of credibility, or engage in fact-finding in reviewing a UIAB decision.<sup>12</sup> Where the UIAB has made a discretionary decision, the

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<sup>9</sup> See Docket 8.

<sup>10</sup> *Stoltz Mgmt. Co. v. Consumer Affairs Bd.*, 616 A.2d 1205, 1208 (Del. 1992); see also *Lively v. Dover Wipes Co.*, 2003 WL 21213415, at \*1 (Del. Super. May 16, 2003).

<sup>11</sup> *Anchor Motor Freight v. Ciabottoni*, 716 A.2d 154, 156 (Del. 1998) (citation omitted).

<sup>12</sup> *Hall v. Rollins Leasing*, 1996 WL 659476, at \*2 (Del. Super. Oct. 4, 1996) (citing *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965)).

scope of the Court’s inquiry includes examining the UIAB’s action for abuse of discretion.<sup>13</sup> A discretionary decision will be upheld absent an abuse of discretion<sup>14</sup> in which the UIAB “exceeds the bounds of reason in view of the circumstances and has ignored recognized rules of law or practice so as to produce injustice.”<sup>15</sup>

10. Under 19 *Del. C.* § 3314(2), an individual is ineligible for benefits when discharged for “just cause.”<sup>16</sup> The employer bears the burden of proving the existence of just cause by a preponderance of the evidence.<sup>17</sup> Just cause is found when an employee engaged in a “willful or wanton act or pattern of conduct in violation of the employer’s interest, the employee’s duties, or the employer’s expected code of conduct.”<sup>18</sup> An employee’s acts will be considered willful or wanton if she was “conscious of [her] conduct

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<sup>13</sup> See, e.g., *Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991); *Meacham v. Del. Dep’t of Labor*, 2002 WL 442168, at \* 1 (Del. Super. Mar. 21, 2002).

<sup>14</sup> *Funk*, 591 A.2d at 225.

<sup>15</sup> *Nardi v. Lewis*, 2000 WL 303147, at \*2 (Del. Super. Jan. 26, 2000) (citation omitted).

<sup>16</sup> 19 *Del. C.* § 3314(2).

<sup>17</sup> *Diamond State Port Corp. v. Ferguson*, 2003 WL 168635, at \*2 (Del. Super. Jan. 23, 2003).

<sup>18</sup> See, e.g., *Avon Products, Inc. v. Wilson*, 513 A.2d 1315, 1317 (Del. 1986); *Abex Corp. v. Todd*, 235 A.2d 271, 272 (Del. Super. 1967).

or recklessly indifferent of its consequences.”<sup>19</sup> Thus, just cause exists when an employee has violated an employer’s policy or rule, particularly where the employee received prior notice of the rule through a company handbook or other documentation.<sup>20</sup>

11. The crux of this appeal is credibility; as such, this Court will not reverse the UIAB’s well-supported decision. For an employee to strike a co-worker would clearly violate PUMH’s written policies, as well as its interests as an employer. Toribio has not contested that she received notice of PUMH’s policies prohibiting aggression against co-workers. Indeed, in addition to signing acknowledgements of these policies at the beginning of her employment, she was provided with a “re-notification” of the relevant rules in October 2005, when she was disciplined for violating them. In concluding that Toribio did strike Coleman, the UIAB credited Coleman’s testimony, as well as corroborative testimony from a witness to the incident and written witness reports supplied by PUMH. Resolving disputes of fact and credibility is the province of the UIAB, which has sole discretion to

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<sup>19</sup> *Filanowski v. Port Contractors, Inc.*, 2007 WL 64758, at \*3 (Del. Super. Jan. 2, 2007), *aff’d*, 931 A.2d 436 (Del. 2007) (quoting *Mosley v. Initial Sec.*, 2002 WL 31236207, at \*2 (Del. Super. Oct. 2, 2002)).

<sup>20</sup> *Mosley*, 2002 WL 31236207, at \*2.

accept the testimony of one witness over another.<sup>21</sup> Based upon its factual findings, the UIAB properly determined that PUMH had just cause to terminate Toribio for misconduct. The Court will not intrude on the UIAB's role as trier of fact by disturbing the UIAB's credibility determinations or factual findings.<sup>22</sup> Therefore, this Court concludes that the UIAB's decision was supported by substantial evidence.

12. For the foregoing reasons, the decision of the UIAB is hereby

**AFFIRMED.**

**IT IS SO ORDERED.**

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**Peggy L. Ableman, Judge**

Original to Prothonotary

cc: Cecilia Toribio  
Barry M. Willoughby, Esq.  
Maribeth L. Minella, Esq.  
Ralph K. Durstein, III, Esq.

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<sup>21</sup> *Connections Community Support Programs, Inc. v. Bantum*, 2001 WL 1628474, at \*2 (Del. Super. March 30, 2001) (citing *DiSabatino Bros., Inc. v. Wortman*, 453 A.2d 102, 105-06 (Del. 1982)); *Produce City, Inc. v. Radziewicz*, 1999 WL 743958, at \*3 (Del. Super. July 7, 1999).

<sup>22</sup> *Connections Community Support Programs, Inc.*, 2001 WL 1628474, at \*2.