11/08/96 DANA L. SEWELL v. OLSTEN TEMPS AND

1996 | Cited 0 times | Superior Court of Delaware | November 8, 1996

ORDER

UPON APPEAL FROM THE UNEMPLOYMENT INSURANCE APPEAL BOARD

ALFORD, J.

This is an appeal filed by Dana Sewell ("Appellant") from a decision of the Unemployment Insurance Appeal Board ("Board"), denying Appellant's application for further review. Upon consideration of the record, the court finds as follows:

1. Appellant completed an application for employment with Olsten Staffing Services ("Appellee") on January 3, 1996. The application contained a question that asked "have you ever been convicted of a crime?" Appellant answered "no" to this question. Appellant was employed by Appellee on January 5, 1995 and received an employment assignment at the Deerfield site of MBNA.

2. Appellee conducted a Prothonotary check on Appellant's criminal history and discovered that Appellant pled guilty to assault in July of 1990 and pled guilty to assault and disorderly conduct in May of 1993. The on-site manager at MBNA was notified and Appellant was terminated on January 5, 1995 for falsifying her employment application.

3. On March 15, 1996 an Unemployment Division Claims Deputy issued a Notice of Determination which stated that Appellant was disqualified for receipt of benefits, effective with or for the week ending February 10, 1996. The Claims Deputy stated that the reason for the disqualification of benefits was that Appellant was discharged from her work for cause since she falsified her employment application. See 19 Del.C. § 3315. Appellant timely appealed this decision.

4. A hearing was held on April 9, 1996 before an Appeals Referee. At the hearing, the Appellant admitted that she pled guilty to the 1990 assault charge but denied having knowledge of the 1993 charges. She explained that she did not acknowledge the 1990 conviction on the application because she thought a charge was dropped from a criminal record after three or four years. She further explained that she answered in the same manner on another employment application with Kelly Services and that she had no problem with them. She contended that the real reason she was being terminated was that she was employed by both Appellee and Kelly, a competing staffing agency. The Appeals Referee affirmed the Claims Deputy decision stating that regardless of Appellant's claims, she had an affirmative duty to disclose her criminal history on her application and the failure to do so

constituted a falsification of her employment application.

5. On April 17, 1996, the Board denied Appellant's application for further review before the Board. The Board concluded that the appeal was without merit because the issue on appeal from the Appeals Referee was factual, and there was substantial evidence to support the findings of fact below. The Board additionally found that the Referee's decision was controlled by settled Delaware law. The Board, in its discretion, declined to review and reconsider the appeal since a sufficient basis for review did not exist.

6. On appeal from a decision of the Board, this Court must determine whether there is substantial evidence on the record to support the Board's decision and whether the decision is free from legal error. Stoltz Management Co. v. Consumer Affairs Bd., Del. Supr., 616 A.2d 1205, 1208 (1992). Substantial evidence means 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). Battista v. Chrysler Corp., Del. Super., 517 A.2d 295, 297 (1986), app. dism., Del. Supr., 515 A.2d 397 (1986). The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings. Johnson v. Chrysler Corp., Del. Supr., 59 Del. 48, 213 A.2d 64, 66 (1965). It merely determines if the evidence is legally adequate to support the agency's factual findings. 29 Del.C. § 10142(d).

7. Title 19 Del.C. § 3315(2) of Delaware's Unemployment Compensation Act provides in pertinent part: "an individual shall be disqualified for benefits . . . for the week in which the individual was discharged from the individual's work for just cause in connection with the individual's work . . . ." Just cause is the equivalent of misconduct and consists of a "wilful or wanton act in violation of either the employer's interest, or of the employees's duties, or of the employee's expected standard of conduct." Abex Corp. v. Todd, Del. Super., 235 A.2d 271, 272 (1967); Starkey v. Unemployment Ins. Appeal Bd., Del. Super., 340 A.2d 165, 166 (1975). A wilful act implies actual, specific or evil intent while a wanton act includes those acts that are heedless, malicious or reckless but not necessarily intentional. Boughton v. Division of Unemployment Ins. of Dept. of Labor, Del. Super., 300 A.2d 25, 26 (1972).

8. The signed application stated that "any false statements are grounds for [an employee's] immediate dismissal . . . ." This statement clearly identifies that an employer has a legitimate interest in "having accurate information from prospective employees so as to make an informed hiring decision." Miller v. Delaware State Univ., Del. Super., Civ.A. No. 93A-12-001, Graves, J. (July 13, 1994) (slip op. at 2).

9. Additionally, false statements on an employment application are generally treated like other kinds of misconduct. Kowalski v. Unemployment Ins. Appeal Bd. If the false information is given wilfully, it constitutes just cause for discharge. Id. (citing Cross v. Unemployment Ins. Appeals Bd., Del. Super., C.A. No. 84A-JN-4, Balick, J. (Feb. 22, 1985) (Letter Opinion) aff'd, Del. Supr., No. 96-1985 (Sept. 12, 1985)).

10. In the case subjudice, the question on the application asked "have you ever been convicted of a crime(s)?" The record indicates that Appellant wilfully made the false statement on the application regarding the 1990 guilty plea because she thought that it would be cleared from her criminal record. The question asked if Appellant had ever been convicted of a crime. Despite whether Appellant thought the guilty plea may be cleared, the correct answer is "yes."

11. This Court finds that there is substantial evidence to support the Board's decision to deny Appellant's application for further review. There is no dispute that Appellant knew of the 1990 conviction and failed to disclose it on the employment application. Additionally, Delaware law is clear that wilfully omitting information on an employment application constitutes just cause for discharge under 19 Del.C. § 3315(2). Therefore, for the reasons set forth above, the decision of the Board affirming the Appeals Referee's decision and denying further review is AFFIRMED.

IT IS SO ORDERED.

Haile Alford

J.