

2002 WL 1042088

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UNPUBLISHED OPINION. CHECK COURT RULES
BEFORE CITING.

Superior Court of Delaware.

Lyle P. DEMARIE, Appellant/Employee,

v.

DELAWARE DEPARTMENT OF
TRANSPORTATION, Appellee/Employer.

No. CIV.A. 00A-11-001HDR.

Submitted: Feb. 20, 2002.

Decided: May 24, 2002.

Upon Appeal from a Decision of the Merit Employee
Relations Board. Affirmed.

Attorneys and Law Firms

Roy S. Shiels, Esq. of Brown, Shiels, Beauregard &
Chasanov, Dover, for Appellant.

Ilona M. Kirshon, Esq., Deputy Attorney General,
Department of Justice, Wilmington, for Appellee.

ORDER

RIDGELY, President J.

*1 This 24th day of May, 2002, upon consideration of the
briefs of counsel and the record in this case, it appears
that:

(1) Lyle DeMarie has appealed the decision of the Merit
Employee Relations Board ("the Board") which upheld
the termination of his employment with the Delaware
Department of Transportation ("the Department").
Because the decision of the Board is supported by
substantial evidence and is free of legal error, it is
affirmed.

(2) Appellant was terminated from his employment as an
auditor with the Department on February 24, 1999. His
termination, according to his superiors, was a result of his
missing a substantial amount of work. The time out of
work, according to Appellant, was due to injuries
sustained in an automobile accident. The Department
claims to have had substantial difficulty pinpointing the
exact nature of Appellant's injury and the date upon
which he would be able to return to work. Appellant also
had a disagreement with his immediate supervisor
regarding his projected return to work date. Following his
termination, Appellant grieved his termination to the
Board, asserting that his termination was in violation of
Merit Rule No. 15.1 because it was, he alleges, executed
without just cause. Appellant also asserted that the
termination was in violation of Merit Rule No. 19.0100,
alleging that he was discriminated against on the basis of
non-merit factors when he was terminated rather than laid
off or given extended leave.

(3) The Board upheld the termination. Based on the facts
as the Board found them, Appellant did not establish that
the Department had abused its discretion in electing to
terminate him rather than granting extended leave, or that
he was improperly discriminated against on the basis of
non-merit factors. The Board found that the decision to
terminate the Appellant was made according to the
discretion of the Department following review of both his
performance and attendance.

(4) Appellant has appealed the Board's decision to this
Court, arguing that the Board committed legal error by
applying the wrong legal criteria to his grievance.
Appellant claims that, because he is alleging
discrimination on the basis of non-merit factors, it was
inappropriate for the Board simply to conclude that the
Department had not abused its discretion in choosing to
terminate Appellant.

(5) On appeals from the Merit Employee Relations Board,
as on appeals from other state administrative agencies, the
Superior Court must limit its scope of review to
correcting errors of law and determining whether
substantial evidence exists in the record to support the
Board's findings of fact and conclusions of law.¹
Substantial evidence means such relevant evidence as a
reasonable mind might accept as adequate to support a
conclusion.² If there is substantial evidence and no
mistake in law, the Board's decision will be affirmed.
This Court may not weigh the evidence, determine
credibility, or make its own factual findings.³

*2 (6) In the present case, the Board found that the Department properly exercised its discretion when it decided not to grant extended personal leave to the Appellant. The Board considered the evidence and ruled that Appellant's allegation of discrimination was unfounded. The Board also found that Appellant's termination had not been shown to be improper or inappropriate under the Merit Rules, either under Chapter 15 or 19. After a review of the proceedings before the Board, I find that these determinations are supported by substantial evidence on the record.

(7) Because the Board's findings of fact which are supported by substantial evidence refute even a prima


facie claim of discrimination, Appellant's claim on appeal that the wrong legal criteria were applied by the Board is without merit.

NOW, THEREFORE, IT IS ORDERED that the decision of the Merit Employee Relations Board is *AFFIRMED*.

All Citations

Not Reported in A.2d, 2002 WL 1042088

Footnotes

¹  *Tulou v. Raytheon Service Co.*, 659 A.2d 796, 802 (Del.Super.Ct.1995).

²  *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del.1994).

³ See  *Johnson v. Chrysler Corp.*, 213 A.2d 64 (Del.1965); *Guions v. Protection Techn.*, 1999 Del. LEXIS 570, 1999 WL 1442022 (Del.Super.Ct.).