

**IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX AT KINGSHILL**

LINDA L. HUGGINS,

Petitioner,

vs.

**VIRGIN ISLANDS EMPLOYMENT
SECURITY AGENCY ex rel HESS OIL
VIRGIN ISLANDS CORP.,**

Respondents.

CIVIL NO. 457/1998

WRIT OF REVIEW

NOT FOR PUBLICATION

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MEMORANDUM OPINION

(December 18, 2000)

The petitioner appeals the decision of the Virgin Islands Employment Security Agency ("VIESA") denying her request for unemployment compensation benefits because she had been discharged for misconduct. For reasons which follow, the decision of the ALJ will be affirmed.

FACTS PROCEDURAL POSTURE

Petitioner, Linda Huggins ("Petitioner" or "Huggins"), was employed as a dock attendant at the Hess Oil Virgin Islands Corp. ("HOVIC"). An accountant at the HOVIC site, Richard

Layton ("Layton"), reported that he witnessed Huggins sleeping in her security booth while on duty, in violation of company policy. Following an internal investigation and hearing, Huggins was dismissed. She subsequently sought and was denied unemployment benefits. The hearing officer concluded she was ineligible for those benefits because she had been discharged from her job for misconduct. On appeal, the Administrative Law Judge ("ALJ") upheld the denial of benefits. Huggins now seeks to have that determination reversed.

STANDARD OF REVIEW

The agency's denial of unemployment insurance benefits is subject to limited judicial review. An agency determination is upheld if supported by substantial evidence on the record. Virgin Islands Code Ann. tit. 24, § 70 (b) (1997); *Thomas v. Abamar-BB*, 35 V.I. 117, 934 F. Supp. 164 (D.V.I. 1996). Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Pierce v. Underwood*, 487 U.S. 552, 565, 108 S. Ct. 2541, 101 L. Ed. 2d 490 (1988). Further, an agency's findings of fact are reviewed under the clearly erroneous standard and upheld unless the court has "the definite and firm conviction that a mistake has been committed." *Coalition v. State Bd. of Educ.*, 90 F. 3d 752 (3d Cir. 1996)(quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395, 68 S. Ct. 525, 92 L. Ed. 746 (1948)).

DISCUSSION

Huggins raises three points of error: that the hearing was conducted without her counsel present and was, therefore, fundamentally unfair; the ALJ's decision is not supported by substantial evidence on the record, and; the ALJ used flawed methodology.

Right to Counsel at Administrative Hearing

At the outset, the Court addresses Huggins' due process challenge. Petitioner argues that the hearing was fundamentally unfair because it was conducted without her counsel present. Huggins asserts that, although she had the assistance of counsel, he was unable to attend the hearing due to a scheduling conflict. However, she argues that the ALJ improperly denied her oral request for a continuance and conducted the hearing without counsel present.

Unemployment compensation benefits are property rights and may not be deprived without due process. *Ross v. Horn*, 598 F. 2d 1312, 1317-18 (3d Cir. 1979) (citations omitted). Such due process requires notice of the charges and an opportunity to be heard, including the right to give testimony and cross-examine witnesses. *Id.* While there is no right to counsel as in criminal proceedings unless the petitioner is compelled to appear, the right to be heard has been defined to include the *opportunity* to be represented by counsel. *See Goldberg v. Kelly*, 397 U.S. 254, 90 S. Ct. 1011, 1022 (1970); *In re Baywood Electric corp. v. New York State Dep't of Labor*, 649 N.Y.S. 2d 28, 29 (1996) (denying due process claim based on agency's refusal to grant a continuance in order for petitioner to secure counsel, where petitioner had ample notice of hearing and could have done so earlier).

In the instant case, the petitioner was afforded the opportunity to be represented by counsel. The Virgin Islands Unemployment Insurance Act provides that "any claimant in any proceeding before a hearing examiner *may* be represented by counsel or other duly authorized agent." Virgin Islands Code Ann. tit. 24, § 306 (i) (emphasis added). Thus, the petitioner could have secured counsel, if she so desired, after receiving notice of the hearing. In fact, the petitioner did so. However, counsel did not attend the hearing because of scheduling conflicts, and apparently did not notify the ALJ or request a continuance until the hearing date. Counsel's scheduling problem does not compel the ALJ to reschedule the hearing to satisfy due process, where there was adequate notice and an opportunity to be represented by counsel.¹ Moreover, both parties appeared *pro se* and were afforded the opportunity to present testimony, arguments and to confront witnesses. The Court therefore rejects Petitioner's argument that the hearing was fundamentally unfair.

Substantial Evidence on the Record

The gravamen of Huggins' substantive challenge is that the testimony of a lone witness, Richard Layton, is not substantial evidence from which the ALJ could decide that she had engaged in misconduct warranting a denial of unemployment benefits.

¹ While there is nothing in the record to indicate that a Motion for Continuance was filed and denied, the petitioner asserts that she made an oral request for a continuance, which was denied.

The local statute provides that a claimant is disqualified from receiving unemployment benefits if discharged for misconduct. *See* Virgin Islands Code Ann. tit. 24, § 304 (b) (3). However, the courts have noted that not every violation of employment procedure which may provide a proper basis for dismissal will justify the denial of unemployment benefits. *See Jackman v. Heyliger*, 20 V.I. 536, 538 (D.V.I. 1984) (citations omitted). Rather, misconduct for the purpose of unemployment benefits determination has been interpreted to mean, “An act of wanton or willful disregard of an employer’s interests, a deliberate violation of the employer’s rules, a disregard for the standards of behavior which an employer has the right to expect from an employee, or negligence indicating an intentional disregard of the employer’s interest or of employee’s duties and obligations to the employer.” *Id.* (citations omitted).

Layton testified that he went to the area to read meters at approximately 6 a.m. and saw Huggins in the security booth, slumped in her chair, her head back against the glass of the booth, eyes closed and mouth open.² Huggins did not move or acknowledge his presence, despite the fact that Layton circled the booth twice. Layton testified that ten minutes later, after completing his route, he returned to the area and noted that Huggins was still in the same position.³ He then requested that another dock attendant accompany him to witness the infraction. That attendant declined to leave his post but radioed for a supervisor to go to the area. *Id.* Layton later returned to the area with a supervisor, however, Huggins had already awakened. Huggins testified she has no recollection of Layton visiting her dock area, despite the fact that other dock attendants had seen him, nor could she recall seeing his car appear.⁴ She also testified that she could not remember falling asleep, but did recall reporting to work feeling a bit tired that day.⁵ Huggins also noted that she has never fallen asleep on the job but has “dozed off” in the past.⁶ The ALJ

² See Tr. at 8, 11.

³ Tr. at 10, 19.

⁴ Tr. at 19, 29, 51-52.

⁵ Tr. at 65.

⁶ Tr. at 65.

also had testimony before her regarding the serious nature of a dock attendant's job to guard against, or quickly respond to, spills as crude oil is unloaded.⁷ Additionally, it was company policy to immediately terminate anyone found sleeping on the job, as noted in its employee manual, which was entered into evidence.⁸ Huggins also signed a document indicating receipt of the manual, which was also entered into evidence.⁹

Huggins questions Layton's credibility and says the charge against her was a pretext for dismissal in retaliation for grievances and complaints she filed against the company. Specifically, she argues that Layton's testimony was not credible because his accounting duties did not call for his presence in the dock area, rendering his account of the facts presumptively suspect.

A review of the record indicates that Huggins was given an opportunity to present her version of the facts and to cross-examine the witnesses. The ALJ also questioned Layton on issues going to bias, in an apparent attempt to probe Huggins' defense that company officials were simply out to get her.¹⁰ Similarly, Huggins was also given the opportunity to present facts to support her allegations that the charge of misconduct was pretextual.

The ALJ, therefore, found that the facts established misconduct as applied in the unemployment compensation statute, given the employer's interests in having the docks secured and the importance of an attendant in securing that area. The ALJ was faced with conflicting testimony and, after considering the facts, deemed Layton's testimony more credible. Huggins is asking this Court to re-examine Layton's credibility and determine whether he is to be believed. That is not the province of a reviewing court, but is better left to the ALJ, as trier of fact, who had an opportunity to view the witnesses. The agency's findings of fact will therefore be left undisturbed.

⁷ Tr. at 41-44.

⁸ Tr. at 31-32, 40.

⁹ *Id.*

¹⁰ See Tr. at 56-60, 74-79.

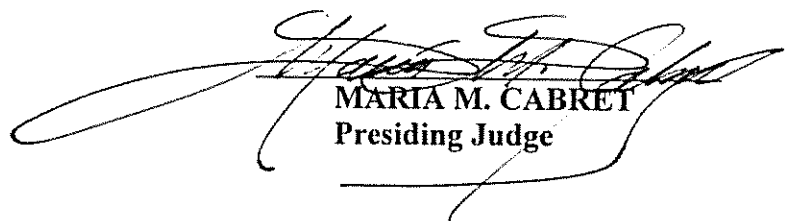
Hearing Methodology

Similarly, the Court finds no merit in Huggins' argument that the ALJ erroneously relied on the uncorroborated testimony of one witness and placed upon her the burden to corroborate that testimony.

There is no rule of law that requires corroboration of a witness. Rather, the fact finder need only find that evidence presented by the witnesses, however many, is credible. Moreover, Huggins' argument that the agency placed the burden on her to corroborate Layton's testimony is without merit. Specifically, she complains that the ALJ questioned her regarding the fact that Layton didn't know her before the incident, the absence of any motive to lie, and her inability to recall Layton on the dock at the time he alleges she was asleep. In reviewing the questions complained of in context, it is clear that the ALJ was attempting only to weed out the facts regarding charges of a conspiracy on the part of the employer, determine potential biases, and make credibility determinations. The ALJ obviously resolved these questions in favor of the employer.

CONCLUSION

For the foregoing reasons, the Court finds that the ALJ's decision was based on substantial evidence and that the agency's hearing did not violate due process. The decision of the ALJ is therefore affirmed.


MARIA M. CABRET
Presiding Judge