

DISTRICT OF COLUMBIA COURT OF APPEALS

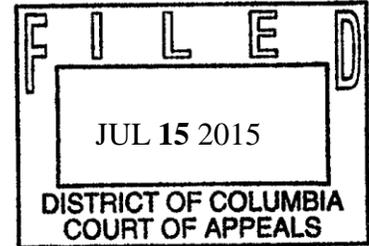
No. 13-AA-1280

BUSINESS RESOURCES AND SECURITY SERVICES, INC., PETITIONER,

v.

MELVIN D. WEBB, RESPONDENT.

Petition for Review of a Decision of
the District of Columbia
Office of Administrative Hearings
(DOES-1779-13)



(Submitted January 22, 2015)

Decided July 15, 2015)

Before GLICKMAN and FISHER, *Associate Judges*, and FARRELL, *Senior Judge*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: Business Resources and Security Services, Inc. (“BRSS”) seeks review of a decision of the Office of Administrative Hearings holding that Melvin Webb was entitled to receive unemployment compensation benefits. BRSS claimed that Webb was disqualified from receiving those benefits because it had discharged him for misconduct, namely for violating a company rule requiring its employees to respond in a timely manner to management’s requests for information. The Administrative Law Judge (“ALJ”) rejected this claim for two reasons, each of which BRSS challenges in its petition for review: *first*, because BRSS failed to show that it consistently enforced the rule in question; and *second*, because any failure by Webb to provide requested information in a timely fashion was not intentional on his part. Reviewing the ALJ’s legal rulings *de novo*, while deferring (as we must) to the ALJ’s factual findings so long as they are supported by substantial evidence in the record,¹ we affirm the ALJ’s decision.

¹ *Odeniran v. Hanley Wood, LLC*, 985 A.2d 421, 424 (D.C. 2009).

As to the first ground of that decision, BRSS argues that there was no evidence that it did not consistently enforce its rule that company employees must respond promptly to management's requests for information. In effect, BRSS's position is that the burden was on Webb to establish inconsistent enforcement. But that is incorrect; it is clear under both the applicable regulations and our case law that the burden was on BRSS to prove that it consistently enforced the rule.² BRSS points to no evidence that it carried this burden.

BRSS also argues that the ALJ erred in finding that Webb's failure to provide requested information promptly was unintentional. This finding was supported, however, by Webb's testimony describing his efforts to respond to BRSS's requests and the obstacles he confronted in doing so. Webb's "sworn testimony directly address[ing] the factual issue[] . . . constituted substantial evidence for the [ALJ's] factual conclusions."³ BRSS fails to identify any legal error in the ALJ's reliance on Webb's testimony; that there may have been "substantial evidence to support a contrary conclusion" is not a basis on which we may overturn the ALJ's determination.⁴ If anything, an ALJ's decision to credit a witness is entitled to "special deference by this court."⁵

² See 7 DCMR §§ 312.2, 312.7, 312.8 (2015); *Hegwood v. Chinatown CVS, Inc.*, 954 A.2d 410, 412-13 (D.C. 2008); *Curtis v. District of Columbia Dep't of Empl. Servs.*, 490 A.2d 178, 179 (D.C. 1985).

³ *Gunty v. District of Columbia Dep't of Empl. Servs.*, 524 A.2d 1192, 1199 n.5 (D.C. 1987).

⁴ *Castro v. Sec. Assur. Mgmt., Inc.*, 20 A.3d 749, 756 (D.C. 2011) (internal quotation marks omitted).

⁵ *Payne v. District of Columbia Dep't of Empl. Servs.*, 99 A.3d 665, 671 (D.C. 2014) (internal quotation marks omitted).

The decision of the Office of Administrative Hearings is hereby affirmed.

ENTERED BY DIRECTION OF THE COURT:



JULIO A. CASTILLO
Clerk of the Court

Copies to:

Timothy Fitzpatrick
Program Analyst
Department of Employment Services –
Compensation Review Board

Julian A. Haffner, Esq.
4800 Hampden Lane – Suite 200
Bethesda, MD 20814

John W. Sorrenti, Esq.
McKenna Long & Aldridge
1900 K Street, NW
Washington, DC 20006