

EVIDENCE AND ADMINISTRATIONS: HOW *BELL BEVERAGE V. UNEMPLOYMENT COMPENSATION BOARD OF REVIEW* CHANGED UNEMPLOYMENT COMPENSATION LAW FOR THE WORST

I. INTRODUCTION

While the decision in the case of *Bell Beverage v. Unemployment Compensation Board of Review*¹ may have dealt with the applicability of the Pennsylvania Rules of Evidence to administrative proceedings, the holding is, in and of itself, evidence of a stark change in the court's view of administrative law. In *Bell Beverage*, the majority held, in pertinent part, that under Pennsylvania Rule of Evidence 803(1), an investigator's statements regarding an employee's willful misconduct were admissible under the "present sense impression" exception.² The court further held that a letter from the informant to the employer was admissible because, although it was hearsay, no objection was made to the document.³ This formal application of the state evidentiary rules was a clear departure from the long-standing belief that the rules of evidence are largely inapplicable to administrative proceedings, a position echoed in the dissenting opinion.⁴

This survey begins in Part II by providing background on similar cases decided prior to *Bell Beverage* and statutes implicated by the present case in an effort to allow the reader to understand the arguments on which *Bell Beverage* was premised. Part III explores the court's decision in *Bell Beverage*, beginning with a concise statement of facts and procedural history. Thereafter, this survey examines the Commonwealth Court of Pennsylvania's treatment of the case, focusing primarily on the court's application of the Pennsylvania Rules of Evidence to

¹ *Bell Beverage v. Unemployment Comp. Bd. of Review*, 49 A.3d 49 (Pa. Commw. Ct. 2012).

² *Id.* at 54-55.

³ *Id.* at 55.

⁴ *Id.* at 56 (Pellegrini, P.J., dissenting).

administrative proceedings. Part IV follows as the final analytical section, providing an evaluation of the decision, including a personal critique, with a conclusion providing final thoughts in Part V.

II. BACKGROUND

A. Statutes Discussed

i. Rules of Evidence

In *Bell Beverage*, the court applied several evidentiary statutes to its analysis, not the least of which was Pennsylvania Rule of Evidence 803(1).⁵ Formally adopted in 1999, Pennsylvania Rule of Evidence 803(1) allows for hearsay testimony to be freely admitted where "[a] statement describing or explaining an event or condition" is made "while or immediately after the declarant perceived it."⁶ Under 803(1), the availability of the declarant is immaterial, and the statement may be used to prove the truth of the matter asserted.⁷ Pennsylvania evidentiary law has similarly allowed for the admission of business records as evidence under title 42, section 6108 of the Pennsylvania Consolidated Statutes, better known as the "Uniform Business Records as Evidence Act."⁸ This law provides that "[a] record of an act, condition or event shall, insofar as relevant, be competent evidence" if it can be properly identified by a custodian or competent witness, and was made "in the regular course of business at or near the time of the act."⁹

Prior to the court's decision in *Bell Beverage*, the Pennsylvania Rules of Evidence were not construed as binding on administrative hearings. This liberal application of the rules is codified in title 2, section 505 of the Pennsylvania Consolidated Statutes Annotated, which states that "Commonwealth agencies shall not be bound by technical rules of evidence at agency hearings, and all relevant

⁵ PA. R. EVID. 803(1).

⁶ *Id.*

⁷ *Id.*

⁸ 42 PA. CONS. STAT. § 6108(a) (2011).

⁹ *Id.*

evidence of reasonably probative value may be received. Reasonable examination and cross-examination shall be permitted."¹⁰

ii. Unemployment Compensation Laws

Generally, Pennsylvania laws afford unemployment compensation to individuals who, through no fault of their own, have lost or cannot find gainful employment.¹¹ However, the allocation of unemployment compensation is not a certainty and may be withheld under a myriad of circumstances.¹² Perhaps most commonly, benefits may be withheld where an employee is terminated for "willful misconduct," that is, a knowing violation of employer rules, policies, or instructions.¹³

B. Cases Discussed

i. *Barclay White Co. v. Unemployment Compensation Board of Review*

The court's long-standing disinclination to fully apply the formal rules of evidence to administrative proceedings has been cemented since the 1940s. In *Barclay White Co. v. Unemployment Compensation Board of Review*,¹⁴ for example, the court was unwilling to apply the formal rules of evidence in deciding whether or not a carpenter had refused to accept *suitable work* without *good cause*.¹⁵ In its holding, the court explained that the Unemployment Compensation Board of Review (Board) is free to prescribe rules of procedure "whether or not such rules conform to common law or statutory rules of evidence and other technical rules of procedure."¹⁶ The court further explained that the Board itself adopted a rule which abdicated its responsibility to observe

¹⁰ 2 PA. CONS. STAT. ANN. § 505 (West 2008).

¹¹ 43 PA. STAT. ANN. § 801 (West 2009).

¹² *Id.* § 802.

¹³ *Id.* § 802(e).

¹⁴ *Barclay White Co. v. Unemployment Comp. Bd. of Review*, 46 A.2d 598 (Pa. Super. Ct. 1946).

¹⁵ *Id.* at 601-02.

¹⁶ *Id.* at 601.

common law and statutory rules of evidence and procedure.¹⁷ Thus, while the claimant's testimony was not the "best evidence," and while the claimant's testimony may very well have been hearsay, the court concluded that the Board was under no obligation to consider these deficiencies under the lens of the formal rules of evidence.¹⁸

ii. *Philadelphia Coke Division, Eastern Associated Coal Group v. Unemployment Compensation Board of Review*

Although *Barclay White Co.* was ultimately overruled, the court's holding with respect to the rules of evidence was well taken. The staying power of *Barclay White Co.* was, perhaps, best illustrated in *Philadelphia Coke Division, Eastern Associated Group v. Unemployment Compensation Board of Review*.¹⁹ In *Philadelphia Coke Division*, the claimant, who had been working as a belt man until October 8, 1970, suffered a job-related injury, causing him to be absent for several weeks.²⁰ On December 7, 1970, the claimant left work, complaining of residual pain from the injury.²¹ On the advice of the employer's doctor, the claimant remained away from work for a period of time.²² Although the claimant was cleared to return to work after subsequent visits to the doctor, and despite being told to report to work on December 21, 1970, the claimant failed to appear.²³

On December 22, 1970, the claimant was discharged for failing to report without a proper medical excuse, and was denied unemployment benefits pursuant to title 43, section 802 in Pennsylvania Consolidated Statutes.²⁴ The claimant challenged the denial, asserting that he had been discharged by the employer on December 15, 1970, when a representative of the employer

¹⁷ *Id.*

¹⁸ *Id.* at 602.

¹⁹ *Phila. Coke Div., E. Ass'n Grp. v. Unemployment Comp. Bd. of Review*, 293 A.2d 129 (Pa. Commw. Ct. 1972).

²⁰ *Id.* at 130.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

released him via phone call without providing a reason.²⁵ Under the assumption that he was no longer employed at the plant, the claimant assumed he could not report on December 21, 1970.²⁶

After being denied benefits at the initial hearing, the claimant appealed to the Board, which overruled the decision of the referee and found the claimant eligible.²⁷ "The Board determined that the claimant was not guilty of wilful [sic] misconduct but [rather] the claimant's absences, as medically certified, were due to illness, which were known by the employer."²⁸

The employer, not surprisingly, appealed, claiming that the testimony of the claimant was incompetent hearsay because the employer's representative was not present and subject to cross-examination.²⁹ The court, however, disagreed with the employer and affirmed the holding of the Board.³⁰ In its holding, the court plainly stated that "the rules of evidence prevailing in courts of law are not controlling in this statutorily regulated proceeding."³¹ Relying in large measure on *Barclay White Co.*, the court further explained that because the Board itself adopted a rule which did not require strict adherence to the rules of evidence, the hearsay evidence was to be given its full probative effect and treated as admissible as a matter of law.³²

iii. *Covell v. Unemployment Compensation Board of Review*

Just a year after the *Philadelphia Coke Division* decision, the court again scoffed at the idea of a formal application of the rules of evidence. In *Covell v. Unemployment Compensation Board of Review*,³³ the court was tasked with deciding whether an employer's letter alleging that an employee voluntarily quit was

²⁵ *Philadelphia Coke Div.*, 293 A.2d at 130.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at 131.

³⁰ *Id.* at 131-32.

³¹ *Philadelphia Coke Div.*, 293 A.2d at 131.

³² *Id.*

³³ *Covell v. Unemployment Comp. Bd. of Review*, 330 A.2d 319 (Pa. Commw. Ct. 1975).

properly introduced as evidence during the Board's hearing.³⁴ Although the court was mindful that the employer's letter carried hearsay qualities, the court refused to entertain the employee's contention, holding that "evidence, admitted without objection, may be given its natural probative effect and will support the Board's findings."³⁵

iv. *Unemployment Compensation Board of Review v. Cooper*

Although Pennsylvania courts had continuously upheld the usage of a relaxed evidentiary doctrine in administrative proceedings, the Commonwealth Court of Pennsylvania took a slight retreat from its prior holdings in 1976, with the decision in *Unemployment Compensation Board of Review v. Cooper*.³⁶ In *Cooper*, the Commonwealth Court of Pennsylvania reversed the Board's findings that a resort maintenance man had voluntarily resigned from his position, resting its decision on the improper admission of hearsay at the Board's hearing.³⁷ The court explained that because the Board relied in substantial measure on information gleaned from a hearsay phone call, and because findings based "solely on hearsay cannot stand," the Board erred in denying the claimant his benefits.³⁸ While the court acknowledged the precedent laid forth in *Covell* and earlier cases, the court in *Cooper* refused to give the hearsay evidence its "natural probative effect," even though it had gone unobjected to during trial.³⁹

v. *McClellan v. Unemployment Compensation Board of Review*

Whatever change the court's holding in *Cooper* suggested was short-lived, and the court eventually returned to the more relaxed standard put forth in *Barclay White Co.* In *McClellan v.*

³⁴ *Id.* at 320.

³⁵ *Id.*

³⁶ *Unemployment Comp. Bd. of Review v. Cooper*, 360 A.2d 293 (Pa. Commw. Ct. 1976).

³⁷ *Id.* at 295-96.

³⁸ *Id.* at 296.

³⁹ *Id.* at 296-97.

Unemployment Compensation Board of Review,⁴⁰ the court not only highlighted the disconnect between administrative hearings and the rules which govern civil proceedings, but went so far as to declare the Pennsylvania Rules of Civil Procedure inapplicable to administrative proceedings as well.⁴¹ In its holding, the court explained that despite the claimant's contention that the rules of civil procedure afforded him additional time to file an appeal, "the Pennsylvania Rules of Civil Procedure . . . do not apply to proceedings before administrative agencies and commissions."⁴² The court further explained that where the Board has unambiguously set forth strict requirements for filing an appeal, the Pennsylvania Rules of Civil Procedure can have no bearing on the Board's interpretation of its own regulations.⁴³

vi. Criminal Cases and the Rules of Evidence

However incongruous the rules of evidence are to administrative proceedings, their firm application to criminal matters is well-settled. In *Commonwealth v. Coleman*,⁴⁴ for example, a murder victim's mother testified to the contents of a telephone conversation she had with the victim, in which the victim indicated that the appellant was going to kill her.⁴⁵ The plurality opinion in *Coleman* held that the assured reliability of a statement comes from it being made without time for retrospective deliberation, and found that the conversation was a contemporaneous account of the event taking place.⁴⁶

In yet another criminal case, *Commonwealth v. Peterkin*,⁴⁷ the court held that a description of a non-exciting event made either during the event or immediately thereafter was admissible under

⁴⁰ *McClellan v. Unemployment Comp. Bd. of Review*, 908 A.2d 956 (Pa. Commw. Ct. 2006).

⁴¹ *Id.* at 959.

⁴² *Id.* (quoting *McGlawn v. Pa. Human Relations Comm'n*, 891 A.2d 757, 775 n.22 (Pa. Commw. Ct. 2006)).

⁴³ *Id.*

⁴⁴ *Commonwealth v. Coleman*, 326 A.2d 387 (Pa. 1974).

⁴⁵ *Id.* at 388.

⁴⁶ *Id.* at 389-91.

⁴⁷ *Commonwealth v. Peterkin*, 513 A.2d 373 (Pa. 1986).

the present sense impression exception.⁴⁸ In *Peterkin*, however, the court made no mention of whether there was any corroboration to the statement and relied solely on its contemporaneousness.⁴⁹ A firm application of the Pennsylvania Rules of Evidence was similarly utilized in *Commonwealth v. Cunningham*,⁵⁰ a robbery case in which the Superior Court of Pennsylvania held that because transcripts of a 911 call fell within the exception to the hearsay rule and were reliable, there was no reason or need for the declarant himself to testify.⁵¹

III. *BELL BEVERAGE V. UNEMPLOYMENT COMPENSATION BOARD OF REVIEW*

A. *Factual History*

The saga of *Bell Beverage* and the subsequent legal change brought about by its holding began on November 3, 2010, when Carlos Falu, a warehouse worker for Bell Beverage, was fired for willful misconduct and denied benefits under section 402(e) of the Unemployment Compensation Law.⁵² Falu's dismissal came about after the owners of Bell Beverage, Frank and Steve Bell, hired a private investigator to follow delivery trucks to investigate possible employee theft.⁵³ After discovering "that one of [Bell Beverage's] drivers, Ralph Puglia, and Puglia's helper were involved in the theft, [Bell Beverage] . . . put [Falu] on the truck with Puglia" to determine if he was also involved.⁵⁴

During the time that Falu was assigned to Puglia's truck, the investigator observed, on two occasions, Puglia unloading inventory from the truck into his home.⁵⁵ On each occasion, the investigator immediately phoned Frank Bell and told him his

⁴⁸ *Id.* at 379-80.

⁴⁹ *Id.* at 379.

⁵⁰ *Commonwealth v. Cunningham*, 805 A.2d 566 (Pa. Super. Ct. 2002).

⁵¹ *Id.* at 573.

⁵² *Bell Beverage v. Unemployment Comp. Bd. of Review*, 49 A.3d 49, 50 (Pa. Commw. Ct. 2012).

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* at 50-51.

observations.⁵⁶ After receiving the first phone call, Frank Bell immediately phoned Falu, who was in the suspect truck pursuant to his duties.⁵⁷ Falu did not answer, and later claimed to have been asleep in the truck.⁵⁸ The second time, Falu answered his phone, but indicated that he and Puglia were on the expressway and would return to the warehouse shortly.⁵⁹ During this phone conversation, the investigator personally observed Puglia unloading product into his home rather than driving on the expressway as Falu had indicated.⁶⁰ The investigator's findings were recounted in a letter to Frank Bell, which implicated both Falu and Puglia in the thefts.⁶¹ Not only did the letter discuss Falu's malfeasance in detail, but it contained the dates and times of when he observed the two men unloading product into Puglia's home.⁶² Falu was promptly dismissed from his employment at Bell Beverage.⁶³

At Falu's unemployment compensation hearing, the investigator's letter was admitted into evidence by the referee, despite the fact that the investigator was not present to authenticate it and Falu was not present to object to its admission.⁶⁴ Based on the admitted evidence, the referee ultimately concluded that Falu had engaged in willful misconduct, and thus, did not qualify for unemployment compensation.⁶⁵ Falu appealed, claiming, among other things, that he was not given notice of the February 28, 2011 hearing.⁶⁶ After remanding the case back to the referee, the matter again came before the Board, which concluded that Falu was improperly denied unemployment compensation because the employer failed to prove that Falu was fired for willful misconduct.⁶⁷ In reaching its decision, the Board refused to

⁵⁶ *Id.* at 51.

⁵⁷ *Id.*

⁵⁸ *Bell Beverage*, 49 A.3d at 51.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Bell Beverage*, 49 A.3d at 51.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.* at 52.

consider any of Falu's testimony "because it discredited [his previous] assertion that he had not received notice of the first hearing."⁶⁸ Further, the Board concluded that the employer's testimony concerning information from its private investigator was hearsay because "the private investigator did not testify at the hearing."⁶⁹ On appeal to the Commonwealth Court of Pennsylvania, the employer argued that the Board erred in finding that Frank Bell's testimony regarding information received from the investigator was inadmissible hearsay because the statements made by the investigator during the two phone calls fell under the present sense impression exception to the hearsay rule.⁷⁰

B. Issues on Appeal

On appeal, Bell Beverage, in reliance on the Pennsylvania Rules of Evidence, presented a three-tiered argument. First, Bell Beverage argued that that the Board erred in finding Frank Bell's testimony regarding information he received from the investigator inadmissible hearsay because statements made during the two phone calls fell under the present sense impression exception to the hearsay rule.⁷¹ Second, Bell Beverage argued that that the private investigator's letter was admissible as a business record under section 6108(b) of the Uniform Business Records as Evidence Act.⁷² Lastly, Bell Beverage argued "that the Board erred in concluding that Employer failed to meet its burden of proving that Claimant was fired for willful misconduct."⁷³

C. The Court's Holding and Rationale

i. The Testimony of Frank Bell

The first issue presented on appeal was whether the Board erred in excluding Frank Bell's testimony regarding his phone

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Bell Beverage*, 49 A.3d at 53.

⁷¹ *Id.*

⁷² *Id.* at 55.

⁷³ *Id.*

conversation with the investigator.⁷⁴ Applying Pennsylvania Rule of Evidence 803(1), better known as the present sense impression exception, the court agreed with the employer and reversed the Board.⁷⁵ The court based its application of 803(1) on a series of cases which had previously invoked the rule.⁷⁶ One such case was *Coleman*, the criminal case in which the court held that the assured reliability of a statement comes from it being made without time for retrospective deliberation.⁷⁷ The court further bolstered its holding by applying several other criminal cases, most notably *Peterkin* and *Cunningham*.⁷⁸

Applying the rationale of *Cunningham* and its predecessors, the court reasoned that the observations conveyed by the investigator via the telephone call to Frank Bell were reliable because they were "contemporaneously made as the event was unfolding."⁷⁹ The court further explained that because Pennsylvania Rule of Evidence 803(1) provides that the availability of the declarant is immaterial, the Board erred in rejecting Frank Bell's testimony about the call as inadmissible hearsay.⁸⁰

ii. The Letter to Frank Bell

The second issue on appeal concerned the admissibility of the investigator's letter to Frank Bell, which detailed the fruits of his investigation.⁸¹ Relying yet again on a formal application of the evidentiary rules, the court held that the letter was admissible as a regularly kept business record, pursuant to section 6108(b) of the Uniform Business Records as Evidence Act.⁸² In its holding, the court noted that the Board did not specifically reject the letter itself as hearsay, but instead rejected the employer's testimony regarding

⁷⁴ *Id.* at 53.

⁷⁵ *Id.* at 54-55.

⁷⁶ *See Bell Beverage*, 49 A.3d at 53-54.

⁷⁷ *Id.*

⁷⁸ *Id.* at 54.

⁷⁹ *Id.*

⁸⁰ *Id.* at 54-55.

⁸¹ *Id.* at 55.

⁸² *Bell Beverage*, 49 A.3d at 55; 42 PA. CONS. STAT. § 6108(b) (2011).

its contents.⁸³ Thus, the court found that the letter should have been considered by the Board, "not because it was admissible under the Uniform Business Records as Evidence Act, but because it was unobjected-to hearsay corroborated by Frank Bell's testimony."⁸⁴

The court further explained that "[i]n unemployment compensation proceedings, hearsay evidence admitted without objection will be given its natural probative effect and may support a finding of the Board as long as it is corroborated by other competent evidence in the record."⁸⁵ Because Falu was not present at the February 28, 2011 hearing, admission of the letter into evidence was not objected to and was corroborated by Frank Bell's testimony regarding the phone calls made by the investigator.⁸⁶

iii. The Employer's Burden to Show Willful Misconduct

Having dealt with the two primary points of contention raised by the employer, the court was left to address whether the employer presented sufficient evidence to demonstrate willful misconduct on the part of Falu.⁸⁷ Although the court initially noted that the law does not define "willful misconduct," it explained that a long line of precedent has defined the term as including "a wanton and willful disregard for an employer's interests, a deliberate violation of an employer's rules, a disregard for the standards of behavior that an employer can rightfully expect of an employee, or negligence indicating an intentional disregard of the employer's interests or the employee's duties and obligations."⁸⁸ The court explained that while the existence of willful misconduct is a question of law, fully reviewable by the courts, the Board is the ultimate finder of fact.⁸⁹ Because the Board issued no findings as to whether Falu was on the truck while the theft was occurring, whether Falu knew or should have known that the theft was taking

⁸³ *Bell Beverage*, 49 A.3d at 55.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.* at 55-56.

⁸⁹ *Bell Beverage*, 49 A.3d at 56.

place, whether Falu was involved in the theft, or whether Falu lied to Frank Bell during the telephone call on November 3, 2010, the Board's findings of fact were insufficient as a matter of law.⁹⁰ As a result, the Commonwealth Court of Pennsylvania vacated the Board's order, and remanded the case to the Board for a new decision containing sufficient findings of fact.⁹¹

D. The Dissent

Despite the majority's formal application of the Pennsylvania Rules of Evidence, President Judge Pellegrini authored a vehement dissent, in which he not only critiqued the court's analysis of Rule 803(1), but also discussed the applicability of the rules of evidence to administrative proceedings.⁹² "Ignoring that the Pennsylvania Rules of Evidence do not apply to administrative proceedings," wrote Judge Pellegrini, "I respectfully dissent because I would hold that 'present sense impression' of declarant employed to secure evidence does not fall within any exception to the hearsay rule."⁹³ Judge Pellegrini argued that the only evidence that established willful misconduct was testimony from Frank Bell regarding the telephone conversations he had with the private investigator, which, using the plain language of Pennsylvania Rule of Evidence 803(1), was inadmissible.⁹⁴ Honing in on the rationale for the present sense impression exception, Judge Pellegrini argued that "[b]ecause those hired to procure evidence have a financial incentive and the opportunity to reflect and make calculated misstatements," any statement made by a private investigator or individual hired to obtain evidence does not fall under the protection of Pennsylvania Rule of Evidence 803(1).⁹⁵

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.* (Pellegrini, P.J., dissenting).

⁹³ *Id.*

⁹⁴ *Id.* at 56-57.

⁹⁵ *Bell Beverage*, 49 A.3d at 57 (Pellegrini, P.J., dissenting).

IV. EVALUATION

The opinion in *Bell Beverage* marks a judicial migration from the once firmly-rooted understanding that formal rules of evidence are inapplicable to administrative proceedings. The court's initial discussion of Rule 803(1) is, perhaps, the most striking departure from precedent, in part because of the sudden change in law, but in large measure because of the case law used to support it. Just as the general inapplicability of evidentiary rules has never been questioned in the administrative arena, the strict adherence to the rules in criminal proceedings is commonplace. However, the fundamental differences between a criminal trial and an unemployment compensation hearing make for a dubious analogy. Whereas the strong due process interests of defendants and the frequent oversight of a judge commands strict adherence to the rules of evidence in criminal trials, administrative hearings are an entirely different legal organism.⁹⁶ That is not to say, however, that parties to an administrative proceeding are entitled to a lesser standard of due process – quite the opposite is true.

The thought process has always been that administrative commissions should be more concerned with delivering fast and efficient dispositions of claims, rather than drawn-out disputes over technical rules.⁹⁷ Undoubtedly, this distinction is influenced by the highly complex areas of law regulated by the commissions, coupled with the need for fact finding in administrative proceedings, rather than traditional adjudication. While the due process interests of parties to each class of proceeding may be of equal weight, the consequences stemming from a criminal conviction, such as social ostracism, imprisonment, and in rare cases, death, surely demand a higher level of scrutiny and formality than the disposition of an unemployment compensation claim. The difference in function between the court and commission necessitates a multivious approach to administrative hearings, rather than a hard and fast set of rules. These glaring

⁹⁶ See Kenneth Culp Davis, *An Approach To Problems of Evidence In The Administrative Process*, 55 HARV. L. REV. 364, 423 (1942).

⁹⁷ See Elliot B. Glicksman, *The Modern Hearsay Rule Should Find Administrative Law Application*, 78 NEB. L. REV. 135, 135-36 (1999).

distinctions only magnify the court's puzzling decision to reach into an entirely unrelated field of law for precedent – a move which highlights the court's eagerness to change the law as much as it highlights the certainty of administrative law prior to *Bell Beverage*.

The decision in *Bell Beverage* presents other problems as well, specifically in regards to the administrability of the ruling. If, as the court has suggested, the Board is now tasked with strictly applying the state rules of evidence, a flood of appeals to the Commonwealth Court of Pennsylvania can be expected. This likely influx of appeals is based on the reality that the current members of the Board are politicians and business people, rather than lawyers.⁹⁸ The idea that individuals who have not been trained in the rules of evidence are to make evidentiary rulings seems to invite a windfall of mistakes, misstatements, and misapplications of the evidentiary rules.

The decision in *Bell Beverage* also presents troubling issues as to its scope. While the court in *Bell Beverage* made no mention of other procedural systems or statutory rules, the similar treatment given to the rules of evidence and other statutory rules in the past gives rise to the argument that *Bell Beverage* is not confined to its facts, but instead will have a sweeping effect on the applicability of all rules and procedures in administrative hearings. Coupled with previously expressed concerns over the holding and its administrability, a pervasive application of *Bell Beverage* would alter the administrative process so severely as to evaporate any discernible difference between an administrative proceeding and a full-blown trial.

⁹⁸ See *UC Board of Review*, PA. DEP'T OF LAB. & INDUSTRY, http://www.uc.pa.gov/portal/server.pt/community/uc_board_of_review/11307 (last visited Mar. 17, 2014); *Eileen Melvin*, LINKEDIN, <https://www.linkedin.com/pub/eileen-melvin/8/b2a/441> (last visited Mar. 17, 2014); *Rick Bloomingdale*, LINKEDIN, <http://www.linkedin.com/pub/rick-bloomingdale/4/181/16b> (last visited Mar. 17, 2014); *PA Governor Rendell Appoints Delaware Countian to Unemployment Compensation Board of Review*, THE FREE LIBRARY, <http://www.thefreelibrary.com/PA+Governor+Rendell+Appoints+Delaware+Countian+to+Unemployment...-a0140971363> (last visited Mar. 17, 2014).

V. CONCLUSION

The decision in *Bell Beverage* has left administrative law in a troubling place. While the majority opinion seems to unambiguously adopt a formal application of evidence law to unemployment compensation hearings, more decisions are necessary before the true state of the law is uncovered. For now, however, *Bell Beverage* seems to leave the proverbial door ajar as to what standard the Board should use when handling appeals. Should they follow tradition and apply the looser evidentiary standard that has been in play since the 1940s? Or should the Board buckle down and brush up on state rules of evidence, in fear of continuously being overruled by the Commonwealth Court of Pennsylvania? While the decision in *Bell Beverage* is plainly about evidence, the decision is evidence in and of itself. The question remains, however, evidence of what?

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