

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

JONATHAN D. TUBBS,

Appellant,

v.

**TRG FIELD SOLUTIONS and
UNEMPLOYMENT INSURANCE.,
APPEAL BOARD**

Appellees.

C.A. No. N10A-07-011 MJB

Submitted: May 9, 2011
Decided: July 25, 2011

Upon Appellant's Appeal from the Unemployment Insurance Appeal Board's Decision.
AFFIRMED.

OPINION AND ORDER

Jonathan D. Tubbs, *pro se*, 40 Miles Road, Claymont, Delaware 19703, Appellant.

TRG Field Solutions, 6 Denny Road, Room 3101, Wilmington, Delaware 19809,
Appellee.

Philip Johnson, Esquire, Deputy Attorney General, Department of Justice, Wilmington,
Delaware, Attorney for the Unemployment Insurance Appeal Board, Appellee.

BRADY, J.

INTRODUCTION

Appellant, Jonathan D. Tubbs, appeals the Unemployment Insurance Appeal Board's ("Board") decision to deny him unemployment benefits after concluding he voluntarily quit his job without good cause. Upon review of the record, and for the reasons set forth in this Opinion, the Court finds that the Board's decision is supported by substantial evidence and free from legal error, and therefore, is **AFFIRMED**.

FACTUAL BACKGROUND

On December 6, 2009, Appellant filed a claim for unemployment insurance benefits with the Delaware Department of Labor ("Department").¹ The claim was denied, and while Appellant pursued an appeal,² from January 18, 2010, until January 26, 2010, Appellant worked for TRG Field Solutions ("TRG"), an independent contractor for Verizon Fios.³ On March 15, 2010, Appellant requested the Department to release unemployment benefit payments.⁴ On March 22, 2010, a Claims Deputy reviewed Appellant's claim and determined that he was ineligible to receive unemployment benefits because he had been terminated by TRG for "just cause"⁵ due to a positive drug test, which, according to the Deputy, was verified by Appellant.⁶

Appellant appealed the Deputy's ruling,⁷ and on April 20, 2010, a hearing was held before a Referee.⁸ At the hearing, Appellant testified that he began a training

¹ Record ("R.") at 8.

² *Id.*

³ *Id.*

⁴ *Id.* at 3.

⁵ *Id.* at 8.

⁶ *Id.*

⁷ *Id.* at 9. Appellant's Appeal Request Notification was filed prior to the April 1, 2010 deadline.

⁸ TRG did not appear at the Referee hearing. *Id.* at 17. According to the Referee, two notices were sent to TRG, both were returned to sender despite the fact that the address was provided by TRG Solutions in their fact finding statement. *Id.*

program with TRG on January 18, 2001, for a commission-based outside sales job, and voluntarily quit for two reasons.⁹ First, Appellant testified that he couldn't trust anyone at TRG after a trainer had asked him to add Verizon Fios services to his friend's account without her knowledge.¹⁰ Second, Appellant testified that TRG was disorganized,¹¹ and that in general, the position was not a good fit for him.¹² Furthermore, Appellant testified that he was unaware of any alleged termination until March 16, 2010, when he was told by the Department that TRG had terminated him on January 27, 2010.¹³

The Referee found that Appellant voluntarily left his position with TRG for personal reasons and failed to exhaust his administrative resources with his employer.¹⁴ The Referee "modified and affirmed" the Deputy's decision,¹⁵ and ruled that Appellant was ineligible to receive unemployment insurance benefits because he had voluntarily terminated his employment with TRG without "good cause."¹⁶

Appellant appealed the Referee's decision,¹⁷ and a hearing was held before the Board on June 23, 2010.¹⁸ Appellant argued that the Referee incorrectly concluded that he left TRG on his own.¹⁹ Appellant testified that on March 22, 2010, he was told for the first time that TRG terminated his employment on January 27, 2010, for a positive drug

⁹ *Id.* at 20-21.

¹⁰ *Id.* at 22-23.

¹¹ *Id.* at 25-26.

¹² *Id.* at 15.

¹³ *Id.* at 27.

¹⁴ *Id.* at 14.

¹⁵ *Id.*

¹⁶ *Id.* at 14. The Referee held that Appellant was disqualified "from receiving unemployment insurance benefits pursuant to Section 3314(1), Title 10, Delaware Code until the individual has been employed in each of 4 subsequent weeks (whether or not consecutive) and has earned wages in covered employment equal to not less the 4 times the weekly benefit amount." *Id.*

¹⁷ *Id.* at 35.

¹⁸ Although given proper notice, TRG failed to appear to the hearing. *Id.* at 36.

¹⁹ *Id.* at 42.

test.²⁰ However, when asked by the Board whether he was terminated by TRG for a failed drug test, Appellant stated: “No I’m not saying that at all. They’re saying that.”²¹

The Board found that although Appellant was notified on March 22, 2010, that he had failed a drug test, his testimony demonstrated that “he left his job because it was not a good fit for him.”²² The Board ruled that Appellant left his job voluntarily without exhausting administrative remedies with the employer, and therefore, he was disqualified from receiving benefits because he did not have good cause to terminate his employment.²³

Appellant filed this appeal *pro se* challenging the Board’s decision to deny him unemployment benefits.²⁴ In his Opening Brief, Appellant explains that he chose to leave TRG because he “could not afford to work” for them.²⁵ Appellant argues that he “cannot be disqualified from unemployment because [he] do not [sic] have money need [sic] to work at TRG.”²⁶

STANDARD OF REVIEW

This Court’s scope of review is limited to a determination of whether the Board’s findings and conclusions were free from legal error, and supported by substantial evidence in the record.²⁷ A decision is supported by substantial evidence when there is

²⁰ *Id.* at 45. Appellant testified that TRG administered a urinalysis drug test on his first day of training. *Id.* The record includes a document provided by TRG titled “Separation Record.” *Id.* at 4. It states that Appellant was terminated on January 27, 2010 for a “failed drug test.” *Id.*

²¹ *Id.* at 47.

²² *Id.* at 37.

²³ *Id.*

²⁴ TRG did not file any briefs to this court. On May 5, 2011, this Court sent a Final Delinquent Brief Notice to TRG explaining that pursuant to Superior Court Civil Rule 107(e), the Court would decide the matter on the papers filed to date. Letter May 5, 2011.

²⁵ Appellant’s Opening Brief (“App.’s Op. Br.”) at 3.

²⁶ *Id.* at 4.

²⁷ *College v. Unemployment Ins. Appeal Board.*, 2009 WL 5191831, at *6 (Del. Super. Dec. 31, 2009); *See also, Professional Ambulance Service, Inc. v. Unemployment Insurance Appeal Board*, 1991 WL 68965, at

relevant evidence in the record that a reasonable mind might accept as adequate to support the Board's conclusion.²⁸ This Court cannot weigh the evidence, evaluate witness credibility, or make its own factual findings.²⁹

DISCUSSION

In order to receive unemployment insurance benefits, a claimant must demonstrate that he or she either quit voluntarily for good cause, or was terminated by the employer without just cause.³⁰ An employee is considered to have voluntarily quit when he or she leaves on their own motion, as opposed to being discharged by the employer.³¹ In addition, "the employee must have had a conscious intention to leave or terminate the employment."³²

The Board concluded that Appellant voluntarily left TRG on January 26, 2010. This conclusion is supported by substantial evidence in the record. At both hearings, Appellant testified that he quit his job with TRG because it was not a good fit for him. Moreover, he testified that he was not aware of a positive drug test until nearly two months after leaving TRG.³³ Thus, Appellant's relationship with TRG ended as a result of his conscious intention to leave. As a result, Appellant can only qualify for unemployment benefits if he left TRG for good cause.

*1 (Del. Super. April, 25, 1991) (explaining that the scope of review in a UIAB appeal is "limited to a determination of whether there was substantial evidence sufficient to support the findings, and the jurisdiction of the Court shall be confined to questions of law.")

²⁸ *College v. Unemployment Ins. Appeal Board.*, 2009 WL 5191831, at *6; *Citing, Oceanport Industries, Inc., v. Wilmington Stevedores, Inc.*, 636 A.2d. 892, 899 (Del. 1994).

²⁹ *College v. Unemployment Ins. Appeal Board.*, 2009 WL 5191831, at *6.

³⁰ *Shaw-Malachi v. City of Wilmington/Finance*, 2006 WL 1875519, at *3 (Del. Super. Mar. 3, 2006).

³¹ *Gsell v. Unclaimed Freight*, 1995 WL 339026, at *3 (Del. Super. May 3, 1995).

³² *Id.*

³³ R. at 51.

Good cause exists when one leaves their job for reasons connected with the employment and not for personal reasons.³⁴ “Good cause can include a substantial reduction in wages, work hours, or a substantial deviation in the working conditions from the original agreement of hire to the detriment of the employee.”³⁵ Moreover, good cause does not exist when the employee leaves his jobs for “purely financial reasons.”³⁶

At both hearings, Appellant testified that he left TRG because it was not a good fit for him. In his Opening Brief filed with this Court, Appellant explains that he left TRG because it did not meet his financial needs.³⁷ In sum, Appellant left TRG for personal reasons. The Board’s conclusion that Appellant quit without good cause is supported by substantial evidence in the record, and free from legal error.

CONCLUSION

In sum, the Board’s decision to deny Appellant unemployment benefits because he voluntarily quit TRG without good cause is supported by substantial evidence, and free from legal error. Therefore, the Board’s decision is **AFFIRMED**.

IT IS SO ORDERED.

/s/
M. Jane Brady
Superior Court Judge

³⁴ *Id.* (citing, *Brainard v. Unemployment Compensation Comm’n*, 76 A.2d 126, 127 (Del. Super. 1950).

³⁵ *Weathersby v. Unemployment Insurance Appeal Board*, 1995 WL 465326, at *5 (citing, *Moore v. Fulton Paper Co.*, C.A. No. 94A-06-004, Geblein, J. (Del. Super. Dec. 2, 1994).

³⁶ *Weathersby v. Unemployment Insurance Appeal Board*, 1995 WL 465326, at *5 (citing, *Short v. Unemployment Ins. Appeal Bd.*, C.A. No. 84A-JI-13, Geblein, J. (Del. Super. Jul. 26, 1985).

³⁷ Ap. Br. at 3.