IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

JAMES EVANS,	:	
	:	C.A. No. K10A-12-001WLW
Appellant,	:	
	:	
v.	:	
	:	
J.R. BLEVINS and DIVISION OF UNEMPLOYMENT INSURANCE APPEAL BOARD,	:	
	:	
Appellee.	:	

Submitted: September 1, 2011
Decided: December 7, 2011

ORDER

Upon Appeal of a Decision of the
Unemployment Insurance Appeal Board.
Remanded.

James Evans, *pro se*

J.R. Blevins, Smyrna, Delaware.

WITHAM, R.J.

This is an appeal of the decision by the Unemployment Insurance Appeal Board finding that Appellant effectively voluntarily quit his employment without good cause. For the reasons set forth below, the matter is remanded.

PROCEDURAL HISTORY

James Evans (hereinafter "Appellant" or "Claimant") brought this appeal of a decision by the Unemployment Insurance Appeal Board (hereinafter "the Board") wherein the Board found that Appellant voluntarily left his job with J.R. Blevins, Inc. (hereinafter "Appellee" or "Employer") without good cause and accordingly denied him unemployment benefits under Title 19, Chapter 33 of the Delaware Code. The Appellant filed his opening brief. Appellee did not respond despite a warning from the Prothonotary on August 10, 2011 that, pursuant to Superior Court Civil Rule 107(f), the Court could take action at any time. The Court issued an order on August 29, 2011 stating that, pursuant to Superior Court Civil Rule 107(f), the Court would move forward and decide the issue based on the Appellant's filing. This constitutes the Court's decision in this matter.

FACTS

The Board summarized the facts of this appeal as follows:

> While at work on April 8, 2010, the Claimant's doctor informed the Employer that the Claimant was not allowed to work due to the presence of an aneurysm. Consequently, the Employer's Representative told the Claimant to leave work. The Claimant did so. The Claimant had no further contact with the Employer, until the Claimant's lawyer contacted the Employer by letter dated May 18, 2010. Prior to that, the Employer informed the Claimant, by letter dated May 10, 2010, that his position with the Employer could no longer be held. The Claimant testified to

> the Board that he did not contact the Employer following this letter because he needed surgery at that time, and the surgery had not yet been scheduled. The Claimant's position seems to be that he had no reason to contact the employer, because he had no information regarding his possible return to work. The Claimant underwent surgery in July 2010 and was released for work on August 24, 2010.[1]

Appellant applied for unemployment on August 15, 2010, and the Claims Deputy found that Appellant quit his job for personal reasons and was therefore disqualified from benefits. Appellant timely appealed this decision to the Appeals Referee who found that Appellant failed to maintain contact with his employer and failed to provide medical documentation and a medical release to return to work, and therefore he effectively quit his position. The Board focused on whether Appellant voluntarily quit his job by abandoning his work, finding that his extended lack of communication with his employer, even after a letter informing him that his employer could no longer hold his position, amounted to abandonment of his employment.[2] For the reasons stated below, the Court remands this case to the Board for further findings of fact and conclusions of law.

Standard of Review

The reviewing court serves to determine whether substantial evidence supports

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[1]*James W. Evans v. J.R. Blevins*, No. 40547621, at 2 (Del. I.A.B. Dec. 2, 2010).

[2]*Id.* at 3.

the Board's decision.[3] Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a particular conclusion.[4] It is more than a scintilla and less than a preponderance.[5] In addition, the Court must determine whether the Board's decision is free from legal error.[6] Superior Court does not hold responsibility as a trier of fact with authority to weigh evidence, determine credibility, or to make findings of fact and conclusions.[7]

DISCUSSION

The Board correctly cited to *Woodall v. Bayhealth Medical Center* for the proposition that an employee must have the conscious intent to voluntarily quit employment.[8] The Board then utilized *In re Bailey*[9] to support the proposition that "a person is presumed to intend the natural and foreseeable consequences of his

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[3]*Kondzielawa v. Ferry, Joseph & Pearce, P.A.*, 2003 WL 21350538, at *3 (Del. Super. June 6, 2003).

[4]*Parks v. Wal-Mart*, 2004 WL 1427016, at *2 (Del. Super. June 24, 2004).

[5]*City of Wilmington v. Clark*, 1991 WL 53441, at *2 (Del. Super. Mar. 20, 1991) (*citing Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981)).

[6]*PAL of Wilmington v. Graham*, 2008 WL 2582986, at *4 (Del. Super. June 18, 2008) (*citing Unemployment Ins. Appeal Bd. v. Martin*, 431 A.2d 1265 (Del. 1981)).

[7]*Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

[8]2000 WL 973082, at *3 (Del. Super. Apr. 28, 2000) (*citing Andress v. F. Schumacher & Co.*, 1993 WL 542062, at *3 (Del. Super. Nov. 3, 1993)).

[9]821 A.2d 851, 866 (Del. 2003) (finding that a managing partner's complete lack of diligence in regard to recordkeeping and taxes reflected a knowing disregard for his duties as a managing partner meriting suspension from the practice of law).

acts."[10] The Court finds it unnecessary to apply *In re Bailey* so expansively outside of its disciplinary law context.

In *Watermiller v. Unemployment Insurance Appeals Board*,[11] the issue was somewhat similar but is still distinguishable from the case at bar. The Court found that the key to the decision was whether there was substantial evidence that the claimant had acted or omitted action such that she abandoned her employment.[12] The claimant in *Watermiller* was pregnant and had not discussed her employment plans with her employer upon her child's birth.[13] She called and told the employer that she would be out for some period as she had just given birth.[14] When the employer asked for her return date, she stated that she did not know.[15] The Court ruled as follows:

> At the point she left work due to child birth, she put her availability to work at issue and she was the one who had the responsibility to notify employer when she became available for work. By not doing so, she abandoned her job, an intentional act. Thus, the evidence supports the Board's conclusion she did so.[16]

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[10]*James W. Evans*, No. 40547621, at 3.

[11]1997 WL 358206, at *3, Graves, J. (Del. Super. June 12, 1997), *aff'd*, 707 A.2d 767 (Del. 1998) (TABLE).

[12]*See Watermiller*, 1997 WL 358206, at *3.

[13]*Id.* at *1.

[14]*Id.*

[15]*Id.* at *3.

[16]*Id.*

The important factor distinguishing *Watermiller* from this case is voluntariness. In *Watermiller*, the claimant's absence from work became voluntary because she became medically able to work but chose not to do so. She simply did not want to work and left her status up in the air.[17] The case at bar is somewhat different. As a result of a telephone call from Appellant's doctor, Appellee told him to leave and return only when he had a medical release to work again. Appellee terminated Appellant roughly one month later before he was medically cleared to work. 19 *Del. C.* § 3314(1) states:

> An individual shall be disqualified for benefits: (1) For the week in which the individual left work voluntarily without good cause attributable to such work and for each week thereafter until the individual has been employed in each of 4 subsequent weeks . . . and has earned wages in covered employment . . . . However, if an individual has left work involuntarily because of illness, no disqualification shall prevail after the individual becomes able to work and available for work and meets all other requirements under this title, but the Department shall require a doctor's certificate to establish such availability . . . .

As a matter of law, this case should have been analyzed under the involuntary prong of the statute because there is not substantial evidence that Appellant left voluntarily, even in light of *Watermiller*. In fact, Appellant's case is strikingly similar to the recent case, *Lewis v. Allen Family Foods*.[18] In that case, Lewis' employer told him to leave work due to restrictions imposed by his treating

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[17]*See id.*

[18]2011 WL 5357565, Graves, J. (Del. Super. Oct. 6, 2011). Notably, the appeals in *Watermiller* and *Lewis* both appeared before Judge Graves.

physician.[19] The Court affirmed a decision by the Board to reconsider Lewis' claim in light of a doctor's certificate, certifying Lewis' availability, that was submitted but not considered by the Department of Labor.[20] In this case, a doctor's "Certificate to Return to Work/School" appears in the appellate record on page 9.

By way of further guidance, on remand the Board must determine whether Appellant satisfied the involuntary elements of the statute: (1) whether claimant had an illness at the time he left his job; (2) whether claimant left involuntarily because of the illness, which can be shown through subsequent doctors' opinions; and (3) claimant must show that he is generally available for work.[21] An additional requirement to qualify for benefits under the involuntary prong is that the inability to perform the job due to medical problems must be communicated to the employer.[22] The Board must reevaluate this case keeping in mind the undisputed call from Appellant's doctor to his employer, the signed certificate from Appellant's doctor certifying his availability to work after August 24, 2011, and the case law cited above.

The Court also notes the presence of a waiver for "good cause" releasing the

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[19]*Id.* at *2.

[20]*Id.*

[21]*Davis v. Best Western Delaware*, 1996 WL 944858, at *2 (Del. Super. Apr. 22, 1996) (*citing Hollingsworth v. General Motors Corp.*, C.A. No. 79A-JA-21, at 3-6, Longobardi, J. (Del. Super. Apr. 1, 1980)).

[22]*Davis*, 1996 WL 944858, at *3 (*citing Perry v. Radisson Hotel*, 1994 WL 164604 (Del. Super. Apr. 6, 1994)).

Appellee from the deadline requiring a claimant's last employer to return a separation notice within 7 days of the date on the separation notice under 19 *Del. C.* § 3317(b). The statute states,

> Any last or base employer who fails to timely return a separation notice or who fails to complete a separation notice within the period prescribed above shall be barred from claiming subsequently that the individual claimant to whom such separation notice applied shall be disqualified under any provisions of § 3314 under this title . . . unless the Department for reasons found to constitute good cause, shall release such employer from the default.[23]

The Court is troubled that the waiver form signed by a claims deputy does not state what constituted "good cause" in this case. Since this case could also be determined on this ground, the Board must inquire as to what constituted "good cause" for a waiver and whether that reason was sufficient.

CONCLUSION

This case is hereby remanded for further findings of fact and conclusions of law. Jurisdiction is not retained. IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

WLW/dmh
oc: Prothonotary
xc: Mr. James Evans
J.R. Blevins

[23] 19 *Del. C.* § 3317(b).