IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

DENISE HUSBAND,	)	
	)	
Appellant,	)	
	)	
v.	)	C.A. No. N11A-03-004-JRJ
	)	
ENVIRONMENTAL DESIGN, LLC and the UNEMPLOYMENT INSURANCE APPEAL BOARD,	)	
	)	
Appellees.	)	

OPINION

Date Submitted: December 14, 2011
Date Decided: February 3, 2012

Upon Appeal from the Unemployment Insurance Appeal Board: **AFFIRMED**

Denise S. Husband, *Pro se*, 312 Marsh Road, Wilmington, DE 19809.

Katisha D. Fortune, Esq., Deputy Attorney General, Carvel State Office Building, 820 N. French Street, 6th Floor, Wilmington DE, 19801, Attorney for Unemployment Insurance Appeal Board.

Jurden, J.

I. INTRODUCTION

Appellant, Denise S. Husband ("Claimant"), files this appeal from the Unemployment Insurance Appeal Board's (the "Board") decision to deny her Motion for Rehearing. For the reasons that follow, the Court finds that the Board acted within its discretion to deny Claimant's motion, and thus the Board's decision is **AFFIRMED**.

II. FACTS AND PROCEDURAL HISTORY

Claimant worked for URS Corporation ("URS") from July 2008 to July 2010.[1] On July 14, 2010 URS laid off Claimant,[2] and she filed for unemployment benefits shortly thereafter.[3] The case number assigned to her claim was 10152678. On August 6, 2010, the Claims Deputy at the Department of Labor ("DOL") determined that Claimant was not eligible to receive unemployment benefits because she was awarded $18,505.06 in severance pay.[4] However, Claimant asserts that the Claims Deputy told her that if she remained unemployed by September 2010, Claimant could re-open her claim.[5]

Within one week of filing for unemployment, Claimant re-established her landscaping company, Environmental Design, LLC ("Environmental Design").[6] Although Claimant continued to operate Environmental Design, once she depleted

[1] Record ("R.") at 33.
[2] *Id*. at 51.
[3] *Id*. at 3. Claimant filed on July 18, 2010.
[4] *See* Appellant's Opening Brief ("Op. Br.") at 8.
[5] *Id*.
[6] R. at 52.

her severance pay, she contacted DOL to re-open her original claim against URS.[7] While re-opening her claim, Claimant indicated that she was self-employed and received income from that employment.[8] As a result, DOL assigned case number 10730669 to Claimant's re-opened claim.[9]

"Due to the complex nature of the determination," the Claims Deputy opted to refer the matter to the Appeals Referee ("Referee") under 19 *Del. C.* § 3318(a) for an initial eligibility determination.[10] At her hearing, Claimant and the Referee agreed that Claimant worked between thirty and forty hours per week marketing, soliciting business, and advertising for Environmental Design.[11] Claimant also testified that she considers operating Environmental Design to be "a full time

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[7] *Id*. at 2.
[8] *Id*.
[9] *Id*. This is does not mean that DOL opened a new claim on behalf of Claimant, rather, it means DOL assigned a new case number to the original claim to address different eligibility issues that may have arisen. *See* the State's December 6, 2011 Letter Responding to the Court at 2.
[10] *Id*. at 22. 19 *Del. C.* § 3318(a) provides:

> If the last employer timely files a completed separation notice in accordance with § 3317 of this title and the employer's statement on the separation notice does raise a potentially disqualifying issue as to the reason for the claimant's separation, the claim shall be referred to a representative of the Department, hereinafter referred to as a Claims Deputy, who shall examine the claim and on the basis of the facts found by the Claims Deputy shall initially determine the individual's qualification and non-monetary eligibility for benefits, and issue a determination in which it is determined whether or not such claim is valid. If valid, the Claims Deputy shall further determine the week with respect to which benefits shall commence. In lieu of making a determination, the Claims Deputy may elect to refer such claim or any question involved therein to an appeal tribunal which shall make its decision with respect thereto in accordance with the procedure described in subsection (c) of this section. In either case, the Claims Deputy shall promptly notify the claimant and the last employer of the Deputy's own determination and the reasons therefor. The Claims Deputy may for good cause reconsider a determination and shall promptly notify the claimant and the last employer of the Deputy's amended determination and the reasons therefor, as the case may be. Base period employers who have submitted timely and completed separation notices in accordance with § 3317 of this title may seek relief from benefit wages charged to their experience merit rating accounts in accordance with § 3355 of this title except that for a claim in which the last employer is also a base period employer for such claim, the issue of benefit wage charge relief or such base period employer shall be determined in accordance with the determination on the issue of the claimant's last separation from such employer.

[11] R. at 26.

job,"[12] and that in addition to the income Claimant generated, she also incurred expenses related to operating the business.[13] The Referee determined on October 21, 2010 that because Claimant re-established her business and worked between thirty to forty hours per week,Claimant was not unemployed, and thus was not eligible to receive unemployment benefits. 19 *Del. C.* § 3302(17), defines unemployment, and states in pertinent part:

> 'Unemployment' exists and an individual is 'unemployed' in any week during which the individual *performs no services* and with respect to which *no wages are payable to the individual*, or in any week of less than full-time work if the wages payable to the individual with respect to such week are less than the individual's weekly benefit amount plus whichever is the greater of $10 or 50% of the individual's weekly benefit amount.[14]

Claimant timely appealed the Referee's decision on October 25, 2010.[15] On December 27, 2010, the Board affirmed the Referee's decision finding that "Claimant is currently a full-time employee of her own business," and thus ineligible for unemployment benefits.[16] Unsatisfied with the Board's decision, Claimant untimely appealed the Board's decision to the Board, rather than the Superior Court, on February 4, 2011.[17] Consequently, the Board treated

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[12] *Id*.
[13] *Id*. at 27-28.
[14] 19 *Del. C.* § 3302(17) (emphasis added).
[15] R. at 39.
[16] *Id*. at 43.
[17] *Id*. at 56. If Claimant chose to appeal the Board's decision, she was required to do so within ten days of its decision, which was January 7, 2011.

Claimant's appeal as a Motion for Rehearing.[18] After reviewing the record, the Board determined that there was no evidence of department error and denied the Claimant's motion.[19]

III. PARTIES' CONTENTIONS

Claimant argues that DOL erroneously closed her initial claim for unemployment benefits, case number 10152678, which involved URS, and opened a new claim against her business, Environmental Designs, case number 10730669.[20] For the first time Claimant asserts that she was unaware of the alleged DOL error despite the Referee and the Board stating that her hearings pertained to "Denise Husband v. Environmental Design LLC" and the existence of DOL documents that indicated the same.[21] Claimant makes the following arguments urging the Court to reverse the Board's decision: (1) "[t]he decision of the Unemployment Insurance Appeal Board should be reversed as it contains legal error or has failed to meet the standards of due process"[22]; (2) "[t]he unilateral closing of a case number by the Unemployment Insurance Division of the Delaware Department of Labor, and opening of a different case number in its place, all without the knowledge of the Claimant, constitutes reversible legal error

[18] *Id*. at 46; 56.
[19] *Id*. at 57.
[20] Op. Br. at 8-9.
[21] *Id*. at 9.
[22] *Id*. at 12.

and lack of due process"[23]; and (3) "[i]t is impossible for a Claimant to have due process and a fair and full hearing before the Unemployment Insurance Appeal Board, which is based on the record created in proceedings before the Board, when the Board is hearing one case number[,] but the Claimant has the understanding that the appeal is on a different case number."[24] Claimant now asks the Court to reverse the Board's decision based upon the alleged errors above.

The Board did not file an answer to Claimant's opening brief because the Board asserts that its decision was on the merits, and it has no interest in seeking to have its decisions sustained on appeal.[25]

IV. STANDARD OF REVIEW

The decision whether to grant a motion for rehearing is entirely within the Board's discretion.[26] Only when the Board abuses its discretion by acting "arbitrarily and capriciously" or by "exceed[ing] the bounds of reason in view of the circumstances and ignor[ing] recognized rules of law or practice so as to produce injustice" will the Board's decision be reversed.[27] Typically, the Board

[23] *Id*. at 13.
[24] *Id*. at 15.
[25] The State's August 2, 2011 Letter to the Court at 1.
[26] *Tesla Indus., Inc. v. Bhatt*, 2007 WL 2028460, at *2 (Del. Super.); *see also Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991) ("Section 3320 grants the Board wide discretion over the unemployment insurance benefits appeal process."); 19 *Del. C.* § 3321(a); UIAB Rule 7.1 ("The grant or denial of a motion for rehearing is solely within the discretion of the Board.").
[27] *Straley v. Advance Staffing, Inc.*, 2011 WL 3451913, at *2 (Del.) (citing *PAL of Wilmington v. Graham*, 2008 WL 2582986, at *4 (Del. Super.)).

will only grant a rehearing under severe circumstances, for instance, where the interests of justice would not be served by inaction.[28]

V. DISCUSSION

Claimant's arguments focus on an alleged error by DOL, and subsequent decisions denying her unemployment benefits based upon that error. To determine whether the Board erred when it denied Claimant's Motion for Rehearing, it is first necessary to address Claimant's argument that she qualifies for unemployment benefits under Delaware law.

The Court is cognizant of its limited and deferential appellate review of the Board's decision when it decides whether to award unemployment benefits to a party. When reviewing the Board's determination, the Court determines whether the Board's findings are supported by substantial evidence and free from legal error.[29] Substantial evidence is such relevant evidence that a reasonable mind would accept as adequate to support a conclusion.[30] The Court does not act as the trier of fact, nor does it have authority to weigh the evidence, decide issues of credibility, or make factual conclusions.[31] In reviewing the record for substantial evidence, the Court considers the record in the light most favorable to the party

[28] *Funk*, 591 A.2d at 225.
[29] *K-Mart, Inc. v. Bowles*, 1995 WL 269872, at *2 (Del. Super.).
[30] *Oceanport Ind., Inc. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del. Super. 1994).
[31] *Johnson v. Chrysler Corp*., 213 A.2d 64, 66-67 (Del. Super. 1965).

prevailing below, in this case, the Board.[32] The Court's review of conclusions of law is *de novo*.[33] Absent an error of law, the Board's decision will not be disturbed where there is substantial evidence to support its conclusions.[34]

Claimant's argument that she qualifies for unemployment benefits essentially boils down to the fact that although claimant worked thirty to forty hours per week for Environmental Design, she earned very little income. 19 *Del C.* § 3302(17) provides, however, that "an individual is 'unemployed' in any week during which the individual performs no services and with respect to which no wages are payable to the individual . . . ."[35] In Delaware, "[o]nce an individual engages in a self-employed business or practice on a full-time basis . . . the individual is no longer unemployed nor available for work, nor clearly is that individual 'actively seeking work' other than the self-employment."[36] Claimant admitted that she was self-employed and provided services to paying clients. Claimant also admitted that she works thirty to forty hours per week, has income, and considers her business to be a "full-time job."[37] Starting and operating a

[32] *Benson v. Phoenix Steele*, 1992 WL 354033, at *2 (Del. Super.).
[33] *Harris v. Logisticare Solutions*, 2010 WL 3707421, at *2 (Del. Super.).
[34] *Dallachiesa v. General Motors Corp.*, 140 A.2d 137, 138 (Del. Super. 1958).
[35] 19 *Del. C.* § 3302(17).
[36] *Annand v. Unemployment Ins. Appeal Bd.*, 2011 WL 2698620, at *2 (Del. Super.) (citing *Weerarante v. Unemployment Ins. Appeal Bd.*, 1995 WL 840722, at *2 (Del. Super.) (citing *O'Brien v. Unemployment Ins. Appeal Bd.*, 1993 WL 603363, at *3 (Del. Super.))).
[37] R. at 26-28.

business is an admirable, yet difficult task. But "[u]nemployment compensation was not intended to subsidize the early stages of a new business."[38]

In support of her argument, Claimant relies on *Annand v. Unemployment Insurance Appeal Board*.[39] In *Annand*, the appellant worked part-time for a company twenty hours per week, and ten to twelve hours per week for his own company.[40] Due to the downturn in the economy, the appellant's hours at both the company that employed him and his own company dropped significantly.[41] After the Referee denied the appellant unemployment benefits, he appealed the Referee's decision to the Board and testified that he sought unemployment benefits for the weeks in which he worked very little or not at all for either company.[42] The Board determined that because the appellant still provided some services to both companies that he did not qualify as "unemployed" under 19 *Del. C.* § 3302(17).[43] On appeal, the Court reversed the Board's decision. The Court noted that a full reading of 19 *Del. C.* § 3302(17) provides that "an employee may be eligible for unemployment benefits when he is working fewer hours than he normally works."[44] The Court held that because the appellant only sought unemployment benefits for the weeks in which he worked less hours than he normally worked, or

[38] *Jones v. Unemployment Ins. Appeals Bd.*, 2001 WL 755379, at *2 (Del. Super.) (citing *O'Brien*, 1993 WL 603363 (Del. Super.)).
[39] 2011 WL 2698620 (Del. Super.).
[40] *Id*. at *1.
[41] *Id*.
[42] *Id*.
[43] *Id*.
[44] *Id*. at *2.

no hours at all, that the appellant qualified for unemployment benefits.[45] Claimant's case is distinguishable from *Annand.* Unlike in *Annand*, where the appellant's number of hours were *reduced*, Claimant worked thirty to forty hours per week for her business and earned income in the process.[46]

Notwithstanding the holding in *Annand*, Claimant seems to use the case to impliedly argue that she qualifies for unemployment benefits on grounds not explicitly discussed in *Annand*. Specifically, Claimant argues that it is logical to infer that the appellent's reduced hours in *Annand* means that the appellant experienced a reduction in income. Claimant contends that by drawing that inference in *Annand*, because Claimant is generating very little income operating Environmental Design, Claimant also qualifies for unemployment benefits.[47] This argument is very similar to the argument addressed in *Jones v. Unemployment Insurance Appeals Board*.[48] In *Jones*, the appellant's business operated at a loss, and as a result, the appellant claimed that this entitled him to unemployment benefits.[49] The appellant in *Jones* worked thirty to fifty hours per week for his business, and received payment for the services he performed.[50] However, due to the number of hours the appellant worked and the payment he received for that work, the Court affirmed the Board's denial of the appellant's claim because he

[45] *Id*.
[46] R. at 26-28.
[47] *Id*. at 28.
[48] 2001 WL 755379, at *2 (Del. Super.).
[49] *Id*.
[50] *Id*.

was not unemployed under 19 *Del. C.* § 3302(17).[51] The Court also noted that the appellant's attempts to secure work in addition the work he performed for his business did not affect the outcome of the Board's decision.[52] Here, like in *Jones*, Claimant also worked substantial hours and received payment for the services she provided.[53] Consequently, in light of the foregoing, the Board's decision to deny Claimant unemployment benefits was supported by substantial evidence and free from legal error.

In addition to the fact that Claimant does not qualify for unemployment benefits under Delaware law, the Court also notes that the alleged error committed by DOL does not exist. Claimant filed her original claim for unemployment benefits after URS laid her off.[54] Because she received severance pay from URS, the Claims Deputy deemed Claimant ineligible for unemployment benefits. But once Claimant depleted her severance pay, she re-opened her original unemployment benefits claim.[55] DOL assigned a new case number to Claimant's claim because Claimant self-employed and earning income at the time. This created a new eligibility issue, *i.e.*, Claimant's self-employment, which necessitated assigning a new case number to Claimant's claim.[56]

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[51] *Id*.
[52] *Id*.
[53] R. at 26-28.
[54] R. at 3.
[55] R. at 2.
[56] The State's December 6, 2011 Letter Responding to the Court at 2.

The Board's determination that Claimant was not "unemployed" within the meaning of the Delaware code is correct. The Board also did not "exceed the bounds of reason" or create injustice by ""ignor[ing] recognized rules of law or practice."[57] Thus, the Court finds that Board's decision to deny Claimants' Motion for Rehearing was proper.

VI. CONCLUSION

For the foregoing reasons, the Board's decision to deny the Claimant's Motion for Rehearing is **AFFIRMED.**

IT IS SO ORDERED.

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Jan R. Jurden, Judge

cc: Prothonotary

[57] *Straley*, 2011 WL 3451913, at *2. (citing *Graham*, 2008 WL 2582986, at *4).