

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

DELAWARE DIVISION OF)
UNEMPLOYMENT INSURANCE,)
)
Appellant,) C.A. No. N11A-09-003 MMJ
)
v.)
)
RICHARD A. SCOTT and the)
DELAWARE UNEMPLOYMENT)
INSURANCE APPEAL BOARD,)
)
Appellees.)

Submitted: April 3, 2012
Decided: June 21, 2012

On Appeal from a Decision of the Division of Unemployment Insurance
AFFIRMED

MEMORANDUM OPINION

Thomas H. Ellis, Esquire, Department of Justice, Wilmington, Delaware, Attorney
for Division of Unemployment Insurance

Richard A. Scott, *Pro Se*, 460 Robinson Drive, Wilmington, Delaware

Caroline Lee Cross, Esquire, Department of Justice, Wilmington, Delaware,
Attorney for Delaware Unemployment Insurance Appeal Board

JOHNSTON, J.

Richard A. Scott (“Claimant”) filed a claim for unemployment insurance benefits on March 20, 2011. An appeals referee of the Delaware Division of Unemployment Insurance held a hearing on May 23, 2011. The referee found that although Claimant was unemployed, he was self-employed and thus ineligible for benefits.

Claimant appealed the referee’s decision to the Unemployment Insurance Appeal Board. The Board held a hearing on July 27, 2011.

By decision dated August 15, 2011, the Board found:

The issue in this case is whether Claimant is a “self-employed” individual within the meaning of Delaware law.

“Employment” includes service performed by an officer of a corporation after December 31, 1995. 19 *Del. C.* §3302(10)(A)(i). The Delaware Supreme Court has held that subsection 3302(10)(A)(i) extends coverage to all corporate officers, including those with significant ownership interests, so long as the termination of employment was “*objectively reasonable.*” *Unemployment Insurance Appeal Board v. Division of Unemployment Insurance*, 803 A.2d 931, 936 (Del. 2002) (Emphasis in the original). Additionally, “employment” is a legal relationship between an employer, which can be either a natural person or a legal person, and an employee, usually an individual human being. Corporations are legal persons and have specific powers, such as the right to sue and be sued and the right to enter into contracts. 8 *Del. C.* § 122. As Chancellor Chandler pointed out in *Amirsaleh v. Board of Trade of the City of New York, Inc.*, 2008 WL 4182998 *4 vn. 18 (Del. Ch.), corporations are legally separate from their owners.

The record shows that the Claimant is an officer and shareholder in an operating Delaware corporation. Therefore, the Claimant is not “self-employed.” Rather, the Claimant is an employee of Ras Addis Associates, Inc. The Referee concluded that the Claimant is an “unemployed individual” within the meaning of 19 *Del. C.* § 3302(17) and the Board agrees with that analysis. Therefore, the Claimant is eligible for the receipt of benefits.

The Division of Unemployment Insurance appealed the Board’s decision.

Claimant/Appellees have not responded to this appeal.

STANDARD OF REVIEW

On appeal from the Unemployment Insurance Appeal Board, the Superior Court must determine if the Board’s factual findings are supported by substantial evidence in the record and free from legal error.¹ Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”² The Court must review the record to determine if the evidence is legally adequate to support the Board’s factual findings.³ The Court does not “weigh evidence, determine questions of credibility or make its own factual findings.”⁴ If the record lacks satisfactory proof in support of the Board’s finding or decision, the Court

¹ *Unemployment Ins. Appeal Bd. v. Duncan*, 621 A.2d 340, 342 (Del. 1993).

² *Histed v. E.I. duPont de Nemours & Co.*, 621 A.2d 340, 342 (citing *Olney v. Cooch*, 425 A.2d 610, 614 (1981)).

³ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

⁴ *Id.* at 67.

may overturn the Board's decision.⁵ On appeal, the Superior Court reviews legal issues *de novo*.⁶

ANALYSIS

The term "self-employment" has not been clearly defined by Delaware's General Assembly. However, this Court has interpreted "self-employment" as existing "where an individual has made more than *de minimus* efforts on behalf of an operating business that he or she owns, regardless of whether the business is profitable or the individual remains available for other work."⁷

In this case, the business in which Claimant is involved is not a sole proprietorship or partnership. The business is a corporation. Appellant does not dispute that Claimant is an employee of the corporation, or that Claimant is no longer receiving compensation from the corporation.

The referee found that although the corporation remained operational, because of lack of work, Claimant was unemployed. Nevertheless, the referee concluded:

[U]nemployment is different than self-employment. The Delaware Superior Court has held that a self-employed person may not receive unemployment compensation. ... Although there has been an apparent

⁵ *Id.* at 66-67.

⁶ *Person-Gaines v. Pepco Holdings, Inc.*, 981 A.2d 1159, 1161 (Del 2009).

⁷ *Workman v. Delaware Division of Unemployment Ins.*, 2001 WL 3903793, at *3 (Del Super.).

decline in the business income, this tribunal cannot ignore that the claimant holds 49 percent ownership interest in a company which is still operational and he continues to devote time to the acquisition of new business contracts. Since there is no evidence that the claimant has had any other employment, it appears that he is a self-employed individual. Therefore, he is ineligible for the receipt of benefits.

The Board reversed the referee's decision, finding that Claimant, as an officer in an operating Delaware corporation, is not self-employed. Claimant is an employee of the corporation. Having received no compensation for employment for the applicable period of time, Claimant is eligible for unemployment benefits.

Appellant argues that the Board ignored established precedent. Specifically, in *O'Brien v. UIAB*,⁸ this Court held:

Once an individual engages in a self-employed business or practice on a full-time basis, the Court finds that the individual is no longer unemployed nor available for work, nor clearly, is that individual "actively seeking work" other than the self-employment. In effect, the individual has become both employer and employee. Furthermore, although public policy favors construing unemployment laws in favor of the unemployed claimant, this Court cannot find that the legislature intended statutory benefits be utilized to support the early stages of a new business.⁹

Based on this analysis, Appellant argues: "The Division maintains that this court should adhere to its earlier precedent in deciding this case and scrap the UIAB

⁸1993 WL 603363 (Del. Super.).

⁹*Id.* at *3; *see also Jones v. UIAB*, 2001 WL 755379, at *2 (Del. Super.); *Weeraratne v. UIAB*, 1995 WL 840722, at *2 (Del. Super.).

approach that places form over substance and to pierce the corporate veil if necessary.”

Appellant’s arguments are not without merit. There appears to be no compelling public policy reason why, for purposes of unemployment compensation, the sole proprietor or partner in a failed business should be denied benefits, while a corporate officer, who functions in a virtually identical role as a practical matter, should be deemed an employee eligible for compensation.

Nevertheless, a corporation is a creation of statute. A corporate entity has independent legal significance. The corporate structure was designed to endow shareholders and officers with certain enforceable rights and obligations. Delaware court scrupulously have recognized and upheld these privileges and responsibilities.

It is well-settled that this Court lacks jurisdiction to pierce the corporate veil.¹⁰ As an equitable remedy, the Court of Chancery has sole jurisdiction over actions to pierce the corporate veil.¹¹

¹⁰*Sonne v. Sacks*, 314 A.2d 194, 197 (Del. 1973); *Mktg. Prods. Mgmt., LLC v. HealthandBeautyDirect.com*, 2004 WL 249581, at *3 (Del. Super.); *Fountain v. Colonial Chevrolet Co.*, 1988 WL 40019, at *10 (Del. Super.).

¹¹*State ex rel. Higgins v. Sourcegas, LLC*, 2012 WL 17217883, at *5 (Del. Super.); *Health andBeautyDirect.com*, 2004 WL 249781, at *3.

CONCLUSION

It appears to the Court that in order to reverse the Board's decision, on the basis argued by Appellant, the Court would have to pierce the corporate veil of the employer of Claimant/Appellee. The Superior Court lacks such jurisdiction, which is vested exclusively in the Court of Chancery.

THEREFORE, the August 15, 2011 decision of the Division of Unemployment Insurance Appeal Board is hereby **AFFIRMED**.

IT IS SO ORDERED.

/s/ Mary M. Johnston

The Honorable Mary M. Johnston