

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

MICHAEL J. CALLAHAN,)	
Appellant,)	
)	
v.)	C.A. No.: 11A-09-006 FSS
)	(E-FILED & U.S. MAIL)
REILLY SWEEPING and)	
UNEMPLOYMENT INSURANCE)	
APPEAL BOARD,)	
Appellees.)	

Submitted: April 3, 2012
Decided: May 14, 2012

ORDER

**Upon Appeal From the Unemployment Insurance Appeal Board –
*AFFIRMED.***

1. Appellant worked for Appellee, Reilly Sweeping, from March 2010 through November 2010. Appellant then worked for a different employer, Nordello Fuels, for approximately four months, until it laid Appellant off on March 3, 2011. Appellant then filed for unemployment benefits, which he received for several months. Appellant then reapplied to Reilly Sweeping. Reilly Sweeping made a new job offer, which Appellant declined.

2. On May 16, 2011, a claims deputy disqualified Appellant from receiving unemployment benefits as of May 7, 2011, because Appellant's pay authorization form indicated he refused a new qualified job offer from Reilly Sweeping.¹

3. Appellant timely appealed the claims deputy's ruling to an appeals referee, reiterating he refused Reilly Sweeping's April 2011 job offer because "the travel is too far and gas pricing has become too expensive and projected only to get higher. The job also is not full time work." Appellant testified to the referee, "Well, [Reilly Sweeping] had called me up and asked me if I was, you know, willing to come back on a part time basis."

4. After a full hearing, the appeals referee upheld the claims deputy's decision. The referee concluded "the mere fact the job will require [Appellant] to commute is not sufficient to render the job unsuitable, as no evidence has been entered on the record that he has more of a commute at the present time . . . than during the previous term of employment with Reilly Sweeping."²

¹ 19 *Del. C.* § 3314(3) ("An individual shall be disqualified for benefits if the individual has refused to accept an offer of work for which the individual is reasonably fitted."). *See also Jewell v. Unemployment Compensation Commission*, 183 A.2d 585, 587 (Del. 1962) ("[An] unemployed person must be available at all times to accept suitable employment and a refusal on his part to do so will disqualify him for benefits under the law. A refusal to accept work, in order to disqualify a claimant, must be deliberate on the part of the claimant.").

² *See id.* §§ 3314(3)(c), (d).

5. The referee's decision was issued on July 1, 2011. Appellant appealed to the Board on July 15, 2011.

6. Appellant testified to the Board that, contrary to his testimony to the referee, he called Reilly Sweeping and asked if it needed help, and it never offered him work. Appellant also testified he misunderstood the deputy's and referee's questions.

7. On August 30, 2011, the Board upheld the referee, holding Appellant had not provided new evidence or testimony. Therefore, the Board disqualified Appellant from receiving unemployment benefits, as he had refused a qualified job offer. On September 8, 2011, Appellant timely appealed to this court.

8. The court's role on appeal from the Board is quite limited. The court does not re-weigh evidence.³ It may only decide if the Board's factual findings are supported by substantial evidence,⁴ and whether the Board correctly applied the law to the facts.⁵ If the Board's factual findings hold up and are legally error-free, the court must affirm unless the Board somehow abused its discretion.⁶

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

⁴ *Unemployment Ins. Appeal Bd. v. Duncan*, 337 A.2d 308, 309 (Del. 1975).

⁵ *Ridings v. Unemployment Ins. Appeal Bd.*, 407 A.2d 238, 239 (Del. Super. 1979).

⁶ *Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991).

9. Here, Appellant focuses on others' alleged wrongdoings. Appellant alleges Reilly Sweeping did not appear at any administrative hearing, claimed to offer him a job only after he applied for unemployment, and is "prolong[ing] this case hoping I would give up my fight." Appellant also alleges he is being treated unfairly because he is an out-of-state benefits recipient.

10. The court is curious how Appellant got this far.⁷ Appellant left Reilly Sweeping in November 2010 to accept a full-time job with Nordello Fuels, in Pennsylvania. That ended Appellant's right to collect unemployment from Reilly Sweeping. Yet, Appellant collected unemployment benefits from Reilly Sweeping for approximately two months after Nordello Fuels laid him off "due to a lack of work."

11. Nonetheless, the court sees no reason to overturn the Board's decision. Appellant provided no supporting evidence, nor did he show the Board abused its discretion. More importantly, there is evidence in the record from which the Board could, and did, find Appellant turned down a qualified job offer. Once the Board made that finding, it could conclude under the law that Appellant was not entitled to receive benefits. Thus, the Board's decision was based on substantial evidence, and consistent with unemployment insurance law.

⁷ See Appeals Referee Hr'g Tr. 5:13-17, June 13, 2011.

For the foregoing reasons, the Board's August 30, 2011 decision is

AFFIRMED.

IT IS SO ORDERED.

/ s/ **Fred S. Silverman**

Judge

cc: Prothonotary

Mr. Michael J. Callahan, *Pro Se*

Caroline L. Cross, Esquire - Unemployment Insurance Appeal Board

Reilly Sweeping