

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

CYNTHIA BROWN,)	
)	
Appellant,)	C.A. No. N12A-02-005 RRC
v.)	
)	
UNEMPLOYMENT INSURANCE)	
APPEAL BOARD,)	
)	
Appellee.)	

Submitted: May 14, 2012
Decided: July 23, 2012

On Appeal from a Decision of the Unemployment Insurance Appeal Board.
AFFIRMED.

ORDER

Cynthia Brown, Newark, Delaware, *pro se*, Appellant

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

COOCH, R.J.

This 23rd day of July, 2012, on appeal from a decision of the
Unemployment Insurance Appeal Board, it appears to the Court that:

1. *Pro Se* Appellant appeals from the Board’s decision to disqualify her from unemployment benefits. The Board determined that Appellant was “not an ‘unemployed individual’” because unemployment exists only where an individual has performed no services and received no wages. Appellant claimed that, as a self-employed individual, she did not render services or collect wages from October 2011 until February

2012. This Court finds, however, that substantial evidence supports the Board’s decision that Appellant was ineligible for unemployment benefits because Appellant was self-employed during the pertinent time period. Therefore, the Unemployment Insurance Appeal Board’s decision is **AFFIRMED**.

2. Appellant was employed by the State of Delaware (“the State”) as a childcare licensing specialist from February 1991 until she voluntarily “resigned” her position in March 2011. In April 2011, Appellant began conducting business from her home as a self-employed consultant, assisting an adoption agency in becoming licensed in other locations. Appellant had not yet obtained a business license from the state.¹ Appellant filed for unemployment benefits in September 2011.² By October 2011, the adoption agency, Appellant’s only apparent client, took time to process the research she had provided. Appellant’s business still operated without a license as of the date of the Board hearing.³ On February 28, 2012, Appellant began work at an alternative public school for youth with behavioral issues. The Board found that Appellant was employed as of the date of the Board hearing.
3. The Claims Deputy referred the case directly to the Appeals Referee for an initial decision pertaining to Appellant’s eligibility because of the matter’s legal issue. The Appeals Referee concluded that Appellant, as a self-employed individual, was not unemployed and was therefore ineligible for unemployment benefits.⁴ Appellant then appealed to the Unemployment Insurance Appeal Board (“UIAB” or “the Board”), which affirmed the finding of the Appeals Referee. This appeal followed.

¹ *29 Del.C.* § 10302(4) provides: “any individual, *sole proprietorship*, partnership, association, cooperative, corporation, nonprofit organization, State or local government agency and any other organization [is] required to register with the State to do business in the State and to obtain 1 or more licenses from the State or any of its agencies.” (emphasis added).

² Appellant contends unemployment began in October; however she applied for unemployment in September. Appellant’s premature application is not explained in the record.

³ Appellant had retroactively applied for a business license as of the date of the Board hearing.

⁴ *Weeraratne v. Unemployment Ins. Appeal. Bd.*, 1995 WL 840722 *1 (Del. Super. Sept. 26, 1995).

4. Appellant contends she is an “unemployed individual” because she provided no services and attained no income from October 17, 2011 to February 27, 2012. Appellant acknowledges that she voluntarily left her prior employment with the State to pursue her own business endeavors. Appellant asserts she has applied for jobs she is qualified for and jobs in other fields. Appellant argues the client relationship has ceased because her services were unnecessary while the client processed the information provided. Finally, Appellant asserts she paid into unemployment for twenty years while employed by the State, and had never sought unemployment benefits.
5. The Board’s “FINDINGS OF FACT AND CONCLUSIONS OF LAW” are set forth *in toto*:

The issue in this case is whether the Claimant is an unemployed individual within the meaning of *19 Del. C. § 3302(17)*.

Under the definition of “unemployed individual,” unemployment occurs during any week during which the individual performs no services and with respect to which no wages are payable to the individual.” *19 Del C. §3302(17)*. In this case, the Claimant worked as a self-employed consultant for an adoption agency beginning April 8, 2011. Claimant worked from home and conducted research on the internet for her one client to determine the rules and regulations for expansion into other states and countries. Claimant testified she worked about 10 hours per week and was paid \$20 per hour for a total of about \$800. Claimant testified she has provided so much information to her client they have provided no new work for her causing the month of October to be slow. Claimant’s business is still operational. Claimant testified she is looking for work with children and families.

Based on the record created in this case, the Board cannot find that the Claimant is an unemployed individual. The law is clear that a claimant is not an “unemployed individual” unless the claimant performs no services *and* collects no wages during any week in which the claimant seeks to collect unemployment benefits. The claimant testified that she resigned her position with the State to start her own business which is still in existence. Claimant’s one client is processing the large amount of information the Claimant has provided and is taking time to decipher it all. The Claimant never obtained a business license so she has not paid into unemployment. In addition, the Claimant has restricted herself to a certain type of work as part of her job search. Claimant quit a full-time job to start a business with one client and very limited work which has no

dwindled but the relationship still exists. Therefore, the Claimant is not an “unemployed individual” within the plain meaning of *19 Del. C. § 3302(17)*.

6. On appeal, the Board advised the Court that it would not file an Answering Brief “because” [t]he underlying case is on the merits and the Board does not intend to take a position as to the merits of the case.”⁵
7. The Supreme Court and this Court have repeatedly emphasized the limited appellate review of an administrative agency’s factual findings. The reviewing court’s function is to determine whether the agency’s decision is supported by substantial evidence.⁶ Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.⁷ The appellate court does not weigh evidence, resolve credibility questions, or make its own factual findings.⁸ The Court merely determines if the evidence is legally adequate to support the agency’s factual findings.⁹ The Court must defer to administrative board expertise.¹⁰ As such, the Court must uphold a Board’s decision that is supported by substantial evidence even if, in the first instance, the reviewing judge might have decided the case differently.¹¹ The record must be viewed in the light most favorable to the prevailing party below.¹²
8. This Court finds no legal error and therefore upholds the Board’s decision because substantial evidence exists to support the Board’s

⁵ Letter dated of May 12, 2012 from Caroline Lee Cross, Esquire, Deputy Attorney General to the court.

⁶ *General Motors Corp. v. Freedman*, 164 A.2d 686, 688 (Del. 1960); *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66-67 (Del. 1965).

⁷ *Oceanport Ind. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del. 1994); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super. 1986) *app. disp.*, 515 A.2d 397 (Del. 1986).

⁸ *Johnson*, 213 A.2d at 66.

⁹ *29 Del. C. § 10142(d)*.

¹⁰ *See id.* (“The Court, when factual determinations are at issue, shall take due account of the experience and specialized competence of the agency and of the purposes of the basic law under which the agency has acted.”).

¹¹ *Kreshtool v. Delmarva Power and Light Co.*, 310 A.2d 649, 653 (Del. 1973).

¹² *Thomas v. Christiana Excavating Co.*, 1994 WL 750325, at *5 (Del. Super. Nov. 19, 1994).

conclusion that Appellant was rightfully disqualified from unemployment benefits. The Board determined 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.”¹³ Appellant, who was admittedly self-employed, was not “unemployed” under that standard. It is a well-established rule in Delaware that self-employed individuals are barred from unemployment benefits because benefits are not for the purpose of supporting the early stages of a new business or an unprofitable one.¹⁴ The purpose of unemployment compensation is to remedy unemployment and to benefit people unemployed through no fault of their own.¹⁵

9. Although Appellant apparently searched for other work, separate from her self-employment, she restricted herself to certain fields. While public policy favors construing unemployment compensation laws in favor of an unemployed claimant, Appellant did not comply with the policy set forth by the Board to collect benefits.¹⁶ Appellant’s business was operative and unemployment compensation is not for the purpose of supporting an unprofitable business. This Court is not unsympathetic to a struggling business owner; however, it cannot overturn the Board’s decision in this case, where the decision is legally sound and otherwise supported by substantial evidence.

¹³ *19 Del.C. § 3302(17)* provides: “Unemployment exists and an individual is unemployed in any week during which the individual performs no service 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 a week are less than the individual’s weekly benefit amount plus which is the greater of \$10 or 50% of the individual’s weekly benefit amount. The Department shall prescribe regulations applicable to unemployed individuals making such distinctions in the procedures as to total unemployment, part-total unemployment, partial unemployment of individuals attached to their regular jobs and other forms of short-time work as the Department deems necessary.” (Internal quotations omitted).

¹⁴ *Jones v. Unemployment Ins. Appeal Bd.*, 2001 WL 755379 *2 (Del. Super. June 11, 2001); *Workman v. Delaware Dept. of Labor*, 2011 WL 3903793 *3 (Del. Super. Sept. 1, 2011).

¹⁵ *Miller v. Herschmann and Unemployment Ins. Appeal Bd.*, 2007 WL 4577373 *2 (Del. Super. Dec. 12, 2007).

¹⁶ *O’Brien v. Unemployment Ins. Appeal Bd.*, 1993 WL 603363 at *1 (Del. Super. Oct. 20, 1993).

10. Appellant was rightfully disqualified from unemployment benefits. The decision of the Board is otherwise supported by substantial evidence and is free from legal error. Therefore, the Board's decision is **AFFIRMED**.

Richard R. Cooch, R.J.

cc: Prothonotary
Unemployment Insurance Appeal Board