

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

DORIS M. BROWN,)	
)	
Appellant,)	
)	
v.)	C.A. No. N10A-03-005 JAP
)	
UNEMPLOYMENT INSURANCE)	
APPEAL BOARD,)	
)	
Appellee.)	

Submitted: January 3, 2011
Decided: February 3, 2011

*Appeal of a Decision of the Unemployment Insurance Appeal Board
Decision **AFFIRMED.***

MEMORANDUM OPINION

Appearances:

Doris M. Brown, Pro Se Appellant
601 Sandburg Place, Newark, DE 19702

Katisha D. Fortune, Deputy Attorney General
Wilmington, Delaware

JOHN A. PARKINS, JR., JUDGE

Before the Court is the appeal of Claimant Doris M. Brown, (“Brown”), of a decision of the Unemployment Insurance Appeal Board, (the “Board”), to deny her unemployment benefits.

Factual and Procedural Background

Brown was employed by Citigroup, (the “Employer”), as a mail clerk from August 30, 2004 until November 25, 2008, when she left work for medical reasons.¹ On January 31, 2009, she had hip replacement surgery and was subsequently unable to return to work before her thirteen weeks of leave were exhausted.² When Brown telephoned her employer in approximately June 2009, the Employer suggested that since her position would not be held for her she should look for work elsewhere.³ Since that time, Brown has been actively looking for another job.⁴

On July 5, 2009, Brown petitioned for unemployment insurance benefits.⁵ She claims that she was able to return to her job as a mail clerk in June 2009, but she did not submit any medical documentation indicating that she was released to go back to work at that time.⁶ In fact, on July 9, 2009, Brown stated that she was still recovering from the surgery and that the

¹ Record of the Case, 17-19, (hereinafter “R”).

² R at 19-21.

³ R at 21.

⁴ R at 21, 34-35.

⁵ R at 7.

⁶ R at 20, 33-34.

Employer was not able to accommodate her limitations.⁷ Her petition was denied on July 27, 2009, due to her inability to do her job and the lack of a doctor's certificate releasing her to go back to work.⁸

On August 3, 2009, Brown filed an appeal of the denial of benefits claiming that she was willing to return to work but that the Employer would not accommodate her restrictions.⁹ Then, on August 6, 2009, Brown actually was released by her doctor to return to work but with the restriction of no lifting over ten pounds.¹⁰ Later that same month, the Appeals Referee found that Brown was still unable to work without restriction and affirmed the denial of benefits.¹¹

On September 11, 2009, Brown again appealed, and a hearing was held before the Unemployment Insurance Appeal Board on January 6, 2010.¹² The Board later affirmed the decision of the Appeals Referee finding that Brown was disqualified for unemployment benefits because she became unemployed due to her inability to perform her work and because she did not present medical evidence that she was released to return to her work without restriction.¹³

⁷ R at 3.

⁸ R at 7.

⁹ R at 8.

¹⁰ R at 13.

¹¹ R at 11-12.

¹² R at 23, 29.

¹³ R at 26.

Brown has now filed a notice of appeal to this Court along with new evidence—a doctor’s note dated September 11, 2009, indicating that she may return to work without restriction.¹⁴ Brown asserts that she did not have the doctor’s note with her on January 6, 2010, the day of the hearing before the Appeals Board.¹⁵

The Board has declined to file an answering brief or provide any argument.

Standard of Review

The Court reviews the Board’s decision for the existence of substantial evidence in the record such that would support the Board’s findings of fact and for legal error.¹⁶ Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”¹⁷

Discussion

Under Delaware law, an individual is disqualified by statute from receiving unemployment insurance benefits if “the unemployment is due to the individual’s inability to work.”¹⁸ The “disqualification [terminates] when the individual becomes able to work and available for work as determined by a

¹⁴ R at 43-44.

¹⁵ R at 34; Claimant’s Opening Brief, 1.

¹⁶ *Unemployment Ins. Appeal Bd. v. Martin*, 431 A.2d 1265, 1266 (Del. 1981); *Hubble v. Delmarva Temporary Staffing, Inc.*, 2003 WL 1980811, *2 (Del. Super.).

¹⁷ *Hubble*, 2003 WL 1980811 at *2 (quoting from *Gorrell v. Division of Vocational Rehab. and Unemployment Ins. Appeal Bd.*, C.A. No. 96A-01-001, Graves, J. (Del. Super. July 31, 1996) Letter Op. at 4.).

¹⁸ 19 *Del.C.* § 3314(8).

doctor's certificate"¹⁹ An employee is considered unable to work within the meaning of the statute when restricted from performing her normal job duties by her doctor due to a physical condition.²⁰

In an appeal of a decision of the Unemployment Insurance Appeal Board, the Court is limited to a review of the record which was before the Board.²¹ The Court may not expand the record and include additional evidence or records.²² Where a claimant does not provide the Board with the necessary medical documentation, the Court cannot find the Board's decision to be legally inadequate.²³

In *Willis v. Unemployment Ins. Appeal Bd.*, a claimant provided her employer with a doctor's note indicating that she was unable to work due to physical problems, but she continued to work despite her medical condition.²⁴ Upon appeal to the Board of a denial of benefits, the *Willis* claimant was found to be disqualified for unemployment compensation because she did not provide medical documentation so as to establish that she was physically able to return

¹⁹ 19 Del.C. § 3314(8).

²⁰ *Petty v. Univ. of Delaware*, 450 A.2d 392, 395 (Del. 1982).

²¹ *Petty*, 450 A.2d at 396; *Hubbard v. Unemployment Ins. Appeal Bd.*, 352 A.2d 761, 763 (Del. 1976).

²² *Petty*, 450 A.2d at 396; *Wessells v. Am. Int'l Group*, 2002 WL 233736, *2, Gebelein, J. (Del. Super. Jan. 2, 2002).

²³ *Willis v. Unemployment Ins. Appeal Bd.*, 2002 WL 31167541, *2, Carpenter, J. (Del. Super. Sept. 30, 2002).

²⁴ *Willis*, 2002 WL 31167541 at *1-2.

to work.²⁵ The Court there found the Board's decision to be legally adequate based on the evidence before it.²⁶

In the matter before the Court, Brown was unemployed for many months as a result of a medical condition—pain, hip replacement surgery and subsequent recovery. During this time, she was unable to work and, therefore, disqualified for unemployment benefits under the statute.²⁷ Upon appeal of a denial for unemployment benefits, Brown presented medical documentation that she could return to work with restrictions.

Brown's ability to return to work with restrictions did not render her eligible for unemployment benefits. In order to be considered able to work and available to work, Brown must present documentation from her doctor indicating that she is released to go back to work without restriction. On this appeal, she has submitted a doctor's note dated September 11, 2009, stating that she could return to work without restrictions. She did not present this note to the Board, claiming she forgot to bring it to the hearing. This Court's review is limited to the evidence before the Board, and the Court is prohibited from expanding the record. Accordingly, the Court will not, and cannot, consider the belatedly produced doctor's note. The Court, therefore, finds that the Board's

²⁵ *Willis*, 2002 WL 31167541 at *1-2.

²⁶ *Willis*, 2002 WL 31167541 at *1-2 (stating that the claimant would probably be receiving benefits already if she would establish with the Board that she is physically able to work instead of appealing the Board's decision).

²⁷ *See* 19 *Del.C.* § 3314(8).

decision is supported by substantial evidence as presented in the record below and without legal error.

Accordingly, the Board's decision is **AFFIRMED**.

IT IS SO ORDERED.

John A. Parkins, Jr., Judge