

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

T. HENLEY GRAVES  
*RESIDENT JUDGE*

SUSSEX COUNTY COURTHOUSE  
ONE THE CIRCLE, SUITE 2  
GEORGETOWN, DE 19947

February 27, 2008

Ronald Isler  
19784 Donovan Road  
Georgetown, Delaware 19947

**Re: Ronald Isler v. Pinnacle Foods and Unemployment Insurance Appeal Board  
C.A. No. 07A-05-003**

Date Submitted: February 5, 2008

Dear Mr. Isler:

Ronald Isler (“Mr. Isler”) appeals the decision of the Unemployment Insurance Appeal Board (“the Board”) that denied Mr. Isler’s request for unemployment insurance benefits. The Board denied Mr. Isler’s request for benefits after concluding he was unable to perform his job responsibilities due to a medical condition. For the reasons set forth herein, the Board’s decision is affirmed.

*Procedural & Factual Background*

The relevant facts are as follows. As of May 2006, Pinnacle Foods Corporation (“Pinnacle Foods”) had employed Mr. Isler as a forklift driver for approximately ten years. Mr. Isler had been involved in a car accident in December of 2005, which resulted in injury. The car accident was not related to Mr. Isler’s work in any way. As a result of this accident, Mr. Isler suffered injury to his left shoulder. His doctor advised him in May of 2006 that any work should be restricted to light duty and he was instructed not to lift anything in excess of fifteen pounds. Pinnacle Foods apparently

limits access to its light duty positions to those employees who have suffered work-related injuries. As such, Pinnacle Foods did not have any light duty work for Mr. Isler. At this point, Pinnacle Foods placed Mr. Isler on a leave of absence from work. On August 3, 2006, Mr. Isler had surgery on his shoulder. On October 26, 2006, Mr. Isler's treating physician granted him permission to return to work, providing that Mr. Isler did not use his left arm. Mr. Isler's physician cleared him for work with no restrictions on March 7, 2007, at which time Mr. Isler returned to work.

During the time Mr. Isler was unable to work, Mr. Isler filed for unemployment benefits. A Claims Deputy denied that request on November 6, 2006. Mr. Isler appealed the Claims Deputy's decision and a hearing was held before an Appeals Referee. By way of a written decision mailed on December 8, 2006, the Appeals Referee affirmed the Claims Deputy's denial of Mr. Isler's request for benefits. Mr. Isler appealed that decision to the Board. By way of written decision mailed on February 9, 2007, the Board remanded the matter in order to permit Pinnacle Foods, which had not appeared at the hearing before the Appeals Referee, to present testimony. On March 1, 2007, another hearing was held before the Appeals Referee. Once again, Pinnacle Foods failed to appear. Nevertheless, the Appeals Referee again affirmed the Claims Deputy's decision to deny unemployment benefits to Mr. Isler. Mr. Isler timely appealed this determination to the Board. After a hearing, and by way of written decision mailed April 30, 2007, the Board affirmed the Appeals Referee's decision denying Mr. Isler unemployment benefits.

The sole issue presented in this appeal is whether Mr. Isler was entitled to unemployment benefits for the time frame during which he was on restricted work duty as a result of a non-work-related accident.

### *Discussion*

When reviewing the decisions of the Board, this Court must determine whether the Board's findings and conclusions of law are free from legal error and are supported by substantial evidence in the record. *Unemployment Ins. Appeal Bd. v. Martin*, 431 A.2d 1265 (Del. 1981); *Pochvatilla v. U.S. Postal Serv.*, 1997 WL 524062 (Del. Super. Jun. 9, 1997); 19 *Del. C.* § 3323(a) (“In any judicial proceeding under this section, the findings of the [Board] as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the Court shall be confined to questions of law.”). “Substantial evidence” is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion”. *Gorrell v. Div. of Vocational Rehab.*, 1996 WL 453356, at \*2 (Del. Super. July 31, 1996). The Court's review is limited: “It is not the appellate court's role to weigh the evidence, determine credibility questions or make its own factual findings, but merely to decide if the evidence is legally adequate to support the agency's factual findings.” *McManus v. Christiana Serv. Co.*, 1197 WL 127953, at \*1 (Del. Super. Jan. 31, 1997).

In this case, the findings of the Board are supported by substantial evidence in the record. Delaware law states that an individual will be disqualified from receiving unemployment benefits if “it shall be determined by the Department that total or partial unemployment is due to the individual's inability to work.” 19 *Del. C.* § 3314(8). This disqualification expires when the individual becomes able to work again and is available for work as determined by a physician's certificate. *Id.* In *Petty v. University of Delaware*, 450 A.2d 392 (Del. 1982), the Supreme Court affirmed a decision of the Board where the Board found that the claimant was unable to work due to work restrictions arising from her pregnancy. The claimant's physician had advised her not to “lift, climb or stand for prolonged periods”. *Id.* at 394. The claimant's job as a custodian had

required significant physical exertion in the form of bending, lifting and standing. The Supreme Court upheld the Board's determination that claimant was unable to work and, therefore, not eligible for benefits.

Similarly, in this case, Mr. Isler's physician placed various restrictions on his ability to work. Mr. Isler testified that his physician restricted him to light duty work in May of 2006. This light duty restriction stated that Mr. Isler could not lift more than fifteen pounds; however, Mr. Isler stated that the physician did not restrict his ability to drive at that time. In October of 2006, after Mr. Isler's surgery, Dr. John Spieker placed him under a different work restriction: this restriction directed Mr. Isler not to use his left arm. In December of 2006, Dr. Spieker released Mr. Isler for work, although he expressly stated that Mr. Isler was not to lift more than ten pounds and that Mr. Isler was to avoid any overhead use of his left arm. On January 22, 2007, Dr. Spieker reiterated these instructions, opining that Mr. Isler could return to work but again limiting Mr. Isler's ability to lift to ten pounds. Mr. Isler argues he could drive a forklift with the use of only one arm and without exerting more than ten pounds of force. However, an internal job posting for Pinnacle Foods indicates that a forklift driver "[m]ust be able to lift objects weighting [sic], or exerts [sic] up to 50 pounds of force."

I cannot find error with the Board's conclusion that Mr. Isler was unable to work due to the work restrictions placed upon him by his treating physician. The internal job posting specifically requires a forklift operator to be capable of exerting fifty pounds of force, which Mr. Isler was prohibited from doing until he was released to full work duty. Immediately after he was released to full work duty, Mr. Isler returned to work. Thus, I conclude Mr. Isler was not entitled to unemployment benefits for the period of time for which he was placed under restrictive work conditions by his treating physician.

*Conclusion*

For the reasons set forth herein, the Board's decision denying unemployment insurance benefits to Mr. Isler is affirmed.

Very truly yours,

T. Henley Graves

oc: Prothonotary  
cc: Pinnacle Foods Corp.  
Nicholas Stevens, Esquire  
Unemployment Insurance Appeals Board