

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

KENNETH R. SILVA,)	
)	
Employee-Appellant,)	
)	
v.)	C.A. No. 07A-08-003-JRJ
)	
CASSIDY PAINTING INC.,)	
)	
Employer-Appellee)	
)	

Date Submitted: January 29, 2008
Date Decided: May 22, 2008

ORDER

*Upon Appeal of the Decision of the Unemployment Insurance Appeal Board. **REVERSED** and **REMANDED.***

Kenneth R. Silva, 117 David Road, Wilmington, DE 19804, employee-appellant, *pro se*.

Scott Wilcox, Esq., 222 Delaware Ave, Suite 900, P.O. Box 25130, Wilmington, DE 19899, attorney for Appellee Cassidy Painting Inc.

Mary Page Bailey, Esq., Department of Justice, State Office Building, 820 N. French Street, Wilmington, DE 19801, attorney for Unemployment Insurance Appeal Board

JURDEN, J

I. INTRODUCTION

Employee appeals the decision of the Unemployment Insurance Appeal Board that he is ineligible for unemployment benefits. He disputes the Board's finding that he voluntarily quit his job and claims that he was terminated without cause. For the reasons set forth below, the decision of the Board is reversed and remanded for further consideration.

II. BACKGROUND

Kenneth R. Silva ("Silva") worked as a mechanic for Appellee Cassidy Painting Inc. ("Cassidy Painting") from April 5, 2005 to April 12, 2007. He was a full time employee and earned \$20 an hour. On April 12, 2007, he was involved in a verbal altercation with his supervisor, John Desmond ("Desmond") after Desmond told him to drive downstate to complete a service job. Silva was upset because it was the end of the day and he had plans to take his daughter to her baseball game. Silva became disgusted and ripped his jumper wires out of the unit that he was working on. In the process, his tools dropped to the ground. Desmond asked Silva why he was upset and a verbal argument ensued. While holding a screwdriver, Silva told Desmond that he was messing with the wrong "mother f...er." Desmond told Silva to call his wife to pick him up because he was not permitted to drive the company truck home. Silva contacted his

son who gave him a ride home. Silva claims that he was under the impression that he was either suspended or terminated from his job.

After Silva did not return to work the following day, Desmond called and told him to pick up his tools. Silva then called Desmond's supervisor, David Deal ("Deal"). Deal told Silva that he thought he had walked off the job. The next day, Silva called the owner of Cassidy Painting, Michael Cassidy ("Cassidy"), and left him a message explaining that he did not quit and that he wanted to talk to him about the incident. Cassidy did not return Silva's phone call.

On Monday, April 16, 2007, Silva picked up his tools from Cassidy Painting. The next day he filed a claim for unemployment benefits with the Delaware Department of Labor.¹ On May 5, 2007, a Claims Deputy determined that Silva was entitled to unemployment benefits because he was terminated without just cause.² Cassidy Painting immediately filed an appeal and a hearing was held before an Appeals Referee. On June 12, 2007, the Appeals Referee reversed the decision of the Claims Deputy and held the Silva was terminated for just cause and therefore was not entitled to unemployment benefits.³ Silva appealed the Referee's decision to the Unemployment Insurance Appeal Board ("Board"). On July 18, 2007, after

¹ Record from U.I.A.B., Docket Item ("D.I.") 5.

² *Id.*

³ *Id.* at

a hearing, the Board upheld the Referee's decision to deny benefits but on different grounds. The Board held that Silva voluntarily quit his job without good cause and therefore was not entitled to unemployment benefits. Silva appealed the Board's decision on August 7, 2007.

III. STANDARD OF REVIEW

In reviewing a decision on appeal from the Board, this Court must determine if the decision is supported by substantial evidence and is free from legal error.⁴ Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.⁵ On appeal, the Court does not “weigh the evidence, determine questions of credibility, or make its own factual findings.”⁶ The Court will only reverse a decision of the Board if its findings are not supported by substantial evidence, or where the Board has made a legal mistake.⁷

IV. ISSUE

The issue on appeal is whether the Board's holding that Silva voluntarily quit his job is supported by substantial evidence and free from legal error.

⁴ *Short v. Unemployment Ins. Appeal Bd.*, 1986 WL 17127 (Del.) (citing *Unemployment Ins. Appeal Bd. v. Duncan*, 337 A.2d 308 (Del. 1975); 19 *Del. C.* § 3323(a)). See also *Unemployment Ins. Appeal Bd. v. Div. of Unemployment Ins.*, 803 A.2d 931, 936 (Del. 2002).

⁵ *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. Super. 1994).

⁶ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

⁷ *Delgado v. Unemployment Insurance Appeal Board*, 295 A.2d 585 (Del. Super. 1972).

V. DISCUSSION

The Board's findings of fact are supported by substantial evidence. There is substantial evidence in the record to support the Board's findings that Desmond told Silva to call his wife for a ride home, that Silva assumed that he was either suspended or fired and that Silva did not return to work the following day. The Board found that even though Silva was under the impression that he was suspended or fired, he had a duty to return to work and confirm the status of his employment. Because he failed to do so, the Board found that Silva voluntarily quit his job. The Court takes no issue with the Board's finding of facts, but rather with its legal conclusion.

Whether a factual situation amounts to a voluntary termination of one's job is a question of law subject to review by the Court.⁸ "The phrase 'voluntary quitting' means leaving on one's own motion, as opposed to being discharged."⁹ Furthermore, the employee must have had a conscious intention to leave or terminate the employment.¹⁰

In this case, the evidence presented does not establish a conscious intention by Silva to leave or terminate employment. The Board found as a

⁸ See *Gsell v. Unclaimed Freight*, 1995 WL 339026 (Del. Super.)(citing *State ex rel. Dept. of Labor v. Unemployment Insurance Appeal Board*, 297 A.2d 412, 414 (Del. Super. 1981).

⁹ *Id.*

¹⁰ *Id.* (citing *Roberts v. Com., Unemployment Compensation Board of Review*, Pa.Cmwlth., 432 A.2d 646 (1981).

fact that Silva was under the impression that he was suspended or fired. That finding negates the element of conscious intent to quit.

Consequently, the Court finds that the Board erred as a matter of law in holding that Silva voluntarily quit his job. This reversal has the effect of a finding that Silva was discharged and therefore is presumptively entitled to benefits. The Court remands this matter so that the Board can determine whether Silva was terminated for just cause.

NOW, THEREFORE, IT IS ORDERED that the decision of the Unemployment Insurance Appeal Board is **REVERSED** and this matter is **REMANDED** for further proceedings consistent with this order.

Jan R. Jurden, Judge