SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

SUSSEX COUNTY COURTHOUSE
1 The Circle, Suite 2
GEORGETOWN, DE 19947

August 20 , 2008

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RE: Tiwanda L. Miller v. Mattress Warehouse, Inc.
C.A. No. 07A-11-002 ESB
Letter Opinion

Date Submitted: May 2, 2008

Dear Counsel and Ms. Miller:

This is my decision on Tiwanda L. Miller's appeal of the Unemployment Insurance Appeal Board's denial of her claim for unemployment benefits. The Board decided that Miller voluntarily quit her job without good cause in a dispute over her compensation. I have affirmed the Board's decision because it is in accordance with the applicable law and supported by substantial evidence in the record.

STATEMENT OF THE CASE

Miller worked as a salesperson for the Mattress Warehouse for five months. After a training period, she was paid a commission based on her sales. Miller received a $685 paycheck for the pay period from May 13 to May 26 on June 1, 2007. Miller was upset because she believed that, even though she was paid on a commission basis, she would be paid at least $100 per day. Miller went to work the next day and faxed a letter to district managers Tarek Elshafey and Kevin Keller, stating

that she was leaving the store and would not return until she spoke with them. Miller did, as she threatened to do, leave the store early that day. Keller called Miller on June 2. He told Miller that even though he did not prepare the payroll that he would look into her concerns. Elshafey tried to call Miller on June 2, 3 and 4. He left messages on her cell phone, but she never called him back. Miller was not scheduled to work on June 3, 2007. However, she came into the store, saw that she was not scheduled to work, and then left without being asked to do so. Elshafey and Keller did not hear from Miller again until she filed a claim for unemployment benefits.

The Board held a hearing on October 17, 2007. Elshafey, Keller and store manager Dixie Deshields appeared for the Mattress Warehouse at the hearing. They testified about Miller's compensation and the circumstances surrounding her departure. Miller did not appear. However, the Board did have available to it the testimony that Miller presented to the Appeals Referee. The Board denied Miller's claim for unemployment benefits, finding that she voluntarily quit her job without good cause.

STANDARD OF REVIEW

The Supreme Court and this Court repeatedly have emphasized the limited appellate review of the factual findings of an administrative agency. On appeal from a decision of the Board, this Court is limited to a determination of whether there is substantial evidence in the record sufficient to support the Board's findings, and that such findings are free from legal error.[1] Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a

[1] *Employment Ins. Appeals Board of the Dept. of Labor v. Duncan*, 337 A.2d 308, 309 (Del. 1975); *Longobardi v. Unemployment Ins. Appeal Board*, 287 A.2d 690, 692 (Del. Super. 1971), *aff'd* 293 A.2d 295 (Del. 1972).

conclusion.[2] The Board's findings are conclusive and will be affirmed if supported by "competent evidence having probative value."[3] The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.[4] It merely determines if the evidence is legally adequate to support the Board's factual findings.[5] Absent an error of law, the Board's decision will not be disturbed where there is substantial evidence to support its conclusions.[6]

DISCUSSION

Miller argues that (1) she did not get notice of the hearing before the Board, and (2) she was fired because (a) she told Elshafey that she was going to get an attorney to force the Mattress Warehouse to pay medical bills that she incurred to treat an insect bite that she got while in training, and (b) the Mattress Warehouse found out that she was pregnant.

1. The Hearing

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

[3] *Geegan v. Unemployment Compensation Commission*, 76 A.2d 116, 117 (Del. Super. 1950).

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

[5] 29 Del.C. § 10142(d).

[6] *Dellachiesa v. General Motors Corp.*, 140 A.2d 137 (Del. Super. 1958).

Miller argues that she did not receive notice of the hearing before the Board. The Board's proceedings are governed by both the requirements of due process and the Administrative Procedures Act.[7] "In the exercise of quasi-judicial or adjudicatory administrative power, administrative hearings, like judicial proceedings, are governed by fundamental requirements of fairness which are the essence of due process, including fair notice of the scope of the proceedings and adherence of the agency to the stated scope of the proceedings."[8] Further, "due process requires that the notice inform the party of the time, place, and date of the hearing and the subject matter of the proceedings."[9] "Generally speaking, the law requires that notice be actually received in order to be effective."[10] The mere deposit in the mail of a notice, under the general law, is not sufficient to

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[7] 19 Del.C. _ 2301A(d), and 29 Del.C. _ 10161.

[8] *Carousel Studio v. Unemployment Ins. Appeal Bd.*, 1990 WL 91108 at *1 (Del. Super. June 26, 1990).

[9] *J.L.B. Corp. v. Delaware A.B.C.C.*, 1985 WL 189008, at *2 (Del. Super. June 7, 1985).

[10] *Windom v. Ungerer*, 903 A.2d 276, 282 (Del. 2006) (citing *State ex rel. Hall v. Camper*, 347 A.2d 137, 138-39 (Del. Super. 1975).

bind a person who never receives it."[11] "If the mailed notice is in fact not received, then the notification is without any legal effect."[12] However, properly addressed mail is presumed to be received by the addressee.[13] The addressee's mere denial of receipt of the notice is insufficient to rebut this presumption.[14]

Miller can not overcome the presumption that she received the notice of the hearing before the Board. Miller's address has remained the same throughout these proceedings. All notices regarding these proceedings were sent to Miller at this address. The hearing transcript notes that a notice of the hearing before the Board was sent to Miller. The record does not indicate that this notice, or any other notice that was sent to Miller, was returned by the post office. Indeed, there is nothing in the record to indicate that Miller did not receive every notice that was sent to her. Thus, Miller's mere denial of receipt of the notice of the hearing before the Board is insufficient to rebut the presumption and that she received the notice.

2. The Board's Decision

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[11] *Id.*

[12] *Id.*

[13] *Brown v. City of Wilmington*, 1995 WL 653460, at *3 (Del. Super. Sept. 21, 1995).

[14] *Id.*

Miller's alleges that she was fired without cause. She believes that she was fired because she was pregnant and had threatened to retain an attorney to force the Mattress Warehouse pay for medical bills that she incurred while in training. An individual may be disqualified from receiving benefits if that employee left work "voluntarily without good cause attributable to such work..."[15] "Good cause" has been defined as "such cause as would justify one in voluntarily leaving the ranks of the employed..."[16] "Good cause can include a substantial reduction in wages, work hours or a substantial deviation in the working conditions from the original agreement of hire to the detriment of the employee."[17] The burden to show good cause is on the claimant.[18] Prior to leaving the claimant "must do something akin to exhausting ... administrative remedies...[19] Voluntarily quitting

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[15] 19 Del.C. _ 3114(1).

[16] *O'Neals Bus Service, Inc., v. Employment Security Commission*, 269 A.2d 247, 249 (Del. Super. 1970).

[17] *Weathersby v. Unemployment Ins. App. Bd.*, 1995 WL 465326, at *5 (Del. Super. June 29, 1995).

[18] *Longobardi,* 287 A.2d at 692.

[19] *O'Neals Bus Service, Ins.*, 269 A.2d at 249.

means leaving on one's own motion, as opposed to being discharged.[20]

The Board denied Miller's claim because it determined that she voluntarily quit her job without good cause, reasoning that Miller's letter to Elshafey and Keller was a resignation letter. Miller did, as she had threatened to do, leave the store early on June 2. Although she spoke briefly with Keller that day, she refused to speak with Elshafey, who called her repeatedly. Other than appearing briefly at work on a day that she was not scheduled to work, Miller never appeared at work again or called to explain why she was not at work. The Board's decision is in accordance with the applicable law and supported by substantial evidence in the record. The Mattress Warehouse did not reduce Miller's wages. Elshafey testified that Miller was done with training and being paid solely on a commission basis when she left the store early. Miller's abrupt departure from work in the middle of her shift, her failure to return Elshafey's calls and the testimony by Elshafey that Miller was paid on a commission basis preclude her from claiming that she had good cause to quit her job. Moreover, there is no persuasive evidence at all in the record to support Miller's allegation that she was fired because she was pregnant and had retained an attorney to force the Mattress Warehouse to pay her medical bills. Quite simply, the Mattress Warehouse did not do anything that would justify Miller's decision to leave work. It was Miller, based on her own mistaken belief about her compensation, that voluntarily decided to leave work and quit her job.

CONCLUSION

The Board's decision is affirmed.

IT IS SO ORDERED.

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[20] *Gsell v. Unclaimed Freight*, 1995 WL 339026, at *3 (Del. Super. May 3, 1995).

Very truly yours,

E. Scott Bradley