

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

BUCKY MAYO,)
)
 Appellant,)
)
 v.)
)
 MURPHY MARINE SERVICES,)
 GREAT LAKES HR SOLUTIONS/)
 GREAT BAY SHIPPERS, and)
 UNEMPLOYMENT INSURANCE)
 APPEAL BOARD,)
)
 Appellees.)

C.A. No. N11A-05-004 DCS

Submitted: January 26, 2012

Decided: April 30, 2012

*Appeal of a Decision of the Unemployment Insurance Appeal Board
Decision **AFFIRMED** in Part and **REVERSED** and **REMANDED** in Part
for Further Findings*

MEMORANDUM OPINION

Appearances:

Bucky Mayo, *Pro Se* Appellant

James J. Sullivan, Jr., Esquire, Wilmington Delaware
Attorney for Appellee Murphy Marine Services

Rae Mims, Esquire, Wilmington, Delaware
Attorney for Unemployment Insurance Appeal Board

STRETT, J.

INTRODUCTION

Claimant Bucky Mayo, (“Mayo”), worked for Murphy Marine Services, (“Murphy Marine”), as a casual laborer on an as-needed basis.¹ Murphy Marine hires temporary laborers to supplement its union work force but provides no guarantee for available work.² Mayo was also employed full-time by Great Bay Shippers from August 2008 to August 2010. Mayo is now appealing the decision of the Unemployment Insurance Appeal Board, (the “Board”), which dismissed his claim and thereby disqualified him for unemployment benefits (apparently from both places of employment). The Court affirms the Board’s decision regarding Murphy Marine. As to Great Bay Shippers, the Court reverses the decision due to a lack of substantial evidence and remands for further findings.

FACTUAL AND PROCEDURAL BACKGROUND

From August 2008 to August 2010, Mayo worked full-time as a truck driver for Great Bay Shippers of Saginaw, Michigan.³ Mayo also occasionally worked as a casual longshoreman for various employers through the Stevedores Union, including Greenwich, Delaware River Stevedores, and Murphy Marine.⁴ The longshoreman work with Murphy Marine and the other stevedore employers was as-needed day labor work without regular hours, and Mayo was required to show

¹ Record on Appeal, p. 19, 36, 39 (hereinafter “R”).

² R at 19.

³ R at 38.

⁴ R at 19, 36-39.

up at a union hall each day to inquire about the possibility of work for that day.⁵ In 2010, Mayo worked as a day laborer for Murphy Marine for merely 38 hours.⁶

Mayo filed a claim for unemployment insurance benefits, effective the week ending January 1, 2011, with the Department of Labor, Division of Unemployment.⁷ On February 14, 2011, a claims deputy determined that Mayo had voluntarily left his employment with Murphy Marine and, as such, was disqualified for benefits.⁸ The claims deputy found that Mayo's failure to report to his place of employment every day so as to inquire about the possibility of work for that day amounts to a voluntary quit.⁹ Mayo appealed this denial of benefits on February 16, 2011.¹⁰

A hearing before the appeals referee was held on March 10, 2011.¹¹ On March 14, 2011, the appeals referee affirmed the decision of the claims deputy and found that Mayo was disqualified for benefits because he voluntarily left work without good cause.¹² The appeals referee determined that Mayo worked full-time as a truck driver for Great Bay Shippers in Michigan from August 2008 to August 2010.¹³ In addition, the referee determined that Mayo worked 355 hours in 2008,

⁵ *Id.*

⁶ R at 34.

⁷ R at 15.

⁸ R at 15.

⁹ R at 15.

¹⁰ R at 16.

¹¹ R at 18.

¹² R at 20.

¹³ R at 19.

360.5 hours in 2009, and 38 hours in 2010 for Murphy Marine.¹⁴ However, the appeals referee contradicted the claims deputy's determination and found that Mayo *did* report every day to see if work was available.¹⁵ Nevertheless, since Mayo's employment with Murphy Marine had no regularity, the referee concluded that Mayo had left work voluntarily without good cause.¹⁶ The referee further found that Mayo's casual laborer employment with Murphy Marine (for merely 38 hours in 2010) must be used to determine qualification for unemployment benefits as opposed to his regular full-time employment with Great Bay Shippers.¹⁷ The decision of the referee stated, without citing an authority, that the employment with Murphy Marine must be used to establish Mayo's qualification for benefits because Murphy Marine was Mayo's last employer.¹⁸

Mayo appealed the referee's decision on March 23, 2011,¹⁹ and a hearing was set to be held before the Unemployment Insurance Appeal Board, (the "Board"), on April 20, 2011.²⁰ Murphy Marine appeared, but Mayo and Great Bay Shippers did not appear. Due to the absence of Mayo, however, the appeal as to

¹⁴ R at 19.

¹⁵ R at 19 (emphasis added).

¹⁶ R at 20.

¹⁷ R at 20.

¹⁸ *Id.*

¹⁹ R at 42.

²⁰ R at 46.

Murphy Marine and Great Bay Shippers was dismissed upon motion of the Board due to failure to prosecute.²¹

On May 5, 2011, Mayo appealed the dismissal of all matters to this Court.²² He alleges that a mix-up occurred regarding the time of the hearing. Briefing is complete, and the matter is now ripe for decision.²³

CONTENTIONS OF THE PARTIES

Mayo contends that his disqualification for benefits (based on employment Murphy Marine and Great Bay Shippers) is unsupported. He asserts that his claim for unemployment benefits should be based on his full-time employment with Great Bay Shippers which ended in August 2010. Mayo asserts that the determination of the claims deputy dated February 14, 2011, stating that his unemployment benefits are connected to Murphy Marine, is an error.²⁴ Mayo further asserts that he was receiving unemployment benefits from Great Bay Shippers and that the payments were wrongly terminated.

Furthermore, Mayo asserts that his daily appearance seeking work as a day laborer for Murphy Marine is indicative of his ability and availability to work and should not be used to penalize him. Additionally, he contends that the

²¹ R at 49. The Court notes that neither the employers nor the Board present any argument as to whether a decision on the merits is inappropriate where the Board dismissed an appeal for failure to prosecute.

²² R at 53.

²³ The Court also notes that Murphy Marine's statement of facts in its answering brief was submitted sans substantive citations to the Record.

²⁴ R at 32.

determination that he is disqualified because he voluntarily left work without good cause cannot stand.

In its answer, Murphy Marine asserts that the Board's decision is correct because Mayo voluntarily left his employment with Murphy Marine. Great Bay Shippers did not file an answer.

STANDARD OF REVIEW

An aggrieved party "may secure judicial review [of a decision of the Unemployment Insurance Appeal Board] by commencing an action in the Superior Court" ²⁵ The Court reviews the Board's decision to determine if substantial evidence exists in the record to support the Board's findings of fact and to determine if the Board erred in its application of the law. ²⁶

Factual findings of the Board are deemed conclusive where such facts are supported by substantial evidence and upon the absence of any fraud. ²⁷ Substantial evidence consists of "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." ²⁸ The Court, in considering an appeal of the Board's decision, does not weigh any evidence or make any factual findings but

²⁵ 19 Del.C. § 3323.

²⁶ *Unemployment Ins. Appeal Bd. v. Martin*, 431 A.2d 1265, 1266 (Del. 1981); *Hubble v. Delmarva Temporary Staffing, Inc.*, 2003 WL 1980811, *2, Graves, J. (Del. Super. April 28, 2003).

²⁷ 19 Del.C. § 3323; *Hubble*, 2003 WL 1980811 at *2.

²⁸ *Hubble*, 2003 WL 1980811 at *2 (quoting from *Gorrell v. Division of Vocational Rehab. and Unemployment Ins. Appeal Bd.*, Del. Super., C.A. No. 96A-01-001, Graves, J. (July 31, 1996) Letter Op. at 4.).

only determines if substantial evidence exists upon which the Board's findings can be legally supported.²⁹

Regarding questions of law, however, the Court's review is *de novo*.³⁰

“Absent an error of law, the Board's decision will not be disturbed where there is substantial evidence to support its conclusions.”³¹

Furthermore, the “Court is limited to consideration of the record which was before the administrative agency.”³² The Court considers the record in the light most favorable to the prevailing party below.³³

In addition, where a claimant is a *pro se* litigant, (as is the case, here) the Court may construe the written submissions and arguments of such a claimant as a challenge to the factual findings and legal conclusions of the Board.³⁴

And, where adequate findings of fact and conclusions of law are not provided on a pivotal issue, it may be necessary for the Court to reverse and remand a decision of the Board for further proceedings.³⁵

²⁹ *Hubble*, 2003 WL 1980811 at *2 (citing *McManus v. Christina Service Co.*, Del. Super., C.A. No. 96A-06-013, Silverman, J. (Jan. 31, 1997) Op. and Order at 4).

³⁰ *PAL of Wilmington v. Graham*, 2008 WL 2582986, *4 (Del. Super. June 18, 2008).

³¹ *Wilson v. Breakers Hotel & Suites*, 2010 WL 2562214 (Del. Super. June 24, 2010) *reargument denied*, 2010 WL 3447685 (Del. Super. Aug. 23, 2010) and *aff'd*, 2011 WL 1565981 (Del. Apr. 25, 2011).

³² *Hubbard v. Unemployment Ins. Appeal Bd.*, 352 A.2d 761 (Del. 1976).

³³ *Thompson v. Christiana Care Health Sys.*, 25 A.3d 778, 782 (Del. Aug. 12, 2011).

³⁴ *Witcher v. Delaware Park*, 2002 WL 499431, *2 (Del. Super. Mar. 28, 2002).

³⁵ *Bd. of Educ., Capital Sch. Dist. v. Johns*, 2002 WL 471175 (Del. Super. Mar. 27, 2002).

DISCUSSION

In this matter, the Court must determine whether the Board's finding that Mayo is disqualified for unemployment benefits (under either employer) is supported by substantial evidence and free from legal error.

In order to determine whether a claimant is entitled to unemployment benefits, the Board uses a two-prong test: 1) is the employee eligible? and, 2) is the employee disqualified?³⁶ To be eligible for benefits a Claimant must be able to work, available to work, and actively seeking work.³⁷ However, “an employee is disqualified from receiving unemployment benefits if he or she voluntarily ends his or her employment without good cause.”³⁸ A voluntary termination without good cause may occur when an employee knowingly accepts employment for a specific, limited duration.³⁹ A worker is not deemed disqualified from unemployment benefits if he must accept or reject a term of employment offered by the employer and does not have an option to continue working beyond that fixed term.⁴⁰

Here, as to Mayo’s receipt of unemployment benefits with Murphy Marine, the Court affirms the Board’s adoption of the appeals referee’s finding that Mayo was a casual laborer and, therefore, not entitled to benefits based upon his

³⁶ *Bd. of Educ., Capital Sch. Dist. v. Johns*, 2002 WL 471175, *2 (Del. Super. Mar. 27, 2002).

³⁷ *Id.*

³⁸ *Lorah v. Home Helpers, Inc.*, 2011 WL 2112739 (Del. May 26, 2011) (citing 19 *Del.C.* § 3314(1)).

³⁹ *Wilmington Country Club v. Unemployment Ins. Appeal Bd.*, 301 A.2d 289, 290 (Del. 1973); *contra Lamden v. Delaware Art Museum*, 1983 WL 412249 (Del. Super. Apr. 4, 1983).

⁴⁰ *Lamden*, 1983 WL 412249 at *3.

infrequent and sporadic day labor work. The Court finds that a voluntary termination without good cause occurred when Mayo knowingly accepted employment from Murphy Marine for a specific period of time only. Moreover, Mayo's failure to appear at a hearing where Murphy Marine appeared created sufficient reason for dismissal.

However, the Court must also decide whether there is substantial evidence to support the appeal's referees conclusion that Mayo's minimal and irregular day laborer employment with Murphy Marine (to supplement his job with Great Bay Shippers) must be used to establish his eligibility for unemployment benefits rather than his regular, full-time employment with Great Bay Shippers. The appeals referee found that because Mayo was working for Murphy Marine (albeit part-time) at the time he filed for unemployment benefits, that his previous employment with Great Bay Shippers could not support his claim. The appeals referee provided no legal reason for its conclusion. Great Bay Shippers did not answer Mayo's initial petition for benefits based upon cessation of his work with Great Bay Shippers. Furthermore, Great Bay Shippers did not appear at the hearing before the appeal's referee, and the Board did not address the issue when it dismissed this claim for failure to prosecute.

The evidence indicates that Mayo only worked for 38 *hours* in 2010 for Murphy Marine, but he worked eight *months* in 2010 for Great Bay Shippers. The

Court finds that the evidence does not support the appeals referee's finding that Mayo's claim for unemployment benefits must be supported by his minimal day labor employment with Murphy Marine instead of his full-time job with Great Bay Shippers. The Court further finds that the evidence showing Mayo's attempts to obtain day labor work with Murphy Marine is supportive of the opposite premise—that he was available and able to work (for Murphy Marine) and, thus, eligible for unemployment benefits.

Great Bay Shippers neither argued that Mayo is ineligible for unemployment benefits based upon his employment with Great Bay Shippers nor posited that 38 hours of casual day labor work someplace else terminates benefits based upon his employment with Great Bay Shippers. While Mayo's minimal employment with Murphy Marine is offered as an insufficient basis on which to lay a claim for benefits, no substantial evidence or legal basis has been shown that would cause his benefits under Great Bay Shippers to cease. Mayo has consistently argued that an error has occurred, but neither the opposing parties, the appeals referee nor the Board have addressed this contention. The Court, thus, remands the matter back to the Board for findings of fact and conclusions of law as to 1) whether Mayo is eligible for reinstatement of unemployment benefits based upon his employment with Great Bay Shippers, and 2) whether Mayo's reporting for potential work with the stevedore's union demonstrates ability and availability for work.

ACCORDINGLY, the decision of the Unemployment Insurance Appeal Board is *AFFIRMED* as to Murphy Marine and *REVERSED and REMANDED for further findings of fact and conclusions of law* as to Great Bay Shippers and the Unemployment Insurance Appeal Board as discussed herein.

IT IS SO ORDERED.

J. Streett

Original to Prothonotary