

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

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

February 9, 2012

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**RE: Regina D. Powell v. Generations Home Care, Inc.
C.A. No. S11A-06-007-ESB
Letter Opinion**

Date Submitted: November 23, 2011

Dear Ms. Powell and Counsel:

This is my decision on Regina D. Powell's appeal of the Unemployment Insurance Appeal Board's denial of her claim for unemployment benefits. Powell worked as a home health care aide for Generations Home Care, Inc. She injured her neck while lifting a patient at his house on January 31, 2010. Powell's doctor restricted her to light-duty work and told her not to lift her arms over her head or to lift more than 20 pounds. Generations Home Care did not have any light-duty work for Powell. She is still on its payroll and has not been terminated. However, due to her injury and work restrictions, Powell is unable to return to work as a home health care aide. Once Powell is released from those restrictions, she can return to Generations Home Care and work as a home health care aide.

Powell received worker's compensation benefits from the day she was injured until

November 30, 2010. Her worker's compensation benefits were terminated because she refused medical treatment. Powell then filed a claim for unemployment insurance benefits on December 12, 2010. The Claims Deputy, Appeals Referee and Board all found that Powell was not available for work and not able to work, thus disqualifying her from receiving unemployment insurance benefits. Powell then filed an appeal of the Board's decision with this Court.

STANDARD OF REVIEW

The Supreme Court and this Court repeatedly have emphasized the limited appellate review of the factual findings of an administrative agency. The Court must determine whether the Board's findings and conclusions are free from legal error and supported by substantial evidence in the record.¹ Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.² The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.³ It merely determines if the evidence is legally adequate to support the agency's factual findings.⁴ Absent an error of law, the Board's decision will not be disturbed where there is substantial evidence to support its conclusions.⁵

¹ *Unemployment Insurance Appeal Board v. Martin*, 431 A.2d 1265, 1266 (Del. 1981).

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

³ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

⁴ 29 *Del.C.* § 10142(d).

⁵ *Dallachiesa v. General Motors Corp.*, 140 A.2d 137 (Del. Super. 1958).

DISCUSSION

In order to receive unemployment benefits, a claimant must be unemployed and meet the statutory eligibility requirements.⁶ An unemployed individual is only eligible for benefits if they are able and available for work.⁷ An employee who involuntarily leaves work due to illness may become eligible for benefits upon a showing that they are able and available to work.⁸ However, the claimant must produce a doctor's certificate to establish availability.⁹ The limitation ends once "the individual becomes able to work and available for work as determined by a doctor's certificate."¹⁰

The terms available to work and able to work, "though complementary, are not synonymous." Both conditions must be met for the receipt of benefits.¹¹ A claimant bears the burden of establishing her entitlement to receive unemployment compensation. Moreover, a claimant is "available to work" when "she is willing, able and ready to accept employment which she has no good cause to refuse, that is, she is genuinely attached to the labor market."¹² Thus, availability to work includes both an "ability to work and qualification through skill, training or experience for a particular occupation, commonly

⁶ *Turkey's Inc. v. Peterson*, 2002 WL 977190 (Del. Super. May 13, 2002).

⁷ *See* 19 Del.C. § 3314(3)

⁸ 19 Del.C. § 3315(1).

⁹ *Id.*

¹⁰ 19 Del.C. 3315(8).

¹¹ *Petty v. Univ. of Delaware*, 450 A.2d 392, 395 (Del. 1982).

¹² *Id.*

expressed in terms of an identifiable labor market.”¹³ The claimant is not required to be available for her usual type of work.¹⁴ Her availability for another type of work is sufficient.¹⁵

Thus, Powell is eligible for unemployment benefits only if she is able and available to work. Powell’s doctor released her to light-duty work with the restrictions that she not lift her arms over her head and not lift anything over 20 pounds. Generations Home Care did not have any light-duty work available for her. All of its positions require its employees to have the ability to lift patients in the event the patient falls or needs to be moved, which Powell is restricted from doing. Therefore, Powell is unable to work as a home health care aide.

Given this, the burden was on Powell to demonstrate that some other job existed that she was qualified and able to perform. She did not present any evidence that there was such a job that she could do. Powell told the Appeals Referee that she was considering going back into daycare, but that she is unable to do so now because she can not lift toddlers or infants. She also told the Appeals Referee that she is considering going into after school care. However, Powell presented no evidence that she is even able to perform the duties required for an after school care provider. There is simply no evidence in the record that Powell is currently able to work as a home health care aide or qualified to work and perform the duties of a daycare or after school care provider. The Board’s decision that Powell is disqualified from receiving unemployment benefits because she

¹³ *Id. citing Harper v. Unemployment Ins. Appeal Bd.*, 293 A.2d 813 (Del. Super. 1972).

¹⁴ *Briddell v. Dart First State*, 2002 WL 499437 (Del. Super. March 28, 2002).

¹⁵ *Id.*

failed to meet her burden that she is able and available to work is based upon substantial evidence in the record and in accordance with the applicable law.

CONCLUSION

The Unemployment Insurance Appeal Board's decision is **AFFIRMED**.

IT IS SO ORDERED.

Very truly yours,

/S/ E. Scott Bradley

E. Scott Bradley

oc: Prothonotary's Office
cc: Unemployment Insurance Appeal Board