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

PATRICIA A. MATHIS,	)	
	)	
	)	
Appellant,	)	
	)	
v.	)	**C.A. No. N11A10-002 MJB**
	)	
	)	
DELAWARE RIVER AND BAY AUTHORITY AND UNEMPLOYMENT INSURANCE APPEAL BOARD,	)	
	)	
	)	
Appellees.	)	

Submitted: May 14, 2012
Decided: August 22, 2012

Upon Appellant's Appeal from the Unemployment Insurance Appeal Board's Decision.
REVERSED AND REMANDED FOR FURTHER PROCEEDINGS CONSISTENT HEREWITH.

OPINION AND ORDER

Patricia A. Mathis, *pro se*, Appellant.

Adria B. Martinelli, Esquire and Lauren E. Moak, Esquire, Young Conaway Stargatt & Taylor, Wilmington, Delaware, Attorneys for Appellee Delaware River and Bay Authority.

Caroline L. Cross, Esquire, Deputy Attorney General, Wilmington, Delaware, Attorney for Appellee Unemployment Insurance Appeal Board.

BRADY, J.

I. INTRODUCTION

Patricia A. Mathis ("Mathis") filed the instant appeal from a decision of the Unemployment Insurance Appeals Board ("Board") on September 14, 2011.[1] On appeal, the Court must determine whether the Board's conclusion that Mathis was ineligible for benefits because she was not unemployed is supported by substantial evidence in the record and is free from legal error.[2] Upon consideration of the pleadings before the Court and the record below, the Court finds that the Board's ruling is not supported by substantial evidence. Accordingly, the matter is **REVERSED** and **REMANDED** for further proceedings consistent with this Opinion.

II. BACKGROUND

Mathis has been employed as a casual/seasonal[3] employee at Delaware River and Bay Authority ("the Authority") for the past 16 years, first as a toll collector and later as an EZ Pass customer service representative.[4] It is the Authority's policy that casual/seasonal workers are limited to 1,000 hours of work per year.[5] When an employee reaches the 1,000 hour limit, the employee must cease working until the start of the new calendar year.[6] In 2010, Mathis reached her 1,000 hour limit on October 21, 2010.[7] She did not work the rest

[1] Mathis' Opening Br. (Feb. 17, 2012) [hereinafter "Opening Br."].
[2] *Unemployment Ins. Appeal Bd. of Dept. of Labor v. Duncan*, 337 A.2d 308, 309 (Del. 1975).
[3] The Authority states that Mathis is a casual or seasonal employee. *See* Record from Unemployment Insurance Appeal Board at 16 (hereinafter "R."). Mathis calls herself a casual employee. Opening Br., at 1. Additionally, the Claims Deputy's report states that Mathis is a "1000 hours employee seasonal employee." R. at 6.
[4] Record at 10. [Hereinafter, "R."]
[5] *Id.* at 16.
[6] *Id.* at 10.
[7] *Id.*

of the year, but returned to work on January 4, 2011.[8] As of June 7, 2011 Mathis was employed by the Authority.[9]

Mathis confirmed that her hours have been limited to 1,000 hours per year for the last several years (as per her hiring agreement)[10] and that she was aware of her employer's 1,000 hour per year limit for casual/seasonal workers, such as herself.[11] Mathis testified that she did not file for unemployment in previous years when she reached her 1,000 hour limit and stopped working because she did not think she was eligible.[12] Mathis contends that in November 2010, she contacted the Department of Labor ("Department") and an employee at the Department informed her that she was eligible for unemployment benefits even though she accepted a position as a casual/seasonal employee.[13] Mathis applied for unemployment benefits and initially received the payment of benefits.[14]

---

[8] *Id.*
[9] *Id.*
[10] R. at 38-39. The Authority's representative testified that the 1,000 hours per year was not a written agreement but it was a longstanding policy. *Id.* at 18. Nevertheless, Mathis acknowledged her awareness of 1,000 hours per year as her hiring agreement with the Authority. *Id.* at 38-39.
[11] *Id.* at 19.
[12] *Id.* at 38. When asked whether she applied for unemployment in the 16 previous years that she had been a casual/seasonal worker for the Authority, Mathis responded "no." *Id.* When asked when she first filed for unemployment, Mathis responded that she filed in November 2010. *Id*. When the Chairman of the Appeal Board asked her again to verify that she had never collected unemployment before, Mathis said, "I filed once or twice before, yes, but not of that year." *Id.* While it is unclear from the testimony whether any of Mathis' previous filings were related to periods when she stopped working for the Authority because she had reached her 1,000 hour per year limit, it is clear that she at least did not do so consistently. Mathis made clear in her testimony before the Appeals Referee that she did not believe in previous years that she was eligible for unemployment for the period between when she reached her 1,000 hour per year limit and the start of the new year. R. at 19. Mathis claims that she only filed in 2010 because she was told by someone at the Department of Labor that she was eligible in 2010. *Id.* at 19-20.
[13] *Id.*
[14] *Id.* at 14, 37. The determination from the Claims Deputy states "overpayment will be established based on this decision." The Board does not discuss overpayment because it was only considering the issue of whether Mathis was unemployed and, therefore, entitled to benefits. Accordingly, the Court will only address whether the Board's decision that Mathis was not unemployed is supported by substantial evidence and is free from legal error.

Upon review of Mathis' case, the Claims Deputy determined that she was ineligible for benefits[15] because she did not fit the definition of "unemployed" as set forth in 19 *Del. C*. § 3302(17).[16] The Deputy's determination states "repayment will be established based on this decision."[17] Mathis appealed arguing that she was misled by a Department employee.[18] After a hearing on June 7, 2011, the decision of the Claims Deputy was affirmed by the Appeals Referee.[19] Mathis appealed the Claims Deputy's decision to the Board and a hearing was held on September 14, 2011.[20] The Board affirmed the decision of the Appeals Referee, finding that Mathis was not unemployed.[21] The Board, finding that Mathis was ineligible for benefits, stated "[because Mathis'] casual employment was of such a nature . . . she had no expectation of regular employment and income. These findings are supported by the undisputed testimony that [Mathis] was a casual/seasonal

---

[15] *Id.* at 6. The Claims Deputy's determination states:

> [Mathis] is employed with Delaware River and Bay Authority. [Mathis] filed for benefits indicating she was working reduced hours as of the week ending 01/08/11, [Mathis] was paid accordingly. The employer has stated the claimant was hired part time with no guarantee of hours and is still employed. She is a 1000 hours employee seasonal employee and her condition of hirer has not changed. [Mathis] is disqualified as she chose her present employment status. One cannot choose to become unemployed or underemployed and expect to have their income supplemented. The trust fund was established to assist those who lose their position through no fault of their own, not one who chooses to become partially or totally unemployed.

[16] Section 3302(17) provides:

> "Unemployment" exists and an individual is "unemployed" in any week during which the individual performs no services and with respect to which no wages are payable to the individual, or in any week of less than full-time work if the wages payable to the individual with respect to such week are less than the individual's weekly benefit amount plus whichever is the greater of $10 or 50% of the individual's weekly benefit amount.

19 *Del. C*. § 3302(17).

[17] R. at 6.

[18] *Id*. at 7. This appeal was timely filed on May 10, 2011. *Id*.

[19] *Id*. at 11.

[20] *Id.* at 34.

[21] *Id.* at 42.

worker for the [Authority] and worked at most 1,000 hours per year for the [Authority]."[22] Mathis now appeals the Board's decision to the Court.[23]

A. Parties Contentions

Mathis maintains that she was told by a Department employee that she qualified for benefits.[24] She argues that the Authority never informed her that she was ineligible until after she had already received benefit payments.[25] Mathis states that she was under the impression that benefits would not be dispersed without her employer's approval.[26] When Mathis received her benefits, she assumed that the Authority had approved.[27] Mathis argues that she "shouldn't be held [financially] responsible for someone else['s] oversight or mistake" because she was mislead by (1) the Department of Labor employee who told her that she was eligible for benefits, and (2) by the Authority, who failed to inform her that she was ineligible until after the benefits had been dispersed.[28]

In a letter dated February 24, 2012, the Board stated that it did not intend to take a position on the merits of the case and has no interest in the outcome.[29] The Authority filed an answering brief requesting the Court to affirm the Board's decision that Mathis was ineligible for benefits. [30] The Authority argues that the decision of the Board was supported by substantial evidence and free from legal error.[31] The Authority argues that

---

[22] *Id.*
[23] Mathis filed her appeal on October 6, 2011. R. at 48.
[24] Opening Br., at 1.
[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] *Id.* Mathis appeal to the Court states "I have been paying social security ever since I've been working, so I'm sure they owe me more than what they are saying I owe them." *Id.*
[29] *Id.* The Board cites *Wilmington Trust Co. v. Barron*, 470 A.2d 257, 261 (Del. Super. 1983) (holding that a judge or a party acting in judicial or quasi-judicial capacity has no cognizable interest in seeking to have his rulings sustained).
[30] Authority's Answering Br., at 11 (March 12, 2012).
[31] *Id.* at 6.

Mathis is not an unemployed person as defined under 19 *Del C.* § 3302(17).[32] It is the Authority's position that Mathis remained an employee of the Authority throughout the time in question and was never unemployed—partially or totally.[33] The Authority argues that Mathis was not eligible for benefits because Mathis was aware of the Authority's 1,000 hour per year policy,[34] and because she had been subject to this policy for the last 16 years without any reduction in hours.[35]

III. STANDARD OF REVIEW

The standard under which the Court reviews the Board's decision is very deferential. The Board's decision is only to be disturbed in very limited circumstances.[36] In reviewing a decision on appeal from the Board, the Court must determine whether the decision is supported by substantial evidence and is free from legal error.[37] Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[38] Further, a showing of substantial evidence requires less than a preponderance of the evidence, but "more than a mere scintilla."[39] If there is substantial evidence supporting the Board's decision and no error of law exists, the Court must affirm.[40] The Court does not weigh evidence, determine questions of credibility, or make

[32] *Id.* at 8.
[33] The Authority asserts, "At no time was Mathis laid off or terminated from employment. Mathis is still employed by the Authority as a part-time, seasonal employee." Authority's Answering Br. at 3.
[34] R. at 19
[35] *Id.* at 38.
[36] *Delaware Transit Corp. v. Roane*, 10A-01-008, 2011 WL 3793450, *6 (Del. Super. Aug. 24, 2011).
[37] *Unemployment Ins. Appeal Bd. of Dept. of Labor v. Duncan*, 337 A.2d 308, 309 (Del. 1975).
[38] *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. Super. 1994) (citing *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981)); *see also Universal Camera Corp. v. NLRB*, 340 U.S. 474, 477 (1951).
[39] *Breeding v. Contractors-One-Inc*., 549 A.2d 1102, 1104 (Del. 1988); *Universal*, 340 U.S. at 477 ("Accordingly, it must do more than create a suspicion of the existence of the fact to be established. . . . [I]t must be enough to justify, if the trial were to a jury, a refusal of a directed verdict when the conclusion sought to be drawn is one of fact for the jury.").
[40] *City of Newark v. Unemployment Ins. Appeal Bd*., 802 A.2d 318, 323 (Del. Super. 2002).

its own factual findings.[41] The Court's role is merely to determine if the evidence is legally adequate to support the Board's findings.[42]

IV. DISCUSSION

In order to receive unemployment benefits, an individual must be either unemployed[43] or partially unemployed,[44] as defined by statute and applicable regulations. Under 19 *Del. C.* §3302(17), an individual is

> "unemployed" (a) in any week during which he performs no services and earns no wages or (b) in any week of less than full-time work if the wages payable to the individual for that week are less than the individual's weekly benefit amount plus whichever is the greater of $10 or 50% of the individual's weekly benefit amount.[45]

In the present case, the Board found that Mathis was not unemployed and, therefore, ineligible for benefits because Mathis' "casual employment was of such a nature that [she] had no expectation of regular employment and income."[46]

Delaware courts adhere to the principle that benefits should not be denied "unless it is clear that the intent of the Act is to exclude the employee from such benefits."[47] Prior to the Delaware Supreme Court decision in *City of Wilmington v. Unemployment Ins. Appeal Bd.* ("*Wisher*"),[48] "neither 19 *Del. C.* § 3315(1) (dealing with voluntary quit situations) nor Delaware case law dealt with the issue of [awarding benefits to] temporary or casual

---

[41] *Id.* at *2 (citing *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. Super. 1986)).
[42] *Keim v. Greenhurst Farms*, 01A-04-005, 2001 WL 1490060, *2 (Del. Super. Nov. 19, 2001) (citing 19 *Del. C.* § 3323(a)).
[43] 19 *Del. C.* § 3315.
[44] 19 DEL. ADMIN. CODE 1200-UNEMP 15. In the present case, it was never argued that Mathis was partially unemployed. However, if it were argued, Mathis was not partially unemployed. *See Spicer v. Spicer Unltd.*, 04A-11-004, 2005 WL 914469, *1 (Del. Super. Apr. 21, 2005).
[45] 19 *Del. C.* §3302(17).
[46] R. at 42.
[47] *E.I. DuPont de Nemours & Co. v. Dale*, 271 A.2d 35, 36 (Del. 1970); *Lowe Bros., Inc., v. Unemployment Ins. Appeal Bd*., 332 A.2d 150, 153 (Del.1975).
[48] *City of Wilmington v. Unemployment Ins. Appeal Bd. and Wisher*, 516 A.2d 166 (Del. 1986).

employees."[49] In *Wisher*, the claimant was employed as a "recreation leader" who was hired to work only sixteen hours a week for seven months.[50] The claimant was aware that,

> she was hired on a seasonal, part-time basis for a specific limited period of employment. In granting the claimant benefits, the Delaware Supreme Court stated that "whether section 3315(1) disqualifies an employee from unemployment benefits is to be determined by considering the totality of the circumstances of the employment and that one critical factor is whether or not the employee took the job with the intent to remain as permanently employed as the job allowed."[51]

In finding that the claimant was entitled to benefits,[52] the Delaware Supreme Court acknowledged that the sole reason for her unemployment was expiration of pre-defined, and knowingly accepted, term of employment.[53]

The *Wisher* holding was incorporated into 19 *Del. C.* § 3315 on disqualification for benefits in 1990,[54] but the "130 day" language was removed by amendment in 1992.[55] Disqualification for Benefits was re-designated as 19 *Del. C.* § 3314 in 2004.[56] Section 3314 provides,

> An individual who becomes unemployed solely as the result of completing a period of employment that was of a seasonal, durational, temporary or casual duration will not be considered as a matter of law to have left work voluntarily without good cause attributable to such work solely on the basis of the duration of such employment.[57]

In case *sub judice*, while there may be evidence to support a finding that Mathis was not unemployed or ineligible for benefits, the Board, in so finding, based its decision

---

[49] *Lacy*, 1996 WL 280894, at *3.
[50] *Wisher*, 516 A.2d at 167.
[51] *Lacy*, 1996 WL 280894, at *4 (citations omitted) (quotation marks omitted).
[52] *Wisher*, 516 A.2d at 170.
[53] *Id*. at 167.
[54] 67 Laws 1990, ch. 318, § 1.
[55] 68 Laws 1992, ch. 421, § 1.
[56] 74 Laws 2004, ch. 306, § 2.
[57] 19 *Del. C.* § 3314 (*eff*. Jan. 10, 2010).

on the narrow ground that "casual employment could not provide an expectation of regular employment and/or income or an intent to remain as permanently as the job allowed."[58] That conclusion is at odds with the plain reading of 19 *Del. C.* § 3314. The Board simply states that knowingly accepting durational employment makes Mathis ineligible, without addressing the conflicting statute and case law. Therefore, the Board's finding that Mathis is ineligible for benefits on that basis cannot be upheld, and the matter is remanded to the Board for the Board to determine, based on all the circumstances presented, if Mathis is eligible for benefits.

Finally, Mathis contends that if she is not eligible, she should not held responsible for a Department employee's mistake.[59] Mathis does not identify the Department employee; however, even if the Court was privy to the employee's identify, Mathis' claim would still fail. In *Spicer v. Spicer Unlimited*,[60] a claimant also argued that she had been misled by, and relied on, the advice of a state employee who incorrectly represented that she qualified for unemployment benefits.[61] The Court held that legal rights are not created by such an event, even if the claimant was given improper advice by a state employee.[62] While the Court is sympathetic with Mathis' position, it is bound to apply the law to the present facts. Accordingly, the fact that Mathis may have been misled by a Department employee, while certainly unfortunate, does not impact the Court's decision.

[58] R. at 42.
[59] Opening Br. at 1.
[60] *Spicer v. Spicer Unltd.*, 2005 WL 914469 (Del. Super. Apr. 21, 2005).
[61] *Id.* at *2.
[62] *Id.* (citing *Vosters v. Delaware Racing Comm'n*, 1987 WL 8896, *2 (Del. Super. Apr. 1, 1987)).

V. CONCLUSION

For the reasons stated above, the judgment below must be **REVERSED** and **REMANDED** for further proceedings consistent herewith.

IT IS SO ORDERED.

_____/s/_____
M. Jane Brady
Superior Court Judge