

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**  
**IN AND FOR KENT COUNTY**

<b>JOHN CHASON, JR.,</b>	:	
	:	<b>C.A. No: 08A-05-005 (RBY)</b>
<b>Appellant,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>C.K. CONSTRUCTION, INC.,</b>	:	
<b>and UNEMPLOYMENT</b>	:	
<b>INSURANCE BOARD,</b>	:	
	:	
<b>Appellees.</b>	:	

**Submitted: February 19, 2009**  
**Decided: April 9, 2009**

*Upon Consideration of Appellant's Appeal from  
the Unemployment Insurance Appeal Board*  
**AFFIRMED**

OPINION AND ORDER

Maggie Clausell, Esq., Dover, Delaware, for Appellant.

B. Brian Brittingham, Esq., Schmittinger & Rodriguez, P.A., Dover, Delaware, for  
Appellee C.K. Construction

Young, J.

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Appellant, Claimant-below, John Chason (“Appellant”) appeals from the Unemployment Insurance Appeal Board’s (“UIAB”) decision denying his claim for unemployment against Appellee CK Construction (“CK”). After considering the UIAB’s decision along with the evidence presented and legal arguments, the UIAB’s decision is **AFFIRMED**.

### ***I: FACTS***

Appellant was employed as a carpenter by CK. Appellant began working for CK on April 25, 2006. On Tuesday, June 25, 2006, Appellant was working in Smyrna, on an outside task at one of CK’s worksites. During the day on June 25th, it began to rain. The rain prevented Appellant from continuing with the work he was doing. Appellant then checked with a supervisor at the Smyrna site to see if any indoor work was available in Smyrna or other CK sites. The supervisor allegedly made some calls concerning inside work, to no avail.

The weather forecast called for rain for the rest of the week. Appellant, believing that no outside work would be available, went to the Unemployment Office to file a claim. He told the clerk at the Unemployment Office that the claim was for a weather related layoff. On the claim, however, the clerk simply wrote “layoff,” with no excess specification.

Sometime during the following day, June 26th, someone from CK called Appellant about work at CK’s Rehoboth Beach site. Appellant did not arrive that day. Instead, he showed up to the Rehoboth site on June 27th. Appellant never submitted the weekly pay authorization claim with the Department of Labor, a

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submission which is necessary in order to receive unemployment benefits.

After learning that Appellant filed the initial inquiry into unemployment, CK asked Appellant if he filed such a claim. Appellant responded that he did not. CK then terminated his employment.

Appellant sought relief from the Claims Deputy of the Unemployment Office. The Claims Deputy found that Appellant was terminated without just cause, as required when making a determination as to the appropriateness of an unemployment award. CK appealed to the UIAB. The UIAB reversed the Claims Deputy's decision and Appellant appealed to this Court. This Court reversed and remanded the UIAB's decision on the grounds that it contained certain fatal inconsistencies. These inconsistencies should have prevented the UIAB from finding substantial evidence to support its decision. The Court remanded for the UIAB to conduct a *de novo* review of the evidence and reconsider its previous disposition.

On May 13, 2008, the UIAB again reversed the Claims Deputy's decision after a hearing. The UIAB found that just cause for termination existed as Appellant acted in a way that was not in the best interests of his employer. The UIAB found that Appellant's action of filing a claim for unemployment when in fact he was not laid off was willful and wanton conduct against the interests of CK. The UIAB again determined that Appellant's claim for benefits was improper, because his termination by CK was justified. Appellant now appeals that decision of the UIAB.

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## **II: STANDARD OF REVIEW**

When considering an appeal from the UIAB, this Court is responsible for ensuring that the UIAB's decision was supported by substantial evidence.<sup>1</sup> If so, the only review available for the Court is to analyze the UIAB's decision for errors of law.<sup>2</sup> Substantial evidence is such evidence that a reasonable person accepts as adequate to support the UIAB's conclusion.<sup>3</sup> This Court does not weigh the evidence or determine its credibility, nor will the Court make its own factual findings.<sup>4</sup>

## **III: ANALYSIS**

At the remanded hearing of the UIAB, Appellant was not present. His counsel argued on his behalf. The UIAB, at the agreement of the parties, relied on the previously established record and the new arguments presented by the parties. At that hearing, Appellant's counsel urged new arguments such as misinterpretations of what a claim was, and whether Appellant understood the policies of CK. From an anticipated procedural standpoint, the process leaves something to be desired. De novo reviews, generally are "new . . . hearing[s] on questions of fact."<sup>5</sup> That was not

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<sup>1</sup> *Bernhard v. Phoenix Mental Health*, 2004 WL 304358, at \*1 (Del. Super. Jan. 30, 2004), (internal citations omitted).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *DiGiacobbe v. Sestak*, 743 A.2d 180, 184 (Del. 1999).

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what took place. Nevertheless, both parties stipulated that they stood on the record established by prior hearings. Hence, the UIAB's hearing relied on the prior factual record. Since that is the process that all involved affirmatively elected, this review will proceed to the merits on that basis.

Appellant's argument relies on the belief that Appellant mistakenly stated that he filed a claim with the Department of Labor. CK asserted throughout the proceedings that Appellant was terminated because he filed a claim and lied about it when confronted by CK. Appellant claims again on appeal that his denial of filing the claim was the appropriate response. After filling out the initial paperwork for unemployment, Appellant never filed the actual claim necessary to get the benefits. In addition, Appellant returned to work two days later, and never received any benefits at all. Appellant stands by the contention that no claim was ever drawn upon. Further, Appellant counters the argument that he laid himself off. He offers testimony that he did not fill out the initial form stating layoff as the reason for the inquiry, and had no intention to represent that he was laid off permanently. Appellant claims that the inquiry was only for benefits while he was rained out of work, and no longer.

To deny a claim for unemployment after termination, the Unemployment Claims Referee must find that the discharged employee acted with willful or wanton conduct, that was not in the employer's best interests. Initially, the Claims Referee did not find that Appellant acted in such a manner. After arguments on appeal, the UIAB decided that the evidence did support a substantial showing of such conduct by Appellant.

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It is not this Court's responsibility to play the role of fact-finder in an appeal from an administrative appeal.<sup>6</sup> UIAB, as the fact-finder, reviews the testimony and issues an opinion. Unless the Court finds that its opinion cannot be supported, discretion is granted to the Board, and the decision is affirmed.<sup>7</sup>

On appeal, the Court's responsibility is to assure that the UIAB's decision did not go against the great weight of the evidence.<sup>8</sup> Appellant did not attend the remanded hearing. No evidence was presented to support the claim that he misinterpreted any questions when confronted by CK. Therefore, aside from the mere allegation that Appellant misunderstood what he was asked, Appellant presented nothing to the UIAB to persuade that Board of his wrongful termination. Further, the UIAB deemed the adoption of the previously established record as a sufficient base of evidence for its decision. Appellant did not attempt to dispute the evidence already presented, and failed to introduce new evidence.

Considering what evidence the UIAB had to rely on in making its determination on remand, this Court cannot find that the UIAB's decision should be overturned. The UIAB's decision, therefore, is **AFFIRMED**.

**SO ORDERED.**

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J.

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<sup>6</sup> See *Bernhard*, 2004 WL 304358, at \*1.

<sup>7</sup> See 19 Del. C. § 3323(a).

<sup>8</sup> *Hall v. City of Wilmington*, 1978 WL 186829, at \*2 (Del. Super. Jan. 27, 1978).