

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

T. HENLEY GRAVES  
*RESIDENT JUDGE*

SUSSEX COUNTY COURTHOUSE  
ONE THE CIRCLE, SUITE 2  
GEORGETOWN, DE 19947

May 21, 2009

Patricia R. Friend  
14412 Collins Street  
Milton, DE 19968

Best Temps Personnel Dept.  
408 North Bedford Street  
P.O. Box 243  
Georgetown, DE 19947

**Re: *Patricia R. Friend v. Best Temps Personnel Dept.***  
**C.A. No. 07A-12-003 THG**

DATE SUBMITTED: April 2, 2009

Dear Ms. Friend and Members of Best Temps Personnel Department:

Ms. Patricia Friend (“Claimant”) appeals the decision of the Unemployment Insurance Appeals Board (“the Board”) that denied Claimant’s request for unemployment insurance benefits after she voluntarily left her work with Best Temps Personnel (“Employer”) without good cause attributable to such work. For the reasons set forth herein, the Board’s decision is **AFFIRMED**.

**FACTUAL AND PROCEDURAL BACKGROUND**

Claimant was employed in temporary assignments through Employer, a temporary help firm, and was registered with Employer until May 30, 2007. On May 2, 2007, Claimant worked a one-day assignment for Employer at I.G. Burton. On May 30, 2007, Employer contacted Claimant about an assignment with Pinnacle Foods. Claimant told Employer that she was already working and had scheduled an interview, on her own and not through Employer, with Pinnacle Foods. Claimant attended the interview she had scheduled rather than the interview scheduled by Employer. The position for which Claimant interviewed for was given to another individual. When Claimant did

not obtain the position, she did not contact Employer for other work or to let Employer know to put her back on Employer's assignment list. Employees are obligated to contact Employer on a regular basis and upon completion of an assignment. This obligation is printed on the Employer's application.

Subsequently Claimant requested unemployed benefits. Claimant's request for unemployment benefits was denied by the reviewing Claims Deputy on June 27, 2007. Because Claimant did not contact Employer after the May 30, 2007, conversation, she was deemed to have voluntarily quit Employer, rendering her disqualified from the receipt of unemployment benefits beginning with the week ending in June 2, 2007. Claimant appealed the Claims Deputy's decision and a hearing was held before an Appeals Referee on July 31, 2007. After hearing testimony from Employer and Claimant, the Appeals Referee upheld the Claims Deputy's determination by way of a written decision mailed August 2, 2007. Claimant appealed this decision to the Board, and on September 26, 2007, the Board heard testimony from Employer and Claimant. By way of written decision mailed November 26, 2007, the Board affirmed the Appeals Referee's decision. Claimant filed a timely appeal with this Court. Employer has elected not to take a position on Claimant's appeal and has not filed an Answering Brief.

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### **STANDARD OF REVIEW**

When reviewing the decisions of the Board, this Court must determine whether the Board's findings and conclusions of law are free from legal error and are supported by substantial evidence in the record.<sup>1</sup> Substantial evidence means such relevant evidence as a reasonable mind might

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<sup>1</sup>*Unemployment Ins. Appeal Bd. v. Martin*, 431 A.2d 1265 (Del. 1981); *Pochvatilla v. U.S. Postal Serv.*, 1997 WL 524062 (Del. Super. Jun. 9, 1997); 19 *Del. C.* § 3323(a) ("In any judicial proceeding under this section, the findings of the [Board] as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the Court shall be confined to questions of law.").

accept as adequate to support a conclusion.<sup>2</sup> The Court’s review is limited: “It is not the appellate court’s role to weigh the evidence, determine creditably questions or make its own factual findings, but merely to decide if the evidence is legally adequate to support the agency’s factual findings.”<sup>3</sup> Absent an error of law, the Board’s decision will not be disturbed where there is substantial evidence to support its conclusion.<sup>4</sup>

### DISCUSSION

The findings of the Board are supported by substantial evidence in the record. Delaware law states that an individual will be disqualified for unemployment benefits “for the week in which the individual left work voluntarily without good cause attributable to such work.”<sup>5</sup> The claimant bears the burden of showing “good cause” for voluntarily terminating employment.<sup>6</sup> “Good cause” may 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.”<sup>7</sup> The phrase “‘voluntary quitting’ means leaving on one’s own motion, as opposed to being discharged.”<sup>8</sup> 19 Delaware Code, Section 3327(b) states: “A temporary employee of a temporary help firm will be deemed to have voluntarily quit employment “if the employee does not contact the temporary help firm for reassignment upon completion of an assignment.”<sup>9</sup> Failure to contact the temporary help firm will not be deemed voluntary quit unless the claimant has been advised of the obligation to

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<sup>2</sup>*Gorrell v. Div. of Vocational Rehab.*, 1996 WL 453356, at \*2 (Del. Super. July 31, 1996).

<sup>3</sup>*McManus v. Christiana Serv. Co.*, 1197 WL 127953, at \*1 (Del. Super. Jan. 31, 1997).

<sup>4</sup>*Dellachiesa v. General Motors Corp.*, 140 A.2d 137 (Del. Super. 1958).

<sup>5</sup>19 Del. C. § 3314(1).

<sup>6</sup>*Longobardi v. Unemployment Ins. App. Bd.*, 287 A.2d 690 (Del. Super. 1971); *aff’d*, 293 A.2d 295 (Del. 1972).

<sup>7</sup>*Ad Weathersby v. Unemployment Ins. App. Bd.*, 1995 WL 465326, at \*5 (Del. Super. June 29, 1995).

<sup>8</sup>*Gsell v. Unclaimed Freight*, 1995 WL 339026 (Del. Super.).

<sup>9</sup>19 Del. C. § 3327 (b).

contact the firm upon completion of assignments and that employment benefits may be denied for failure to do so.”<sup>10</sup>

In this case, the parties agree that Claimant worked for the Employer on a one-day assignment with I.G. Burton on May 2, 2007. There is no evidence that Claimant had further contact with the Employer until May 30, 2007, when Employer contacted her and she declined an interview with Pinnacle Foods that was arranged by Employer. The parties also agree that Claimant has had no contact with the Employer subsequent to the May 30, 2007, conversation between Employer and Claimant. Although Claimant has denied understanding that she was an employee of the Employer, she admits working on an assignment for the Employer on May 2, 2007. In order to do this, Claimant would have had to sign an employment application, thus bringing her under the requirements of Section 3327(b).

The Employer has testified without contradiction that a notice of an employee’s obligation to report daily is printed on the application form. Claimant did not contradict the Employer’s testimony. Furthermore, it is uncontested that Claimant has had no further contact with the Employer after the May 30, 2007, contact between Claimant and the Employer. Because of Claimant’s violation of the contact provision, Section 3327(b) renders her separation from employment after May 30, 2007, a voluntarily quit, for which Claimant bears the burden of persuasion for good cause.

Claimant has failed to satisfy her burden for good cause, and I cannot find error with the Board’s conclusion that Claimant left her work with Employer voluntarily. Claimant failed to contact the Employer after refusing an interview on May 30, 2007. She is deemed to have terminated her employment relationship with the employer voluntarily, and the denial of her request for

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<sup>10</sup>*Id.*

unemployment benefits is supported by the record.

As to Claimant's new additional grounds for appeal to this Court, Claimant is bound by the record of the administrative hearing below. For unemployment appeals from denial of unemployment benefits, this Court is limited to consideration of record which was before administrative agency.<sup>11</sup> Unemployment insurance claimants cannot add factual information to the record on appeal, and any attempt to do so must be disregarded.<sup>12</sup> Claimant's new additional grounds for appeal have no bearing on this appeal, and as such, this Court will not hear these claims.

### **CONCLUSION**

The Court finds that the Board's decision was supported by legally substantial evidence. Accordingly, the decision of the Unemployment Insurance Appeals Board is hereby **AFFIRMED**.

**IT IS SO ORDERED.**

Very truly yours,

T. Henley Graves

oc: Prothonotary  
cc: Unemployment Insurance Appeal Board

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<sup>11</sup>*Hubbard v. Unemployment Ins. App. Bd.*, 352 A.2d 761.

<sup>12</sup>*Haskon, Inc. v. Coleman*, 310 A.2d 657.