August 14, 2002

Rosalyn B. Skinner
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Lewes, DE 19958

Gerry Gray, Esquire
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**Re: Skinner v. Beauty at the Beach, C.A. No. 02A-02-007**
**Date Submitted: June 6, 2002**

Dear Ms. Skinner and Mr. Gray:

Pending before the Court is the appeal of Rosalyn Skinner ("Claimant") of a decision of the Unemployment Insurance Appeals Board ("Board") denying her benefits. The decision of the Board is hereby affirmed.

## I. FACTUAL AND PROCEDURAL HISTORY

Claimant was employed at Beauty at the Beach ("Employer"), where she provided skin care and waxing services. On November 29, 2001, the parties agree that the Claimant entered into a heated altercation with the front desk manager, Richard Griffin, and the general manager, Stephan Maybroda. Claimant left the premises and did not return. On the same day, the Claimant applied for unemployment insurance benefits, claiming she was fired without just cause. On December 3, 2001, the Employer challenged Claimant's claim for benefits by saying that it had not terminated her employment.

The Claims Deputy referred the case to the Appeals Referee for an initial hearing and decision in order to better determine whether the Claimant quit voluntarily, or was discharged. On January 4, 2002, the Appeals Referee held that Claimant was discharged from her employment without just cause and was therefore entitled to unemployment benefits. The Employer appealed to the Board. On January 30, 2002, the Board held a hearing.

At the hearing, the Claimant testified that on November 29, 2001, Rich Griffin, the front desk manager, went into the Claimant's "day planner" calendar to write down a particular appointment. After some reflection, the Claimant became very upset because she felt Griffin had committed a criminal trespass. Thus, she verbally confronted Griffin, and then Griffin went to report Claimant's behavior to Stephan Maybroda, the salon manager. She testified that Maybroda came out to talk to her and began to antagonize her, saying that she was to clear out her things and leave, and that he physically watched her take her things because he thought she might steal. She noted that Susan Mikolaitis, the salon manager, was present but did not speak to her during this time.

The Employer's witnesses, Rich Griffin, Stephan Maybroda, Susan Mikolaitis, and another stylist, Rebecca Reed, all testified to their version of the story. They all agreed that the Claimant began yelling, cursing and threatening Rich for going into her appointment book. Griffin testified that after the Claimant began accosting him, he sought out Mikolaitis to ask her what to do, and she suggested that they send Claimant home for the day to cool down. Maybroda testified that he had returned from the post office to hear about the dispute from Mikolaitis, and then proceeded to ask both Griffin and the Claimant about it. He testified that he asked the Claimant to go outside the salon with him where they could speak in private, but that she began

screaming vulgarities and threats at him in front of a customer. The Claimant never disputed Griffin's side of the story, although Maybroda gave her ample opportunity to do so.

Maybroda testified that he told her he was going to send her home for the day to cool down, which is what the owner agreed would be the best course of action. He noted that they never intended to fire her; in fact, he went to Griffin and asked him to reschedule the Claimant's appointments for the next day she was scheduled to work. He also testified that the Claimant asked him if she was fired, and he said that he did not have the power to fire her, but that he was sending her home for the day because she was out of control. The owner, Mikolaitis, confirmed that these events took place and that as the Claimant left with her CD player and her day planner, she asked Mikolaitis if she was fired. Mikolaitis testified that she told the Claimant she was not fired but that she needed to go home for the rest of the day.

The Board concluded that the Claimant left work voluntarily without good cause attributable to such work:

> From the evidence presented, the Board concludes that the claimant was not discharged, but rather voluntarily terminated her own employment. This is evidenced by the claimant's gathering all of her personal belongings and never returning to work except to pick up her paycheck. It is also clear that claimant's behavior in verbally assaulting her managers and co-employees was consistent with her desire to no longer remain employed. The Board does not find claimant's testimony to be credible, but does find the testimony of Stephan Maybroda and Susan Mikolaitis to be credible, as they told claimant she was not fired, but just to go home for the day.
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> In a voluntary quit situation, the burden of proof is on the claimant, to demonstrate that she had good cause attributable to the work to quit her job. 19 *Del. C.* § 3315(1). The Board does not find that claimant has met that burden here. Claimant was upset with Rich for going into her treatment room and making a note in her salon appointment book. The Board finds these actions do not amount to adverse working conditions such as would justify a voluntary termination of employment. It was Rich's job to keep employees advised of their

appointments; also the treatment room belonged to the salon and Rich had the right to enter it. There is no evidence that Rich invaded claimant's personal effects in any way.

On February 22, 2002, the Claimant appealed to the Superior Court, claiming misrepresentations of law and fact as grounds for an appeal. She continues to maintain that her employers meant to fire her by telling her to gather her things and "get out."

## II. STANDARD OF REVIEW

The Supreme Court and this Court have repeatedly emphasized the limited appellate review of the factual findings of an administrative agency. *Laime v. Capasulla's Sub Shop and UIAB*, Del. Super., No. 96A-11-006, Cooch, J. (May 20, 1997). The function of the reviewing Court is to determine whether the UIAB's findings are supported by substantial evidence and free from legal error. *Unemployment Insurance Appeal Board v. Martin*, 431 A.2d 1265 (Del. 1981); See also 19 *Del. C.* § 3323(a). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battisa v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super. 1986), *app. dism.*, 515 A.2d 397 (Del. 1986). The appellate court does not weigh the evidence, determine questions of credibility or make its own factual findings. *Johnson v. Chrysler*, 213 A.2d at 66. It merely determines if the evidence is legally adequate to support the agency's factual findings. 29 *Del. C.* § 10142(d).

## III. DISCUSSION OF LEGAL ISSUES

The Superior Court cannot examine the factual findings of the Board or the credibility of

witnesses appearing before the Board. See *Gehr. v. State*, Del. Super., C.A. No. 99A-06-001, Stokes, J. (Mem. Op.)(Jan. 31, 2000)("the Board, sitting as the trier of fact, is permitted to pass on the credibility of witnesses and to accord their testimony the appropriate weight"); *Delstar Ind., Inc. v. Delaware Dept. of Labor*, Del. Super., C.A. No. 96A-04-001, Quillen, J. (Jan. 1997)("Court is bound by Board's determinations as to credibility").

This issue is essentially a factual question regarding which party is more credible. The only dispute in this case is whether the salon manager or salon owner fired the Claimant or simply told her to go home for the rest of the day to "cool off" because she was reportedly "out of control." As long as the Board based its decision on substantial evidence and came to a reasonable conclusion based on that evidence, this Court will not disrupt the Board's findings.

The Board specifically found the employer's witnesses to be more credible. Based on that credibility finding, the Board concluded that the Claimant voluntarily quit. There also existed substantial evidence the further finding that voluntary quit was not with good cause.

**IV. CONCLUSION**

The decision of the Board is hereby affirmed.

Sincerely,

T. Henley Graves

cc: Prothontary
Unemployment Insurance Appeal Board
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