

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

MOHAMED CAMARA,)
)
 Appellant,)
)
 v.)
)
MARINE LUBRICANTS, AND)
UNEMPLOYMENT INSURANCE)
APPEAL BOARD,)
)
 Appellees.)

C.A. No. N12A-05-011-DCS

Submitted: November 15, 2012
Decided: February 25, 2013

*Appeal of a Decision of the Unemployment Insurance Appeal Board
Decision **AFFIRMED***

MEMORANDUM OPINION

Appearances:

Mohamed Camara, *Pro Se* Appellant

R. Karl Hill, Esquire
Attorney for Appellee Marine Lubricants

STRETT, J.

Statement of Facts

Appellant, Mohamed Camara (“Appellant”) has filed an appeal of the Unemployment Insurance Appeal Board decision denying him unemployment benefits. Appellant worked as a truck driver for Appellee, Marine Lubricants (“Marine Lubricants”) from September 2, 2007 to July 1, 2011.¹ On July 1, 2011 Appellant was arrested by federal immigration officers at his place of work.² The officers came to arrest Appellant after receiving a call from Appellant’s wife telling them that Appellant had a firearm.³ Appellant testifies that marital problems caused his wife to report him to the police.⁴ He was, then, incarcerated for six months in federal prison while immigration officers were investigating his case.⁵ For the duration of his detention, Appellant made no effort to call Marine Lubricants to talk about the status of his employment.⁶ Appellant claims that he did not have any money to make a telephone call and that he did not want to make a collect call because it would have been too expensive for his employer.⁷ Marine Lubricants did not hire a new worker immediately, but, after six weeks with no

1 R. 3, 5, 12.

2 R. 1, 4, 13, 14.

3 R. 14.

4 R. 14

5 R. 1, 4, 5, 14, 15, 41.

6 R. 5, 18, 41.

7 R. 16.

word from Appellant, Marine Lubricants hired someone to replace him.⁸ Marine Lubricants expressed that, even if Marine Lubricants wanted to hold a position open for Appellant, it was unable to because Appellant's immigration status was undocumented and he lacked a work permit.⁹ Appellant was released from prison on January 4, 2012.¹⁰ Shortly thereafter Appellant went to see his former employer, Marine Lubricants, about his job.¹¹ Appellant was told that his job was no longer available and that the position had been filled.¹²

Procedural Background

Appellant filed a claim for unemployment benefits on January 15, 2012.¹³ On February 9, 2012 the Department of Labor determined that Appellant was disqualified from receiving unemployment benefits and denied his request.¹⁴ Appellant then filed an appeal to the Chief Appeals Referee on February 15, 2012.¹⁵ At the hearing on March 6, 2012, the Referee affirmed the decision reasoning that Appellant's incarceration for more than six months constituted a voluntary departure from employment, thereby, disqualifying him from receiving

8 R. 4, 17.

9 R. 4.

10 R. 14, 24.

11 R. 14.

12 R. 6, 15.

13 R. 2.

14 R. 7.

15 R. 7.

benefits.¹⁶ On March 8, 2012, Appellant appealed to the Unemployment Insurance Appeal Board (the “Board”).¹⁷ On April 25, 2012, after a hearing and by written decision, the Board affirmed the Referee’s decision.¹⁸

Appellant filed this appeal of the Board’s decision on May 14, 2012.¹⁹ He submitted an opening brief on September 13, 2012. On October 2, 2012, an answering brief was submitted by Marine Lubricants. The Board declined to submit a brief. On October 18, 2012, this Court issued a delinquent brief notice to Appellant wherein he was given ten days to submit a reply brief. The Court has not received a reply brief from Appellant.

Contentions of the Parties

Appellant contends that the Board’s decision that he is not eligible for unemployment benefits because he voluntarily left his work was incorrect. In his brief, Appellant states that he never planned on quitting his job at Marine Lubricants, but rather, he left involuntarily due to his arrest.

Marine Lubricants contends that the Board was correct in denying Appellant benefits because he left due to incarceration, which constitutes a voluntary departure. Additionally, Marine Lubricants argues that this appeal should be

16 R. 23-26.

17 R. 35.

18 R. 37, 45-47.

19 R. 51, 52.

dismissed because Appellant's opening brief does not meet the requirements of Delaware Superior Court Civil Rule 107.

Standard of Review

An aggrieved party, “[w]ithin 10 days after the decision of the Unemployment Insurance Appeal Board has become final... may secure judicial review thereof by commencing an action in the Superior Court.”²⁰ The Court is deferential when reviewing a decision from the Board.²¹ Thus, the Board's decision is only overturned in limited circumstances.²² If supported by the evidence, and in the absence of fraud, the factual findings of the Board are considered to be conclusive, and the Court's review is thus constrained to findings of law.²³

The scope of the Court's review is restricted to the determination of whether there was substantial evidence sufficient to support the Board's findings and that such findings are free from legal error.²⁴ Substantial evidence consists of “such relevant evidence as a reasonable mind might accept as adequate to support a

²⁰ 19 Del.C. § 3323.

²¹ See *Delaware Transit Corp. v. Roane*, 2011 WL 3793450, at *6 (Del. Super. Aug. 3, 2011) (noting that a Board decision can be overturned by the court “only for errors of law, inconsistencies, or capricious disregard for competent evidence”); see also *Wilson v. Unemployment Ins. Appeal Bd.*, 2011 WL 3243366, at *2 (Del. Super. July 27, 2011) (quoting *Ridings v. Unemployment Ins. Appeal Bd.*, 407 A.2d 238, 239 (Del. Super. Ct. 1979)).

²² See *Delaware Transit Corp.*, 2011 WL 3793450, at *6.

²³ 19 Del.C. § 3323(a); see also *Cox v. Unemployment Ins. Appeal Board*, 553 A. 2d 638 (Del. Super. 1989).

²⁴ *Unemployment Ins. Appeal Bd. v. Martin*, 431 A.2d 1265, 1266 (Del. 1981); see also *Hubble v. Delmarva Temporary Staffing, Inc.*, 2003 WL 1980811, at *2 (Del. Super. Feb. 24, 2003); *Ingram v. Barrett's Business Service, Inc.*, 794 A.2d 1160 (Del. 2007).

conclusion.”²⁵ The Court, in considering an appeal of the Board’s decision, does not weigh any evidence or make any factual findings but only determines if substantial evidence exists upon which the Board’s findings can be legally supported.²⁶ Even if the Court disagrees with the Board’s decision and might have held differently in the first instance, it must still uphold the Board’s decision if it was supported by substantial evidence.²⁷

Additionally, in the case of a *pro se* litigant, the Court may construe the written submissions and arguments of such a claimant as a challenge to the factual findings and legal conclusions of the Board.²⁸

Discussion

In this matter, the Court must determine whether the Board's finding that Appellant voluntarily left work is supported by substantial evidence and free from legal error. Additionally, the Court will decide whether the Appellant’s appeal should be dismissed pursuant to Delaware Superior Court Civil Rule 107.

²⁵ *Hubble*, 2003 WL 1980811 at *2 (quoting from *Gorrell v. Division of Vocational Rehab. and Unemployment Ins. Appeal Bd.*, Del. Super., C.A. No. 96A-01-001, Graves, J. (July 31, 1996) Letter Op. at 4.)

²⁶ *Hubble*, 2003 WL 1980811 at *2 (citing *McManus v. Christina Service Co.*, Del. Super., C.A. No. 96A-06-013, Silverman, J. (Jan. 31, 1997) Op. and Order at 4).

²⁷ *T.A.H. First, Inc. v. Wescott*, 2004 WL 2827879, at *3 (Del. Super. Sept. 1, 2004).

²⁸ *See Witcher v. Delaware Park*, 2002 WL 499431, *2 (Del. Super. Mar. 28, 2002) (noting that the court may perform a less stringent review of documents submitted by a *pro se* litigant).

Compliance with Rule 107

First, Marine Lubricants argues that this appeal should be dismissed because Appellant's brief failed to comply with Superior Court Rule 107. The Court may use its discretion to dismiss a Board appeal that does not comply with Superior Court Civil Rule 107 pursuant to Superior Court Civil Rule 72(i)²⁹ and 107(f).³⁰ Superior Court Civil Rule 107(e) sets forth several requirements for submitting a brief, such as having a table of contents, table of citations, statement of the case, statement of the questions involved and argument.³¹ Appellant's brief does not meet the requirements that are listed in Superior Court Civil Rule 107(e). It lacks a table of contents, citations, and does not state the questions involved in the case or cite to legal authority.

However, even though a brief may be deficient, the Court has discretion concerning dismissal.³² Here, the case is a *pro se* appeal. The Court has the authority to review documents submitted by such appellants by a less stringent

29 *See* Del. Super. Ct. Civ. Rule 72(i) (stating that, “[d]ismissal may be ordered for untimely filing of an appeal, for appealing an unappealable interlocutory order, for failure of a party diligently to prosecute the appeal, for failure to comply with any rule, statute, or order of the Court or for any other reason deemed by the Court to be appropriate”).

30 *See* Del. Super. Ct. Rule 107(f) (stating that, “[i]f any brief, memorandum, deposition, affidavit, or any other paper which is or should be a part of a case pending in this Court, is not served and filed within the time and in the manner required by these Rules or in accordance with any order of the Court or stipulation of counsel, the Court may, in its discretion, dismiss the proceeding if the plaintiff is in default, consider the motion as abandoned, or summarily deny or grant the motion, such as the situation may present itself, or take such other action as it deems necessary to expedite the disposition of the case”).

31 *See* Del. Super. Ct. Civ. Rule 107(e).

32 *See Yates v. Masley Enterprises*, 2012 WL 1415701, at *7 (Del. Super. Feb. 9, 2012) (holding that even though appellant's brief did contain deficiencies based on Rule 107 it did not warrant the case being dismissed on a technicality).

standard than those drafted by lawyers.³³ In this matter, the appeal was filed on time, and Appellees were given sufficient notice of the action. Accordingly, the Court will decide this case based on its merits.

Voluntary Abandonment

Appellant Cannot Show Good Cause for Leaving Work

Marine Lubricants contends that it should not have to pay unemployment benefits to Appellant because Appellant was not fired but voluntarily left his job due to incarceration. 19 *Del. C.* § 3314(1) states that “[a]n individual shall be disqualified for benefits: (1) For the week in which the individual left work without good cause attributable to such work....”³⁴

Claimant has the burden of demonstrating good cause for voluntarily leaving employment.³⁵ Good cause is shown when: “(i) an employee voluntarily leaves employment for reasons attributable to issues within the employer’s control and under circumstances in which no reasonably prudent employee would have remained employed; and (ii) the employee first exhausts all reasonable alternatives to resolve the issues before voluntarily terminating his or her employment.”³⁶

³³ *Witcher*, 2002 WL 499431, at *2.

³⁴ 19 *Del. C.* § 3314.

³⁵ *Staton v. Unemployment Ins. Appeal Bd.*, 2009 WL 2215098, at *1 (Del. Super. July 15, 2009).

³⁶ *Thompson v. Christiana Care Health Sys.*, 25 A. 3d 778, 783 (Del. 2011).

Furthermore, a voluntary resignation for good cause must be for reasons related to the employment and not for personal reasons.³⁷

Here, the Board found that Appellant did not show good cause because he left for personal reasons that were not work related within his employer's control. Appellant was arrested by Federal Immigration Officers. It is uncontroverted that even though the arrest occurred at his place of work, the arrest was unrelated to Appellant's employment; Appellant's arrest was related to his personal immigration status in this country. Moreover, Appellant informed the Board that his arrest was generated by a personal matter—his wife called the authorities. The Court does not intend to delve into the domestic relations between Appellant and his wife; however, there can be nothing more personal than matters of the home. So, too, strained domestic relations are beyond the employer's control. Thus, the Board determined that, under 19 *Del. C.* 3314(2), Appellant's incarceration was personal and not work related and, therefore, Appellant had voluntarily left his employment.

Moreover, Appellant did not allege that he was mistreated at work, or that his conditions of employment changed so drastically that he could no longer continue to work for Marine Lubricants. Indeed, Appellant said that he had no intention of leaving his job before he was arrested, and he sought reinstatement

³⁷ *Smith v. Placers, Inc.*, 1993 WL 603375, at *2 (Del.Super. Nov. 17, 1993) (finding that examples of good cause include a substantial reduction in wages or a substantial deviation in working conditions).

after his release. This is evidence that Appellant was in an environment where a ‘reasonable prudent worker’ would have remained employed. Appellant has not shown good cause.

Therefore, based on the record of this case, the Court finds Appellant’s departure from employment to be voluntary under Delaware law.

Incarceration is Not Good Cause

Appellant contends that he did not voluntarily leave his job, but was forced to leave because he was arrested. In Delaware, it is well established law that incarceration does not constitute good cause and disqualifies a claimant from receiving unemployment benefits.³⁸ A person may not voluntarily choose to go to jail, but incarceration is a consequence for choices of behavior for which a person is held responsible.³⁹ Employers are not required to keep a job open for incarcerated employees, and they are also not required to pay unemployment benefits under these circumstances.⁴⁰ Placing such a burden on employers would be unreasonable and against public policy.⁴¹

38 *Staton*, 2009 WL 2215098, at *2 (holding that claimant was disqualified for unemployment benefits because he voluntarily left his job due to incarceration because of domestic violence); *Mason v. Best Drywall*, 1999 WL 459303, at *3 (Del.Super. April 1, 1999) (noting that “[l]egislature did not intend that an individual should be eligible for unemployment compensation while incarcerated”); *Neal v. Perdue Farms*, 2012 WL 1415710, at *1 (Del. Super. March 7, 2012) (stating that “[i]f a person is unemployed due to his commitment to a penal institution, then the person is disqualified from the receipt of unemployment benefits”).

39 *Id.*

40 *Mason v. Best Drywall*, 1999 WL 459303, at *3 (Del.Super. April 1, 1999).

41 *Id.*

The incarceration, in this case, does not establish good cause. Appellant was arrested by Federal Immigration Officers and was then incarcerated for six months. This case is no different than any other case were an employee was denied unemployment benefits due to incarceration.⁴²

Additionally, employers are not required to keep a position open for an employee who has been incarcerated. Furthermore, in this case, Appellant did not contact his employer during the six months that he was in prison. Although Appellant may not have had the money to call his employer, the fact remains that Marine Lubricants was left without knowledge of the Appellant's situation. The Court will not fault Marine Lubricants for simply trying to continue their day to day functions by hiring another worker.

The Court finds that the Board correctly applied the facts presented to it in reaching its decision and that its decision is supported by substantial evidence and free from legal error.

⁴² Moreover, Appellant has not asserted, and there was no suggestion, that an arrest by Federal Immigration Officer's is different than an arrest for violations of a penal code.

ACCORDINGLY, Appellant is disqualified from receiving unemployment benefits. The decision of the Unemployment Insurance Appeal Board is ***AFFIRMED***.

It Is So ORDERED.

Diane Clarke Streett
Judge

Original to Prothonotary