

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

KAYLA BAKER,)	
)	
Appellant,)	
)	
v.)	C.A. No. N12A-07-012 EMD
)	
LITTLE SCHOLARS,)	
)	
&)	
)	
UNEMPLOYMENT INSURANCE)	
APPEAL BOARD,)	
)	
Appellees.)	

Submitted: April 24, 2013
Decided: July 22, 2013

On Appeal from the Unemployment Insurance Appeal Board
Decision REVERSED and REMANDED

Kayla Baker, Newark, Delaware, pro se *Appellant*.

Little Scholars Center 1 LLC, Newark, Delaware, pro se *Appellee*.

Caroline Lee Cross, Esquire, Wilmington, Delaware, *Attorney for Appellee*.

DAVIS, J.

INTRODUCTION

This is an appeal from a decision of the Unemployment Insurance Appeal Board (the “Board”). The Board’s decision reversed and modified the decision of an Appeals Referee finding Claimant-Appellant Kayla Baker eligible for the receipt of unemployment benefits for her unpaid leave of absence from Employer-Appellee Little

Scholars, a daycare located in Newark, Delaware. The Board based its determination on a lack of evidence presented to demonstrate that Ms. Baker actively sought work during the relevant period. Ms. Baker claims on appeal that the Board failed to consider evidence of her efforts in finding employment during her period of claimed unemployment.

For the reasons set forth below, the Board's decision is **REVERSED** and **REMANDED**, as the Board's decision is not supported by substantial evidence.

PROCEDURAL POSTURE AND RELEVANT FACTUAL BACKGROUND

Little Scholars employed Ms. Baker as a certified head teacher from September 1, 2011 until February 17, 2012. On February 17, 2012, Little Scholars placed Ms. Baker on an unpaid leave of absence. Little Scholars placed Ms. Baker on a leave of absence after Little Scholars received an Interim Order issued by the Family Court of the State of Delaware. The Interim Order had the effect of placing Ms. Baker on the State of Delaware's Child Protective Registry at Child Protection Level III pending the disposition of a Petition for Substantiation filed by the Division of Family Services.

Under 16 *Del. C.* § 923(b)(3), a person placed on the Child Protective Registry at Child Protection Level III is "ineligible for employment in a child care facility". Consequently, Little Scholars placed Ms. Baker on an unpaid leave of absence after receiving notice of entry of the Interim Order. The Family Court's placement of Ms. Baker on the Child Protective Registry stemmed from an incident that purportedly occurred at Ms. Baker's prior place of employment, a different day care.

Ms. Baker filed her claim for unemployment benefits with the Department of Labor on February 19, 2012.¹ A Claims Deputy for the Department of Labor conducted fact finding based on a written statement from Ms. Baker and a written statement from Little Scholars.² Both statements indicate that Ms. Baker was placed on a leave of absence as a result of a Family Court Interim Order. Ms. Baker's written statement also contended that she will be able to resume employment at Little Scholars once the Family Court proceedings are complete. The Claims Deputy determined that Ms. Baker was ineligible for the receipt of benefits. The Claims Deputy reached the determination by concluding that Ms. Baker was not unemployed because she was on a leave of absence, after which she would return to her employment with Little Scholars.

On March 8, 2012, Ms. Baker filed an appeal of the Claims Deputy's determination. An Appeals Referee for the Delaware Department of Labor Division of Unemployment Insurance held a hearing on April 9, 2012.³ Ms. Baker and Karen Rice, a representative of Little Scholars, participated in the hearing by telephone. The Appeals Referee heard evidence of the nature of Ms. Baker's leave of absence and Little Scholars' intent to rehire her after the leave of absence.

On April 9, 2012, the Appeals Referee determined that Ms. Baker was unemployed and found she was an individual who has earned no wages and performed no work since February 17, 2012. The Appeals Referee also concluded that Ms. Baker was entitled to the receipt of benefits because the record contained no showing that Ms. Baker engaged in willful or wanton misconduct so as to disqualify her. Accordingly, the Appeals Referee modified and reversed the decision of the Claims Deputy.

¹ Record [hereinafter "R."] at 1.

² *Id.* at 1-4.

³ *Id.* at 9.

On April 18, 2012, Little Scholars appealed the decision of the Appeals Referee. Ms. Rice requested a further hearing in the appeal. The Board held a hearing on July 11, 2012.⁴ The Board heard evidence of the nature of Ms. Baker's leave of absence – that it was unpaid, temporary and the result of the Interim Order, and that Ms. Baker had not been removed from Little Scholars' payroll. The Board issued its decision on July 27, 2012. The Board concluded that Ms. Baker was an unemployed individual; however, the Board also found that Ms. Baker was not entitled to benefits because Ms. Baker failed to demonstrate that she was able and available to work, and seeking work in any field other than the child care industry – an industry from which she was barred from employment.

The Board stated:

There has been no evidence presented that Claimant is actively seeking work in any field other than child care, a field [from] which [she is] legally barred from employment. Given the facts and circumstances before the Board, the Board must find that Claimant is ineligible for the receipt of benefits pursuant to 19 *Del. C.* § 3315(3), as she has failed to demonstrate that she is able and available for work, and actively seeking work.

Further, although the Board need not reach the question of whether or not a Claimant is qualified for the receipt of benefits, the Board notes that failure to be able to perform a vital job function can demonstrate just cause for terminating an employment.⁵

On July 31, 2012, Ms. Baker filed her appeal of the Board's decision with this Court. The Court issued a briefing schedule on October 17, 2012. Ms. Baker filed her Opening Brief on November 8, 2012. The Board filed a letter on November 14, 2012 indicating it did not intend to file an answering brief. This matter was initially assigned to a judge for decision on November 27, 2012. This matter was reassigned to this judge

⁴ *Id.* at 26.

⁵ *Id.* at 38.

for decision on January 8, 2013. The Court received completed records from the proceedings below on April 24, 2013.

PARTIES' CONTENTIONS

Ms. Baker contends that the Board's decision is incorrect because the Board did not hear evidence from Ms. Baker about her job search. She argues that she actively sought work in fields outside of child care and engaged in extensive job search efforts. As an attachment to her Opening Brief, she submitted to the Court a work search log, which the Court cannot consider due to its limited scope of review in this proceeding.⁶

The Board has represented in a letter to the Court on November 13, 2012 that it takes no position on this matter, as it has no cognizable interest in seeking to have the decision below sustained.

Little Scholars has not submitted a brief or letter to the Court.

STANDARD OF REVIEW

On review, under 19 *Del. C.* § 3323, "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."⁷ Therefore, this Court's role upon appeal is to determine whether the Board's findings are "supported by substantial evidence and free from legal error."⁸ Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."⁹

⁶ *Hubbard v. Unemployment Ins. Appeal Bd.*, 352 A.2d 761, 763 (Del. 1976) ("Upon appeal from a denial of unemployment benefits, the Superior Court is limited to consideration of the record which was before the administrative agency").

⁷ 19 *Del. C.* § 3323 (2012); *Coleman v. Dep't of Labor*, 288 A.2d 285, 287 (Del. Super. 1972) ("[T]he credibility of the witnesses, the weight of their testimony, and the reasonable inferences to be drawn therefrom are for the Board to determine.").

⁸ *Ridings v. Unemployment Ins. Appeal Bd.*, 407 A.2d 238, 239 (Del. Super. 1979); *Crews v. Sears Roebuck & Co.*, N10A-08-011, 2011 WL 2083880, at *2 (Del. Super. May 11, 2011).

⁹ *Oceanport Indus. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994).

Moreover, the Court may only consider the record before it.¹⁰ In reviewing the record for substantial evidence, the Court considers the record in “the light most favorable to the party prevailing below.”¹¹

Consequently, the Court will not disturb the Board’s determination absent an abuse of discretion by the Board.¹² The Court will find an abuse of discretion only if “the Board ‘acts arbitrarily or capriciously’ or ‘exceeds the bounds of reason in view of the circumstances and has ignored recognized rules of law or practice so as to produce injustice.’”¹³

DISCUSSION

Delaware Courts are to liberally construe Delaware’s unemployment compensation scheme, as it “was enacted in an effort to protect the health, morals, and general welfare of its citizens from the effects of involuntary unemployment.”¹⁴ The Supreme Court has observed that the unemployment compensation scheme was drafted for “the benefit of persons unemployed through no fault of their own, who are also sincerely co-operating to end their unemployment.”¹⁵ In the same decision, the Court stated, “In interpreting the [Unemployment Compensation] Act, we should not exclude from its benefits any person who is unemployed through no fault of his own, unless the

¹⁰ *Hubbard*, 352 A.2d at 763.

¹¹ *Steppi v. Conti Elec., Inc.*, 2010 WL 718012, at *3, 991 A.2d 19 (table) (Del. Mar. 16, 2010); *Gen. Motors Corp. v. Guy*, 90A-JL-5, 1991 WL 190491, at *3 (Del. Super. Aug. 16, 1991).

¹² *Crews*, 2011 WL 2083880, at *2; *see also Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991) (“The scope of review for any court considering an action of the Board is whether the Board abused its discretion.”).

¹³ *Straley v. Advanced Staffing, Inc.*, 2009 WL 1228572, at *2 (Del. Super. 2009) (citations omitted).

¹⁴ *Rodney Sq. Bldg. Restorations, Inc. v. Noel*, 07A-07-007, 2008 WL 2943376, at *5 (Del. Super. July 22, 2008).

¹⁵ *Emrick v. Unemployment Comp. Comm'n*, 173 A.2d 743, 745 (Del. Super. 1961) *overruled on other grounds by Lowe Bros., Inc. v. Unemployment Ins. Appeal Bd.*, 332 A.2d 150 (Del. 1975).

Legislature itself has demonstrated an intent to do so by words fairly clearly showing such intent.”¹⁶

Requirements for eligibility for the receipt of benefits are embodied in 19 *Del. C.* § 3315. Section 3315(3) provides that an individual is eligible for benefits if she “[i]s able to work and is available for work and is actively seeking work; provided that employee is not otherwise disqualified”¹⁷ A Claims Deputy makes the initial determination of whether a claimant is eligible and qualified for the receipt of benefits on the basis of fact finding conducted by the Claims Deputy.¹⁸

In this case, the record that resulted from fact finding by the Claims Deputy was limited to Ms. Baker’s leave of absence on account of the Interim Order. The record did not develop facts additional to those regarding the nature of Ms. Baker’s leave of absence. Ms. Baker has submitted to the Court her job search log to demonstrate that she actively sought work outside the field of child care during the period for which she claims she was entitled benefits. The Court cannot consider or draw conclusions from Ms. Baker’s job search log. The Court cannot consider this job search log because this Court’s review is limited to a review of the record below.¹⁹ It is from this record that this Court must make a determination of whether the Board’s decision is supported by substantial evidence and free from legal error.²⁰

Nonetheless, in her Opening Brief, Ms. Baker draws attention to the absence of factual support in the record for the Board’s determination that Ms. Baker was not

¹⁶ *Id.*

¹⁷ 19 *Del. C.* § 3315(3).

¹⁸ *Id.* § 3318(a).

¹⁹ *Hubbard v. Unemployment Ins. Appeal Bd.*, 352 A.2d 761, 763 (Del. 1976).

²⁰ *See Ridings v. Unemployment Ins. Appeal Bd.*, 407 A.2d 238, 239 (Del. Super. 1979); *Crews v. Sears Roebuck & Co.*, N10A-08-011, 2011 WL 2083880, at *2 (Del. Super. May 11, 2011).

eligible for benefits on the basis that she failed to demonstrate that she was able and available to work and sought work outside the field of child care. Indeed, there are no facts in the record before the Court which indicate whether and the extent to which Ms. Baker was able and available to work and sought work outside the field of child care. It appears that the Board failed to elicit, or even attempted to elicit, any facts on this issue.

Although a claimant carries the burden of demonstrating compliance with the requirements of 19 *Del. C.* § 3315,²¹ the Board lacked a basis to conclude that Ms. Baker was ineligible for the receipt of benefits based on a lack of demonstrated efforts to obtain employment, as the record contained neither negative or affirmative evidence of Ms. Baker's job seeking efforts. Indeed, the record is completely empty of facts as to any issue of Ms. Baker's fulfillment of the requirements of 19 *Del. C.* § 3315(3). The reason for this is unknown to the Court. The Court can only conclude this happened because the central and sole issue of the proceedings before the Appeals Referee and the Board was whether Ms. Baker was unemployed for the purposes of the Unemployment Compensation Act – *i.e.*, did the leave of absence due to the Interim Order constitute unemployment for purposes of the Act.

Construing the Unemployment Compensation Act so as not to exclude Ms. Baker from benefits where she was unemployed through no fault of her own,²² the Court finds that the Board's decision is not supported by substantial evidence. Here, there simply is no evidence on record that supports the conclusion that Ms. Baker failed her burden to

²¹ *Unemployment Ins. Appeal Bd. v. Div. of Unemployment Ins.*, 803 A.2d 931, 936 (Del. 2002).

²² Ms. Baker represents in her Opening Brief that a commissioner of the Family Court denied the Petition of Substantiation on September 26, 2012, and that Ms. Baker returned to work at Little Scholars the next day. Appellant's Opening Br.

demonstrate she was able and available to work and sought work in fields other than child care pursuant 19 *Del. C.* § 3315(3).

The Court is somewhat troubled by the following statement by the Board:

Further, although the Board need not reach the question of whether or not a Claimant is qualified for the receipt of benefits, the Board notes that failure to be able to perform a vital job function can demonstrate just cause for terminating an employment.²³

The Court is unsure why this statement was necessary to the Board’s determination below. The Court appreciates that the Board could find, as noted in its decision, on remand and after further development of the record – *and with appropriate notice to the parties of what is being addressed by the Board* – that Little Scholars did terminate Ms. Baker’s employment and had just cause for doing so on the basis that Ms. Baker could not perform a vital job function, which would disqualify Ms. Baker from the receipt of unemployment benefits.²⁴ But that issue does not seem to have been raised by or addressed by any of the parties during the process.

Staying within the record, the Court “declines” the Boards invitation and considers Ms. Baker’s eligibility to claim benefits under 19 *Del. C.* § 3315, and not 19 *Del. C.* § 3314, to be the basis of the Board’s decision, and thus the issue before the Court in this Appeal. Therefore, the Court declines to affirm the Board’s decision on any basis that Ms. Baker is disqualified from the receipt of unemployment benefits pursuant to 19 *Del. C.* § 3314.

²³ R. at 38.

²⁴ 19 *Del. C.* § 3314(2) (“An individual shall be disqualified for benefits: ... For the week in which the individual was discharged from the individual’s work for just cause in connection with the individual’s work. . . .”).

CONCLUSION

For the reasons stated above, the Board's finding that Ms. Baker is ineligible for the receipt of benefits on the basis that she failed to demonstrate that she was able and available to work and sought employment outside the field of child care is not supported by substantial evidence. Therefore, the Board's decision is **REVERSED**, and this matter is **REMANDED** for proceedings consistent with this Opinion.

IT IS SO ORDERED.

/s/ Eric M. Davis
Eric M. Davis
Judge