

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

NORMAN K. CUSTIS, SR.,	)	
	)	
Employee-Appellant,	)	
	)	
v.	)	C.A. No. N12A-08-008 JRJ
	)	
STAFFMARK INVESTMENT LLC,	)	
	)	
Employer-Appellee, and	)	
	)	
UNEMPLOYMENT INSURANCE	)	
APPEAL BOARD,	)	
	)	
Appellee.	)	

Date Submitted: February 19, 2013  
Date Decided: May 1, 2013

**OPINION**

*Upon Appeal from the Unemployment Insurance Appeal Board: **AFFIRMED***

Norman K. Custis, Sr., *pro se*, 117-C Highland Blvd., New Castle, DE 19720, Employee-Appellant.

Staffmark Investment LLC, *pro se*, c/o Talx, P.O. Box 283, Saint Louis, MO 63166, Employer-Appellee.

Caroline Lee Cross, Esquire, Deputy Attorney General, Department of Justice, Carvel State Office Building, 820 North French Street, 6<sup>th</sup> Floor, Wilmington, DE 19801, Attorney for Appellee Unemployment Insurance Appeal Board.

**JURDEN, J.**

## I. INTRODUCTION

Norman K. Custis, Sr., (the “Employee”) appeals the decision of the Unemployment Insurance Appeal Board (the “Board”) affirming the denial of unemployment benefits. The Board determined that the Employee’s unemployment was due to his inability to work and he was therefore disqualified from unemployment benefits until he was cleared for work. The Court finds that the Board’s decision is supported by substantial evidence and that the Board did not err as a matter of law. Consequently, the Board’s decision is **AFFIRMED**.

## II. FACTS AND PROCEDURAL HISTORY

The Employee obtained full-time employment as a warehouse clerk through Staffmark Investment LLC from June 13, 2008, until August 5, 2010, when he sustained a workplace injury.<sup>1</sup> The Employee has been unable to work since the August 5, 2010 injury because he cannot lift his right arm higher than his chest and his doctor has not cleared him to return to work.<sup>2</sup>

On March 18, 2012, the Employee filed a claim for unemployment benefits while already concurrently receiving worker’s compensation.<sup>3</sup> On April 12, 2012, the Claims Deputy denied his application pursuant to 19 *Del. C.* § 3314(8) because the Employee was unemployed “due to his inability to work.”<sup>4</sup> On April 16, 2012, the Employee appealed the Claims Deputy’s decision.<sup>5</sup> On May 15, 2012, an administrative hearing was held before a Referee, during which the Employee testified that he could not lift his arm above his right shoulder and his doctor had not cleared him for work.<sup>6</sup> The Referee affirmed the decision of the Claims Deputy, finding that

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<sup>1</sup> Record at 20-21, *Custis v. Staffmark Invs. LLC*, No. N12A-08-008 JRJ (Del. Super. Oct. 25, 2012).

<sup>2</sup> *Id.* at 23, 24.

<sup>3</sup> *Id.* at 11.

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

<sup>5</sup> *Id.* at 14.

<sup>6</sup> *Id.* at 16, 23-24.

the Employee's "total or partial unemployment was due to his inability to work until he was medically cleared to work."<sup>7</sup>

Employee appealed the decision of the Referee and on July 25, 2012, an administrative hearing was held before the Board.<sup>8</sup> There, Employee confirmed that he had not been medically cleared for work, submitting to the court a petition to the Industrial Accident Board stating that he suffers from permanent partial disability.<sup>9</sup> The Board affirmed the decision of the Referee, finding that the Employee's unemployment was due to his inability to work, which disqualifies him from unemployment benefits until he is medically cleared to return to work.<sup>10</sup> On August, 15, 2012, Employee appealed the decision of the Board.<sup>11</sup>

### **III. STANDARD OF REVIEW**

The Superior Court is limited when reviewing a decision on appeal from the Board. If supported by evidence, factual findings of the Board "shall be conclusive, and the jurisdiction of the Court shall be confined to questions of law."<sup>12</sup> Thus, the Court "does not sit as a trier of fact with authority to weigh the evidence, determine questions of credibility, and make its own factual findings and conclusions."<sup>13</sup> Instead, "[t]he position of the [Court] on appeal is to determine only whether or not there was substantial evidence to support the findings of the Board."<sup>14</sup> Substantial evidence "means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."<sup>15</sup> If there is substantial supporting evidence and no

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<sup>7</sup> *Id.* at 31.

<sup>8</sup> *Id.* at 34, 37.

<sup>9</sup> *Id.* at 45.

<sup>10</sup> *Id.* at 47.

<sup>11</sup> *Id.* at 53.

<sup>12</sup> 19 *Del. C.* § 3323(a).

<sup>13</sup> *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. Super. 1965).

<sup>14</sup> *Gen. Motors Corp. v. Freeman*, 164 A.2d 686, 689 (Del. 1960).

<sup>15</sup> *Oceanport Indus., Inc. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del. 1994), citing *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981).

mistake of law, the Board's decision will be affirmed.<sup>16</sup> Accordingly, this Court shall determine whether the Board's findings of fact are supported by substantial evidence<sup>17</sup> and shall review questions of law *de novo*.<sup>18</sup>

#### IV. ISSUES

The issues before the Court are: (1) whether there is substantial evidence to support the Board's finding that the Employee's unemployment is due to his inability to work, and (2) whether the Board erred as a matter of law.

#### V. DISCUSSION

Under 19 *Del. C.* § 3314(8), a claimant is disqualified from unemployment benefits if "it shall be determined . . . that total or partial unemployment is due to the individual's inability to work."<sup>19</sup> This disqualification terminates only "when the individual becomes able to work and available for work as determined by a doctor's certificate."<sup>20</sup> In the case *sub judice*, the Employee testified that he could not work because he cannot lift his arm above his chest, that he was suffering from permanent partial disability, and that his doctor had not cleared him to return to work. Consequently, as this is "relevant evidence that a reasonable mind might accept as adequate to support a conclusion," there is substantial evidence to support the Board's finding that the Employee is unemployed due to his inability to work.<sup>21</sup> Because 19 *Del. C.* § 3314(8) bars the Employee from receiving unemployment benefits until he is medically cleared by a

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<sup>16</sup> *Longobardi v. Unemployment Ins. Appeal Board*, 287 A.2d 690 (Del.Super 1972) *aff'd*, 293 A.2d 295 (Del.Super 1972).

<sup>17</sup> *See Strunk v. Ne. Music Programs*, 2012 WL 1409625, at \*2 (Del. Super. Jan. 18, 2012), citing *K-Mart, Inc. v. Bowles*, 1995 WL 269872, at \*2 (Del. Super. Mar. 23, 1995).

<sup>18</sup> *See id.*, citing *Harris v. Logisticare Solutions*, 2010 WL 3707421, at \*2 (Del. Super. Sept. 10, 2010); *cf. Oceanport*, 636 A.2d at 899.

<sup>19</sup> *See also Morris v. U.I.A.B.*, 340 A.2d 162, 163 (Del. Super. 1975).

<sup>20</sup> *Id.*

<sup>21</sup> *Oceanport Indus. Inc.*, 636 A.2d at 899.

doctor, the Board did not err as a matter of law when it affirmed the decision of the Referee and denied the Employee's request for unemployment benefits.

**VI. CONCLUSION**

Because there is substantial evidence to support the Board's findings that the Employee's unemployment was due to his inability to work and because the Board did not err as a matter of law, the Board's decision to deny unemployment benefits is **AFFIRMED**.

**IT IS SO ORDERED.**

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Jan R. Jurden, Judge

cc: Prothonotary