

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

GERARD GOUBEAUD,)	
)	
Appellant,)	
)	
v.)	C.A. No. N12A-08-016-MMJ
)	
COUNTY ENVIRONMENTAL CO. and)	
UNEMPLOYMENT INSURANCE)	
APPEAL BOARD,)	
)	
Appellees.)	

Submitted: April 5, 2013
Decided: June 7, 2013

On Appeal from the Decision of the Unemployment Insurance Appeal Board
AFFIRMED

ORDER

Gerard Goubeaud, *Pro Se*, 5 South Purdue Avenue, New Castle, Delaware 19720. Appellant.

Donald Logan, Esquire, Victoria K. Petrone, Esquire, Logan & Petrone, LLC, Attorneys for Appellee, County Environmental Co.

JOHNSTON, J.

Gerard Goubeaud (“Claimant”) has appealed the August 15, 2012 decision of the Unemployment Insurance Appeal Board (“Board”). The Board affirmed the Appeals Referee’s determination that Claimant was discharged from his work with County Environmental Co. (“Employer”) for just cause and is consequently disqualified from receipt of unemployment benefits. Claimant contends that he is entitled to unemployment benefits, but offers no specific factual or legal support for his appeal.

FACTUAL AND PROCEDURAL CONTEXT

Claims Deputy’s Determination

On April 30, 2012, the Claims Deputy found that Claimant had failed to report to work for a scheduled shift and had not called in or reported to work at any time subsequently. The Deputy also found that Claimant had not called in because his son had passed away and because he was incarcerated. Claimant’s failure to contact his employer constituted misconduct. The Claims Deputy ruled that Claimant was disqualified from receiving benefits pursuant to 19 *Del. C.* § 3314(2), because Claimant had been discharged from his employment for just cause. On May 1, 2012, Claimant appealed the Claims Deputy’s determination. A hearing was held before an Appeals Referee on May 29, 2012.

Hearing Before the Appeals Referee

At the hearing, Paul Lloyd, Human Resources professional at County Environmental Co., testified on behalf of Employer that Claimant had failed to report for a scheduled shift and did not contact Employer regarding his no-show. Lloyd explained that Claimant was contacted a second time, and again failed to report for work. Finally, Lloyd testified that Employer had a policy regarding job abandonment—failure to report or contact Employer for three days is treated as a “quit.” Ultimately, Employer discharged claimant for job abandonment, pursuant to this policy.

Claimant acknowledged that he had failed to report to work on March 21, and that he had failed to contact his employer because he became incarcerated. He testified that he was ultimately released on March 26 or 27, and that he had been unable to contact Employer from March 21 until the date of his release.

Appeals Referee’s Determination

By decision dated May 30, 2012, the Appeals Referee affirmed the decision of the Claims Deputy. The Appeals Referee found that Claimant was discharged for just cause by Employer and consequently disqualified from receipt of unemployment benefits. On June 6, 2012, Claimant appealed the Appeals Referee’s decision.

Appeal Board's Decision

By decision dated August 15, 2012, the Board affirmed the Appeals Referee's determination. The Board found that while the death of Claimant's son and his subsequent period of incarceration provide an explanation for Claimant's failure to contact Employer, Claimant's explanation does not constitute legal justification for his misconduct.¹ The Board ruled that Claimant's misconduct—failing to contact Employer—provided just cause for his discharge, and consequently that Claimant was disqualified from receipt of benefits. This appeal followed.

STANDARD OF REVIEW

On appeal from the Unemployment Insurance Appeal Board, the Superior Court must determine if the Board's factual findings are supported by substantial evidence in the record and free from legal error.² Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."³ The Court must review the record to determine if the evidence is legally adequate to support the Board's factual

¹ See generally 19 Del. C. § 3317(7).

² *Unemployment Ins. Appeal Bd. v. Duncan*, 621 A.2d 340, 342 (Del. 1993).

³ *Histed v. E.I. duPont de Nemours & Co.*, 621 A.2d 340, 342 (citing *Olney v. Cooch*, 425 A.2d 610, 614 (1981)).

findings.⁴ The Court does not “weigh evidence, determine questions of credibility or make its own factual findings.”⁵ If the record lacks satisfactory proof in support of the Board’s finding or decision, the Court may overturn the Board’s decision.⁶ On appeal, the Superior Court reviews legal issues *de novo*.⁷

DISCUSSION

Claimant’s Contentions

In the Notice of Appeal filed with this Court, Claimant articulates four grounds for his appeal: “(1) the Board got all the facts wrong (2) I was never given a notice of being fired (3) I called to see if there was work [;] there is a lack of communication in the company [and] (4) I am given time OFF For Death’s [*sic*] Thay [*sic*] are making this personal [,] not business.” The Court notes that Claimant mentions none of the grounds listed in his Opening Brief to the Court. Instead, Claimant simply submitted a document to the Court labeled “Opening Brief,” which reads in full and verbatim as follows: “I am Filing this because I am entitled to unemployment Benafits

⁴ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

⁵ *Id.* at 67.

⁶ *Id.* at 66-67.

⁷ *Person-Gaines v. Pepco Holdings, Inc.*, 981 A.2d 1159, 1161 (Del 2009).

and the company is tryen to get over on me and I am not going to let that happen [.]”⁸ Claimant filed no Reply Brief.

Employer’s Contentions

Employer contends that Claimant’s appeal should be dismissed for failure to prosecute, and alternatively that it should be denied for failure to articulate a legal error or lack of substantial evidence supporting the Board’s Decision.

Superior Court Civil Rule 72(i) states in relevant part:

Dismissal 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.

Employer also relies on the ruling in *Buck v. Cassidy Painting, Inc.*,⁹ where the Court dismissed a *pro se* litigant’s appeal for a combination of defects, including the untimely filing of the opening brief and noncompliance with the briefing requirements of Rule 107.¹⁰ Employer points out that here, as in *Buck*, Claimant’s brief fails to articulate an

⁸ Opening Br. at 1 (All errors in original).

⁹ 2011 WL 1226403 (Del. Super.).

¹⁰ *Id.* at 2.

argument that is capable of review. Therefore, Employer urges the Court to dismiss Claimant's appeal pursuant to Rule 72(i).

Employer also contends that Claimant fails to raise any challenges to the Opinion of the Board regarding substantial evidence or legal error. Employer notes that it is undisputed that Claimant was absent from work after March 12, 2012 and failed to contact Employer at any time subsequently. Thus, Employer argues that the Board properly found that Claimant had been discharged for just cause and was disqualified from receipt of benefits. Employer urges the Court to affirm the Board's decision, as being supported by substantial evidence and free from legal error.

Analysis

Claimant failed to file his Opening Brief in a timely fashion according to the briefing schedule ordered by this Court. However, Claimant's brief fails to comply in both substance and form to the requirements of Rule 107. Claimant filed no Reply Brief. The Opening Brief fails to articulate even the barest modicum of evidence or legal argument in favor of Claimant's position. As with the appeal in *Buck*, were this Court to permit Claimant's appeal to proceed, the orderly and efficient administration of justice would

be sacrificed.¹¹ Therefore, Claimant's appeal shall be dismissed pursuant to Rule 72(i).

Even setting aside the substantial procedural defects, Claimant's appeal still would be denied. A review of the Appeal Board's decision reveals that it is supported by substantial evidence and free from legal error. Job abandonment constitutes just cause for discharging an employee, as it is willful or wanton conduct disregarding the interests of the employer and duties of employment.¹² Employees discharged for just cause are disqualified from receipt of unemployment benefits.¹³ There is substantial record evidence supporting the Board's finding that claimant was discharged for just cause and therefore disqualified.

CONCLUSION

The Court finds that Claimant's appeal must be dismissed for failure to comply with Superior Court Civil Rule 72(i). Claimant failed to timely file his Opening Brief, neglected to file a reply brief, did not follow the requirements delineated in Rule 107. Further, Claimant failed to articulate any facts or legal argument in support of his contentions.

¹¹ *Buck*, 2011 WL 1226403, at *2.

¹² *MRPC Financial Management LLC v. Carter*, 2003 WL 21517977, *4 (Del. Super.); *Majaya v. Sojourner's Place*, 2003 WL 21350542, *4 (Del. Super.) .

¹³ 19 *Del. C.* § 3314(2).

THEREFORE, Employee's appeal is hereby **DISMISSED**.

IT IS SO ORDERED.

/s/ Mary M. Johnston
The Honorable Mary M. Johnston