IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

HUMBERTO QUINONES,	:	
	:	C.A. No. 08A-06-007 WLW
Appellant,	:	
	:	
v.	:	
	:	
ACCESS LABOR and U.I.A.B.,	:	
	:	
Appellee.	:	

Submitted: July 13, 2009
Decided: November 2, 2009

ORDER

Upon Appeal of a Decision of the
Unemployment Insurance Appeal Board.
Affirmed.

Humberto Quinones, *pro se*.

Access Labor, *pro se*.

WITHAM, R.J.

Introduction

This is a *pro se* appeal by Humberto Quinones ("Quinones") from the June 27, 2008 decision of the Unemployment Insurance Appeals Board ("the Board" or "UIAB"). In an Order dated March 18, 2008, this Court reversed the Board's April 15, 2007 decision and remanded the case for a full and proper hearing. The Court anticipated that the parties would use the opportunity to better develop the factual record. Neither Quinones nor Access Labor, however, chose to attend the subsequent hearing on May 14, 2008. Consequently, the Board was forced, in the interest of "timely justice," to proceed on the existing factual record. This Court will do the same.

The Board reaffirmed a determination by the Appeals Referee ("the Referee") that Quinones is disqualified from receiving unemployment benefits due to his refusal to accept a suitable offer of employment, pursuant to 19 *Del. C.* § 3314(3).

Decision of the UIAB

On March 5, 2006, Quinones began working for Wyoming Concrete via Access Labor. On July 21, 2006, Quinones ended his assignment with Wyoming Concrete when the company laid off all of its employees. Quinones had been earning $7.50 an hour. He filed for unemployment benefits shortly thereafter.

On July 25, 2006, Access Labor offered Quinones a garbage pick-up position with IDS paying $8.00 an hour. The job was full-time from 5:00 a.m. until 5:00 p.m., Monday through Friday. Quinones accepted this position and indicated that he would arrive the following morning for work. Quinones, however, contends that he

conditioned this acceptance on his ability to get a ride to the job site. He also contends that his acceptance was further conditioned on his ability to do the job despite his medical condition.[1] Nevertheless, it is clear that Quinones failed to appear for work.

On August 18, 2006, the Claims Deputy determined that Quinones had refused suitable work. Consequently, he was disqualified from receiving unemployment benefits pursuant to 19 *Del. C.* § 3314(3).[2] Quinones appealed the Claims Deputy's decision to the Referee, and then to the UIAB. Both the Referee[3] and the UIAB[4] affirmed the Claims Deputy's decision. The UIAB, however, affirmed on different grounds. The Board, citing 19 *Del. C.* § 3314(1)[5], determined that Quinones was disqualified from receiving unemployment benefits because he voluntarily, and

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[1] Quinones testified that he has a type of Crohn's disease which requires him to have ready access to bathroom facilities. Consequently, he expressed concern over having to ride in a garbage truck all day. Despite this concern, Quinones informed Access Labor that his real problem was transportation.

[2] Section 3314(3) provides, in pertinent part, that an individual shall be disqualified for benefits "[i]f the individual has refused to accept an offer of work for which the individual is reasonably fitted . . . ."

[3] *Quinones v. Access Labor*, UIAB Appeal Docket No. 438805 (Sept. 14, 2006) (Candie M.Dibble, Appeals Referee).

[4] *Quinones v. Access Labor*, UIAB Appeal Docket No. 438805 (Apr. 15, 2007), *aff'g* Decision of Appeals Referee (Sept. 14, 2006).

[5] Section 3314(1) provides, in pertinent part, that an individual shall be disqualified for benefits "[f]or the week in which the individual left work voluntarily without good cause attributable to such work . . . ."

without good cause, left work.

In an Order dated March 18, 2008, this Court reversed the Board's decision and remanded the case for a full and proper hearing in conformity with the Court's decision.[6] This Court concluded that there was not substantial evidence to support the Board's conclusion that Quinones was disqualified from receiving unemployment benefits under Section 3314(1).[7] In fact, this Court noted that there was no "precedence [sic] supporting the use of § 3314(1) when no day of work or portion has been completed."[8] This Court further concluded that the Board's characterization of the job offer in question was not supported by substantial evidence.[9]

The Board, on remand, reconsidered Quinones's appeal under Section 3314(3).[10] Despite proper notice, neither Quinones nor Access Labor appeared at the hearing. Nevertheless, the Board reviewed the existing factual record in light of this Court's holding and determined that Quinones is disqualified from receiving unemployment benefits under Section 3314(3).

The Board first noted that the employer bears the burden of providing a

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[6] *Quinones v. Access Labor*, 2008 WL 2410170 (Del. Super.).

[7] *Id.* at *5.

[8] *Id.* (citations omitted).

[9] *Id.* at *6.

[10] *Quinones v. Access Labor*, UIAB Appeal Docket No. 438805 (June 27, 2008).

claimant with notice of a suitable job offer.[11] The Board further noted that:

> An individual is 'reasonably fitted' for the work offered when the employment is similar to the individual's previous training and experience and can be performed with little additional training; other factors to be considered are previous rate of pay, physical fitness, period of unemployment and prospects for securing work in the person's customary occupation.[12]

The Board concluded, despite much of the factual record being in dispute, that: [1] Access Labor had extended a valid offer of employment to Quinones; [2] Quinones accepted the position and indicated that he would be present the following morning for work; and [3] Quinones failed to appear for work as promised.

Given this conclusion and an examination of the factual record, the Board determined that Quinones was "reasonably fitted" for the new job assignment. The Board noted that Quinones failed to come forward with persuasive evidence to show that he would be unfit for the job, despite being given numerous opportunities to do so. It further noted that it is fair to place the burden on Quinones because he is the party in position to offer such evidence. Consequently, the Board concluded that Quinones, without justification, rejected a valid offer of employment.

Standard of Review

This Court's review of a decision of the Unemployment Insurance Appeals Board is limited to a determination of whether there is sufficient substantial evidence

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[11] *Id.* (citing *Jewell v. Unemployment Comp. Comm'n*, 183 A.2d 585 (Del. 1962)).

[12] *Id.* (citing *Pinkett v. Barrett Bus. Servs, Inc.*, 2001 WL 167845 (Del. Super.)).

in the record to support the Board's findings, and that such findings are free from legal error.[13] Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion.[14] The Board's findings are conclusive and will be affirmed if supported by "competent evidence having probative value."[15] An appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.[16]

Discussion

Section 3314 of Title 19 of the Delaware Code provides, in pertinent part:

> An individual shall be disqualified for benefits:
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> . . .
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> (3) If the individual has refused to accept an offer of work for which the individual is reasonably fitted or has refused to accept a referral to a job opportunity when directed to do so by a local employment office of this State or another state . . . . No individual otherwise qualified to receive benefits shall lose the right to benefits by reason of a refusal to accept a referral or new work if:
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> . . .
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> c. The work is at an unreasonable distance from the

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[13] *Employment Ins. Appeals Bd. of the Dep't of Labor v. Duncan*, 337 A.2d 308, 309 (Del. 1975); *Longobardi v. Unemployment Ins. Appeals Bd.*, 287 A.2d 690, 692 (Del. Super. Ct. 1971), *aff'd*, 293 A.2d 295 (Del. 1972).

[14] *Oceanport Indus. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super. Ct. 1986).

[15] *Geegan v. Unemployment Comp. Comm'n*, 76 A.2d 116, 117 (Del. Super. Ct. 1950).

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

> individual's residence, having regard to the character of the work the individual has been accustomed to do, and travel to the place of work involves expenses substantially greater than that required for the individual's former work; or
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> d. The remuneration, hours or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.[17]

The Board is correct that much of the factual record remains in dispute in this case. The question before this Court, however, is whether there is substantial evidence to support the Board's conclusion that Quinones: [1] was given notice of an offer of employment; [2] refused to accept this offer of employment; and [3] was "reasonably fitted" for the work offered.

Notice of an Offer of Employment

In *Jewell v. Unemployment Compensation Commission*, the Delaware Supreme Court held that a claimant may not be considered to have refused an offer of work of which he had no knowledge.[18] Here, Quinones was given sufficient notice of the job offer with IDS. In fact, despite the disputes in the record regarding the telephone conversation between Quinones and Access Labor, it is clear that Quinones was aware of the new position and indicated that he would arrive the following morning for work.

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[17] 19 *Del. C.* § 3314.

[18] 183 A.2d at 587.

Refusal of an Offer of Employment

In *Jewell*, the Court noted that the Unemployment Compensation Law contemplates, "that an unemployed person must be available at all times to accept suitable employment and a refusal on his part to do so will disqualify him for benefits under the law."[19] The Court further noted that, "a refusal to accept work, in order to disqualify a claimant, must be deliberate on the part of the claimant, for he cannot be held to have refused an offer unless he has actually done so."[20]

Quinones deliberately refused to accept the offer of employment. Again, although the facts are disputed regarding conversations over transportation, the record clearly indicates that Quinones failed to appear for work the following morning. As the Board noted, Quinones was responsible for communicating his reservations to the Employer or, at the very least, advising the Employer that he would not report for work. Nevertheless, the record clearly indicates that he failed to report for work.

"Reasonably Fitted" for the Work Offered

Given that Quinones refused to accept a job offer of which he had adequate notice, the question becomes whether his refusal disqualifies him from receiving unemployment benefits. That is, whether the job offered is one for which he is "reasonably fitted."

In *Pinkett v. Barrett Business Services, Inc.*, the Court noted that an individual

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[19] *Id.*

[20] *Id.*

is "reasonably fitted for work when the offer of employment is similar to the individual's previous training and experience, and as a result can be performed with minimal additional training."[21] The Court noted further that additional factors to consider include "the individual's prior earnings, physical fitness, length of unemployment, and prospects for securing work in his/her customary occupation."[22]

Quinones has provided two reasons why he believes he is not "reasonably fitted" for the job offered: [1] a lack of transportation to and from the job site; and [2] personal medical problems. Regarding the transportation, the Board concluded that transportation does not constitute a valid reason under § 3314(3) to refuse a suitable job offer. The Court agrees in this particular case.

One of the main factual disputes in this case is whether Quinones adequately expressed a concern over transportation. Quinones testified that he conditioned his acceptance on his ability to arrange transportation. Access Labor, however, testified that it provides transportation to employees who request it. Consequently, it was incumbent upon Quinones, if he was unable to secure adequate transportation, to notify Access Labor of his need for transportation. Nevertheless, Quinones simply failed to appear for work.

Quinones also claims that his personal medical problems made him unfit for the new job. Quinones, however, has failed to adequately support his claim. In

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[21] 2001 WL 167845, at *3 (citation omitted).

[22] *Id.* (quoting *Power v. Myriad Servs., Inc.*, Del. Super., C.A. No. 95A-07-001, Gebelein, J. (Mar. 8, 1996), *aff'd* 718 A.2d 528 (Del. 1998)).

Pinkett, the Court held that the claimant was "reasonably fitted" for the offered job.[23] The Court noted that despite the claimant's contention that she could not work due to carpal tunnel problems, the claimant was unable to support her claim before the Board.[24] Specifically, the Court noted, "[w]ithout substantiation that the Claimant could not work due to carpal tunnel problems, the Claimant failed to establish she was not reasonably fitted for the offered job."[25]

In the case *sub judice*, Quinones also failed to substantiate his medical claim. In *Pinkett*, the claimant submitted a letter from her doctor that acknowledged her history with carpal tunnel, but failed to address whether she was able to work in light of that condition.[26] Similarly, Quinones testified that he suffered from a type of Crohn's disease. He further testified that Access Labor was aware of his medical problem. Nevertheless, Quinones, despite numerous opportunities to do so, has failed to substantiate his claim that his medical illness renders him unfit for the offered job.[27] In fact, when first offered the job with IDS, Quinones admits that he was willing to give it a try.

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[23] 2001 WL 167845, at *4.

[24] *Id.*

[25] *Id.* (citations omitted).

[26] *Id.*

[27] It is worth noting that neither Quinones nor Access Labor attended the May 14, 2008 UIAB hearing held to further develop the factual record.

Section 3314(3)(c)

The remaining issue before the Court is whether, despite being otherwise "reasonably fitted" for the offered job, Quinones could refuse work under Section 3314(3)(c). The Board concluded that he could not. The Board found as follows:

> The new job involved a twelve-hour shift, whereas the former job had an eleven-hour shift. There has been no showing that the extra hour or work would have presented a problem, either in terms of transportation or medically. The new job was day shift, starting at 5:00 a.m., rather than 1:00 p.m., in the case of the former position. The new job was in Felton, whereas the old job was in Camden. The Claimant lives in Dover. The record fails to establish that the additional distance to Felton was unreasonable, as the Board understands that term. Nor would the added distance or change in shift involve substantially greater expenses. Moreover, to the extent the Claimant could not provide his own transportation, the Employer was willing to provide it. The Board finds that the Claimant has failed to establish that his expenses for travel to work would be substantially greater in the new job.[28]

The Court finds that this conclusion is supported by the record.

Conclusion

For the foregoing reasons, the decision of the Unemployment Insurance Appeals Board is AFFIRMED. IT IS SO ORDERED.

R.J.

WLW/dmh
oc: Prothonotary

[28] *Quinones v. Access Labor*, UIAB Appeal Docket No. 438805 (June 27, 2008).