

Luther Mitchell  
225 Strawberry Alley  
Georgetown, Delaware 19947

Date Submitted: April 4, 2002  
Date Decided: July 8, 2002

RE: *Luther Mitchell v. Mountaire Farms & Unemployment Insurance Appeal Board*  
C.A. No. 01A-07-004

Dear Mr. Mitchell:

*Pro se* claimant Luther Mitchell (“Claimant”) appeals a decision of the Unemployment Insurance Appeal Board (the “Board”) that denied his request for unemployment benefits.<sup>1</sup> The Board found that Claimant voluntarily terminated his employment with Mountaire Farms and failed to show just cause for doing so. The Board’s decision is affirmed.

#### STATEMENT OF FACTS

This case stems from the employment relationship between Claimant and his employer, Mountaire Farms, located in Georgetown, Delaware. Claimant had been an employee of Mountaire Farms for over eight years on the date of the incident that gave rise to this litigation. On March 20, 2001, Claimant believed he was experiencing an asthma attack and consulted the site nurse. Claimant left work early at the direction of the superintendent but failed to report to work the following day. Claimant applied for and was denied unemployment benefits. An appeal ensued.

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<sup>1</sup> Claimant filed a one page letter. Mountaire Farms did not file a response nor is represented by counsel. Consequently, the parties were advised that the Court would proceed to decision.

The Appeals Referee concluded that Claimant voluntarily terminated his employment and, in order to receive unemployment benefits, Claimant would have to demonstrate good cause.

The Appeals Referee made the following findings of fact:

This tribunal finds that the claimant began working for the employer as a chicken catcher. In March 1999 he started working in the plant because of his asthma. He first worked in a temporary position in plant services. In April 1999 he began working in the icehouse and worked there until he suffered an injury. The claimant never provided the employer with any documentation of any medical restrictions because of his asthma. In March 2001, a full-time position with plant services opened up and it was offered to the claimant. The security manager told the claimant that it was a non-union position, but there was no discussion of whether the claimant would have to leave the union in order to take the position. The claimant refused this position.

On March 20, the superintendent put the claimant on the line in the plant. The claimant had done this job before with no problems. There was no mention of the claimant not being able to do this job or work in the plant because of his asthma. The claimant worked there until 1:45 pm when he felt overheated and dizzy. The claimant stepped off the line and told the line leader that he was going to the nurse. When the claimant got to the nurse's office, she told him that she would have to speak to the Human Resources Director. The claimant asked her to also call the superintendent. The superintendent told the claimant that according to the doctor's note the job was within his restrictions. The claimant told the superintendent that he has asthma. He said that he was hot and dizzy and if he went back into the plant, he was sure that he would fall off of the grading station. The superintendent felt that he could not send the claimant back there so he told the claimant that he should probably go home for the day and come back when he was feeling better. The claimant said, "so, I'm fired." The superintendent told him that he was not fired. He said this to the claimant a second time in front of another employee to make sure that the claimant understood that he still had a job. The claimant then left and never returned.

The Referee concluded that Claimant was not entitled to unemployment benefits because he failed to allege good cause as required when one voluntarily terminates his employment. Following another evidentiary hearing,<sup>2</sup> the Board adopted the Referee's findings of fact and conclusions of

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<sup>2</sup> At this hearing, Claimant abandoned his original allegation that he had been fired upon reporting to the human resources director.

law:

Based upon the testimony heard before the Referee and by the Appeal Board, the pertinent findings of fact and conclusions of law of the Referee are adopted as the findings and conclusions of the Appeal Board. The Board finds that the job held by claimant was within the medical restrictions that had been provided to employer. In addition, claimant was never told that he was fired; he simply left and did not return. Thus the Board finds that claimant voluntarily terminated his employment without good cause in connection with the work.

#### ISSUE PRESENTED

Claimant argues that the evidence in the record does not support the Board's legal conclusion that he lacked good cause to justify his voluntary termination of employment.

#### DISCUSSION

##### *A. Standard of Review*

In reviewing the decisions of the Board, this Court must determine whether the Board's findings and conclusions are free from legal error and supported by substantial evidence in the record.<sup>3</sup> *Unemployment Ins. Appeal Bd. v. Martin*, 431 A.2d 1265 (Del. 1981); *Ponchvatilla v. United States Postal Serv.*, Del. Super., C.A. No. 96A-06-19, Cooch, J. (June 9, 1997), Mem. Op. at 2; 19 Del. C. § 3323(a) ("In any judicial proceeding under this section, 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."). In looking for "substantial evidence," the Court is looking for "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *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. Moreover,

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<sup>3</sup> The Court ignores any new facts or evidence Claimant submits since this review is on the record only.

"[i]t is not the appellate court's role to weigh the evidence, determine credibility questions or make its own factual findings, but merely to decide if the evidence is legally adequate to support the agency's factual findings." *McManus v. Christina Service Co.*, Del. Super., C.A. No. 96A-06-013, Silverman, J. (Jan. 31, 1997), Op. and Order at 4.

*B. The Right to Unemployment Benefits*

Section 3315 of Title 19 of the Delaware Code provides, in relevant part:

An individual shall be disqualified for benefits:

(1) For the week in which the individual left work voluntarily without good cause attributable to such work and for each week thereafter until the individual has been employed in each of 4 subsequent weeks (whether or not consecutive) and has earned wages in covered employment equal to not less than 4 times the weekly benefit amount.

Under this section, the claimant has the burden of proving "good cause." *Longobardi v. Unemployment Ins. Appeal Bd.*, 287 A.2d 690, 692 (Del. Super. 1971). Good cause may exist where there is a substantial reduction in wages or hours of employment, or a substantial deviation from the original employment agreement. *Scott v. Clausen*, Del. Super., C.A. No. 01A-06-003, Stokes, J. (Feb. 28, 2002). Good cause "must be such cause as would justify one in voluntarily leaving the ranks of the employed and joining the ranks of the unemployed and must be for reasons connected with the employment." *Mifflin v. Polo Factory Store*, Del. Super., C.A. No. 01A-04-002, Stokes, J. (Oct. 18, 2001) (internal quotation marks and citation omitted).

The Appeals Referee and the Board, through adoption, found that Mountaire Farms was aware of Claimant's on-the-job back injury and accommodated his subsequent work restrictions. The Appeals Referee and the Board did not find evidence to indicate that Claimant had an asthma condition that was aggravated by the working conditions on the plant line. This finding is supported

by the evidence in the record. Claimant's testimony before the Board indicated that he was dizzy and sweating heavily when he went to see the plant nurse; Claimant did not describe difficulty in breathing. No evidence was presented to indicate that Mountaire Farms was or should have been aware that the working conditions in the plant aggravated Claimant's alleged asthma condition. The Board concluded Mountaire Farms did not have reason to believe that Claimant could not fulfill his work-related responsibilities due to asthma. Testimony presented supports the Board's finding that Claimant had been advised repeatedly that he was not being fired on the date in question. Claimant's failure to return to work lacked good cause as required to sustain unemployment benefits in a case of voluntary termination.

#### CONCLUSION

A review of the record satisfies the Court that the Board's findings and decision are supported by substantial evidence and are free from legal error. For the foregoing reasons, the decision of the Board denying unemployment benefits is affirmed.

**IT IS SO ORDERED.**

Very Truly Yours,

Richard F. Stokes

cc: Prothonotary  
Mountaire Farms  
UIAB