

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

NORMAN KING )  
 )  
 Appellant, )  
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 )  
 v. ) C.A. No. 02A-11-009 CHT  
 )  
 )  
 PATHMARK and )  
 UNEMPLOYMENT INSURANCE )  
 APPEAL BOARD )  
 )  
 Appellees. )

OPINION AND ORDER

**On the Employee's Appeal from the Decision  
of the Unemployment Insurance Appeal Board**

Date Assigned: April 28, 2003

Date Decided: July 29, 2003

Norman King, *pro se*, 439 S. 6<sup>th</sup> Street, Lebanon, PA 17042.

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**TOLIVER, Judge**

**STATEMENT OF FACTS AND NATURE OF THE PROCEEDINGS**

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Norman King was employed as a seafood/deli clerk by Pathmark Stores from July 30, 2001 until June 3, 2002. The instant controversy arises out of Mr. King's resignation, which occurred on June 3, 2002.

Throughout Mr. King's employment at Pathmark, he suffered from alcohol and drug dependency. Mr. King informed Mr. Bill Gorman, the general store manager, of his addictions on March 28, 2002, and indicated that he wanted to quit his job in order to enter a detoxification program. Mr. Gorman urged Mr. King not to quit, but instead to seek help and then return to his job. Mr. King subsequently attended a five day detoxification program and returned to work on April 29, 2002. On June 3, 2002, however, Mr. King failed to report to work. He subsequently contacted Mr. Gorman to inform him that he could no longer handle both work and his addictions, and would not be returning to his job at Pathmark so that he could

attend a one year rehabilitation program.<sup>1</sup> Mr. Gorman informed Mr. King that if he was still the general manager of that Pathmark when Mr. King completed his rehabilitation, that he would rehire Mr. King.

On June 23, 2002, Mr. King filed a petition seeking unemployment benefits. The claim was denied by the claims deputy pursuant to 19 Del. C. §3315, because it was determined that Mr. King left his unemployment for personal reasons, not due to a good cause attributable to his work. Mr. King appealed the decision, and a hearing occurred on August 28, 2002 before an appeals referee. The appeals referee affirmed the claims deputy's decision, finding that Mr. King voluntarily quit without good cause attributable to the work. Mr. King then appealed to the Unemployment Insurance Appeals Board ("UIAB").

A hearing was held before the UIAB on October 23, 2002.

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<sup>1</sup> Mr. King alleges that prior to resigning on June 3, he attempted to contact his union steward to inquire about Pathmark's rehabilitation program, but never received an appropriate response. Pathmark alleges that Mr. King's frustration and eagerness to begin rehabilitation prompted him to seek that help outside of the company and without the company's assistance.

A four member quorum of the UIAB heard the appeal. At the conclusion of that hearing, two members agreed with the appeals referee that Mr. King had voluntarily left his employment and was therefore barred from receiving workers' compensation benefits. The remaining two members held that Mr. King's frustration with trying to obtain information about his benefits did constitute good cause to quit, and that he was entitled to unemployment compensation benefits. As a result, the Board held that the vote had no legal significance, and the decision of the appeals referee would stand.<sup>2</sup> Accordingly, the appeals referee's decision was allowed to stand.

Mr. King appealed the UIAB's decision to this Court on November 25, 2002. He filed his opening brief on February 24, 2003. He makes four arguments: First, that he was eligible for full time medical benefits, which included drug and alcohol treatment at company expense. Second, that he

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<sup>2</sup> The UIAB cited to Warrington v. State, 1994 Del. Super. LEXIS 297.

informed company management that he needed that treatment to maintain acceptable levels of work performance. Third, Mr. King alleges that he contacted union personnel and company management on numerous occasions regarding Pathmark's rehabilitation program, but received no response or information on those programs from either source. Finally, Mr. King claims that company management customarily contacts the union for employees who seek medical benefits, but that in his case, Pathmark both failed to contact the union and concealed information that was necessary for Mr. King to access his medical benefits.<sup>3</sup>

Pathmark filed a response on March 24, 2003. It argues that the UIAB's decision was supported by substantial evidence, and that Mr. King voluntarily quit his job and is therefore not entitled to unemployment benefits. Pathmark further contends that it was indeed willing to make reasonable

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<sup>3</sup> Mr. King raises certain contentions related to his eligibility for medical benefits. However, they do not have a direct bearing on the instant controversy.

accommodations to permit Mr. King to seek treatment, but Mr. King never gave Pathmark the chance to do so. Pathmark also denies the allegation that the company concealed information regarding Mr. King's medical benefits and argues that it was not Pathmark's responsibility to ensure that the union was fulfilling its obligations of communication with its members. Lastly, Pathmark argues that Mr. King did receive an employee manual, and that document contained the information about available medical benefits which Mr. King apparently sought.

That which follows is the Court's disposition of the issues so presented.

### **DISCUSSION**

This Court is bound by the Board's findings if supported by substantial evidence and absent abuse of discretion or error of law.<sup>4</sup> "Substantial evidence is defined as such

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<sup>4</sup> Ohr v. Kentmere Home, 1996 Del. Super. LEXIS 356 at 8.

relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”<sup>5</sup> It “is more than a scintilla and less than a preponderance” of the evidence.<sup>6</sup> This Court does not weigh the evidence, determine questions of credibility or make its own findings of fact.<sup>7</sup> Its function is to determine if the evidence is legally adequate to support the factual findings below.<sup>8</sup>

Pursuant to 19 Del. C. §3315(1), an individual who is otherwise eligible for benefits may be disqualified if “he or she left work voluntarily without good cause.” In the present case, the UIAB was evenly divided as to whether Mr. King had good cause to voluntarily quit his position to enter a rehabilitation program. A review of the record persuades the Court that the appeals referee had substantial evidence to determine that Mr. King, frustrated with the lack of

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<sup>5</sup> Anchor Motor Freight v. Ciabattoni, 716 A.2d 154, 156 (1998); and Streett v. State, 669 A.2d 9, 11 (1995).

<sup>6</sup> City of Wilmington v. Clark, 1991 Del. Super. LEXIS 118 at 6.

<sup>7</sup> Johnson v. Chrysler, 213 A.2d 64, 66 (1965).

<sup>8</sup> 29 Del. C. §10142(d).

information provided him regarding medical benefits, quit his job for personal reasons unrelated to his employment, and therefore without good cause. He is therefore not entitled to unemployment compensation benefits.

First, when Mr. King first approached Mr. Gorman to tell him of his intention to enter a drug program, he was permitted to enter a detoxification program for five days and to return to his job. If Mr. King later felt that additional rehabilitation was necessary, he could have continued to seek information regarding such treatment while maintaining his employment. Instead, after approximately one month, Mr. King simply failed to appear for a scheduled shift. He later telephoned Mr. Gorman, informing him that he could no longer balance his addiction and his job responsibilities. His actions, though understandable, can only be classified as personal, and not a reason attributable to his employment.

Second, though it appears that there were company-sponsored programs for those in Mr. King's predicament,



eligible employees were required to apply for those benefits through the union. Mr. King's union representation may have been less than committed to assisting him in his quest for rehabilitation program information, but it was not Pathmark's responsibility to enforce the union's obligations to its members. Mr. King apparently had the opportunity to obtain for the information in question, but failed to do so.

**CONCLUSION**

Based upon the foregoing, the decision of the Unemployment Insurance Appeal Board is supported by substantial evidence and free from legal error. As a result, it must be, and hereby is, **affirmed**.

**IT IS SO ORDERED.**

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**Toliver, Judge**