

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

SUSSEX COUNTY COURTHOUSE
1 The Circle, Suite 2
GEORGETOWN, DE 19947

June 24, 2010

Tony A. Wilson
603 Mulberry Street
Milton, DE 19968

**RE: Tony A. Wilson v. The Breakers Hotel & Suites
C.A. No. S09A-08-004- ESB
Letter Opinion**

Date Submitted: May 26, 2010

Dear Mr. Wilson:

This is my decision on your appeal of the Unemployment Insurance Appeal Board's denial of your claim for unemployment benefits.¹ You were employed by The Breakers Hotel & Suites in Rehoboth Beach as a maintenance worker. Your hours fluctuated each week. You worked as few as 15 hours in a week and as many as 30.57 hours in a week during June and July 2008. In August 2008, your employer gave you a permanent maintenance schedule, stating that you would be working from 2:30 pm to 11:00 pm on

¹ The Board's decision is the only decision properly before me on appeal. I did not consider your Motion to Reopen the Department of Labor's decision that you were not entitled to unemployment benefits because you had obtained a job. It appears that you were unemployed and receiving unemployment benefits. You then obtained a job with The Breakers Hotel & Suites, which prompted the Department of Labor to terminate your unemployment benefits. The Department of Labor made this decision on July 14, 2008. You did not pursue any of your administrative remedies within the Department of Labor. You also did not file an appeal of the Department of Labor's decision with this Court. You instead filed a Motion to Reopen with this Court on August 5, 2009. You should have exhausted your administrative remedies within the Department of Labor and then filed an appeal within the appropriate time period with this Court. See 19 *Del.C.* § 3322(a) and 19 *Del.C.* § 3323(a). Therefore, your Motion to Reopen is both improper and untimely.

Friday and Saturday of each week. You then filed a claim with the Department of Labor for unemployment benefits, arguing that you were partially unemployed because you were not working as many hours in August as you had been in June and July. The Board denied your claim for unemployment benefits, reasoning that you were not totally unemployed because you were working and you were not partially unemployed because you did not have normal customary full-time hours in June and July and were working more hours per week in August than your lowest hours per week in June and July.

STANDARD OF REVIEW

The Supreme Court and this Court repeatedly have emphasized the limited appellate review of the factual findings of an administrative agency. On appeal from a decision of the Board, this Court is limited to a determination of whether there is substantial evidence in the record sufficient to support the Board's findings, and that such findings are free from legal error.² Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.³ The Board's findings are conclusive and will be affirmed if supported by "competent evidence having probative value."⁴ The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.⁵ It merely determines if the evidence is legally

² *Unemployment Ins. Appeals Board of the Dept. of Labor v. Duncan*, 337 A.2d 308, 309 (Del. 1975).

³ *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super. 1986), *app. dismiss.*, 515 A.2d 397 (Del. 1986).

⁴ *Geegan v. Unemployment Compensation Commission*, 76 A.2d 116, 117 (Del. Super. 1950).

⁵ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

adequate to support the Board's factual findings.⁶ Absent an error of law, the Board's decision will not be disturbed where there is substantial evidence to support its conclusions.⁷

DISCUSSION

An employee may receive unemployment benefits if the employee is totally or partially unemployed. 19 *Del.C.* § 3302 (17) states that:

“Unemployment” exists and an individual is “unemployed” in any week during which the individual performs no services and with respect to which no wages are payable to the individual, or in any week of less than full-time work if the wages payable to the individual with respect to such week are less than the individual's weekly benefit amount plus whichever is the greater of \$10 or 50% of the individual's weekly benefit amount.

The Department of Labor promulgated Regulation 15 pursuant to the authority granted to it by 29 *Del.C.* § 8503(7). It states that a “partially unemployed individual” is defined as one who (I) earned less than his weekly benefit amount plus two dollars, (II) was employed by a regular employer, and (III) worked less than his normal customary full-time hours for such regular employer because of lack of full-time work.⁸ The evidence in the record shows that you worked a varying number of hours during June and July. You worked as few as 15 hours a week and as many as 30.57 hours a week. However, you only worked more than 30 hours per week four times. You did not work normal customary full-time hours per week in June and July. Your employer revised your schedule in August to provide that you were to work 16 hours per week. You were not totally unemployed in

⁶ 29 *Del.C.* § 10142(d).

⁷ *Dallachiesa v. General Motors Corp.*, 140 A.2d 137 (Del. Super. 1958).

⁸ 19 *Del. Admin. Code* 1200-UNEMP 15.

August because you were still working each week. You were not partially employed in August because you did not have normal customary full-time hours in June and July and were still working more hours per week in August than your lowest number of hours per week in June and July. Therefore, you are ineligible for unemployment benefits. The Board's finding that you were not totally or partially unemployed is in accordance with the applicable law and supported by substantial evidence in the record.

CONCLUSION

The Unemployment Insurance Appeal Board's decision is affirmed.

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley

oc: Prothonotary's Office
cc: The Breakers Hotel & Suites