IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

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| WILLIAM D. GASKILL, | : | |
| | : | C.A. No. K13A-01-004WLW |
| Appellant, | : | |
| | : | |
| v. | : | |
| | : | |
| BESTEMPS and UNEMPLOYMENT INSURANCE APPEALS BOARD, | : | |
| | : | |
| Appellee. | : | |

Submitted: July 1, 2013
Decided: October 2, 2013

**ORDER**

Upon an Appeal of a Decision of the
Unemployment Insurance Appeals Board.
*Affirmed.*

William D. Gaskill, *pro se*

James T. Wakley, Esquire of the Department of Justice, Wilmington, Delaware; attorney for the UIAB.

WITHAM, R.J.

The issue before the Court is whether the Unemployment Insurance Appeals Board correctly determined that the Appellant was disqualified from the receipt of unemployment benefits because he refused an offer of work for which he was reasonably fitted.

## FACTS AND PROCEDURE

This is a *pro se* appeal by William D. Gaskill (hereinafter "Gaskill") from the decision of the Unemployment Insurance Appeals Board (hereinafter "the UIAB" or "the Board") upholding Gaskill's disqualification from the receipt of unemployment benefits.

After being laid off from his job as a material handler at the Dover Air Force Base, Gaskill was hired by BesTemps of Dover (hereinafter "BesTemps"), a temporary staffing service, in August of 2012.[1] On August 27, 2012 BesTemps placed Gaskill as a warehouse worker at Color-Box in Harrington, Delaware. On his BesTemps application form, Gaskill indicated he was able to work all available shifts, and was available to work on weekends. Gaskill was informed by Patsy Ware (hereinafter "Ware"), his supervisor at BesTemps, that he may have to work on weekends as part of the Color-Box assignment. However, at that time, Gaskill had custody of his young child every other weekend. Gaskill contacted the mother of his child on the same day as his placement. Gaskill attempted to compromise with her

[1] The Appeals Referee and UIAB both noted in their Orders that Gaskill was employed at BesTemps from September 1 through September 5, 2012. It is unclear from the record how these dates were reached, as Gaskill's testimony in both proceedings as well as Gaskill's hiring documents indicate a hiring date of August 27, 2012 and a start date of August 29, 2012.

on modifying their custody arrangements so that Gaskill could work every weekend, but they could not reach an agreement.

On August 29, 2012 Gaskill arrived at Color-Box for his orientation. During orientation, when Color-Box personnel informed Gaskill that it was mandatory that he work every weekend, Gaskill told them that while he could work every other weekend, he was presently unable to secure proper childcare arrangements for his child that would allow him to work the full required schedule. Color-Box personnel told Gaskill he could only work there if he agreed to work every weekend. Color-Box dismissed Gaskill after he failed to so agree, and clocked him out after he had attended orientation for six hours.

On August 30, 2012 Ware called Gaskill and, after a heated discussion pertaining to the previous day's events[2], Ware told Gaskill she would notify him of any further job opportunities. Gaskill did not immediately hear back from Ware, left Ware a message to call him back, and has not since attempted to follow up with her. There has been no further contact between Gaskill and BesTemps. When asked by the Board why he did not make any further attempt to follow-up with Ware, Gaskill responded that he was so offended by the "disruptive" nature of their earlier conversation, that he "just chose to shove off on that."[3]

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[2] Gaskill testified that Ware told him: "if you would have told me you had. . .a child I would have never sent you there." Transcript of Record at 29. Gaskill claims he did tell Ware he had a child, but it is unclear from the record whether Gaskill told Ware that the custody arrangement with the child's mother prevented him from working every weekend.

[3] Transcript of Record at 52.

On September 19, 2012 the Claims Deputy determined that because Gaskill refused an offer of work, he was disqualified from receiving unemployment benefits pursuant to 19 *Del. C.* § 3314(3).[4] Gaskill appealed, and on October 22, 2012, the Appeals Referee affirmed the determination following a telephone hearing in which BesTemps did not participate. The Appeals Referee based his decision in part on "the lack of evidence that [Gaskill] exhausted his child care options. . . ."[5] Gaskill appealed again, and the UIAB held a hearing on January 8, 2013. BesTemps again did not participate in the hearing. By decision dated January 28, 2013, the UIAB adopted the findings and conclusions of the Appeals Referee and reaffirmed Gaskill's disqualification from receiving unemployment benefits.[6] The Board found that Gaskill refused an offer of work by "indicat[ing] he was available to work, accept[ing] an assignment, then decid[ing] personal reasons made him unavailable for work. . . ."[7]

Gaskill has now filed the instant appeal with this Court. Gaskill has filed his appeal *pro se*; neither BesTemps nor the UIAB have filed an answering brief.

## STANDARD OF REVIEW

As with appeals from all administrative agencies, when a decision of the UIAB

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[4] Notice of Determination, Case No. 70864939.

[5] *Gaskill v. BesTemps*, Referee's Decision, Appeal Docket No. 70864939, at 3.

[6] *Gaskill v. BesTemps*, Decision of the Unemployment Ins. App. Bd., Appeal Docket No. 70864939, at 2.

[7] *Id.*

is appealed, this Court's scope of review is limited to "determining whether the Board's conclusions are supported by substantial evidence and free from legal error."[8] Substantial evidence means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[9] This Court will not weigh the evidence, determine questions of credibility, or make its own factual findings.[10] Questions of law are reviewed *de novo* "to determine whether the Board erred in formulating or applying legal concepts."[11] If there is substantial evidence and no error of law, the Board's decision will be affirmed, unless the Board committed an abuse of discretion.[12] An abuse of discretion occurs when the Board "acts arbitrarily or capriciously, or exceeds the bounds of reason in view of the circumstances and has ignored recognized rules of law or practice so as to produce injustice."[13]

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[8] *Nardi v. Lewis*, 2000 WL 303147, at *2 (Del. Super. Ct. Jan. 26, 2000) (citations omitted).

[9] *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981) (quoting *Consolo v. Fed. Mar. Comm'n*, 383 U.S. 607, 620 (1966)).

[10] *Hopkins Const., Inc. v. Unemployment Ins. App. Bd.*, 1998 WL 960713, at *2 (Del. Super. Ct. Dec. 17, 1998) (citing *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66-67 (Del. 1965)).

[11] *PAL of Wilmington v. Graham,* 2008 WL 2582986, at *4 (Del. Super. Ct. June 18, 2008) (citing *Nardi*, 2000 WL 303147, at *2).

[12] *See PAL of Wilmington,* 2008 WL 2582986, at *4 (citing *Funk v. Unemployment Ins. App. Bd.,* 591 A.2d 222, 225 (Del. 1991)); *Sikorski v. Boscov's Dept. Store,* 1995 WL 656831, at *1 (Del. Super. Ct. Sept. 22, 1995) (citations omitted).

[13] *PAL of Wilmington*, 2008 WL 2582986, at *1 (citations and internal quotations omitted).

## DISCUSSION

Gaskill merely rehashes the same argument on appeal that he made throughout the proceedings below: that he did not refuse an offer of work at the Color-Box orientation, but simply could not work the mandatory schedule based on his custody arrangements with the mother of his child.

Pursuant to 19 *Del. C.* § 3314(3), an individual is disqualified from receiving unemployment benefits if he "has refused to accept an offer of work for which the individual is reasonably fitted. . . ."[14] Whether a claimant is disqualified from receiving unemployment benefits under § 3314(3) is determined by a three-part analysis: (1) the claimant must receive notice of an offer of employment; (2) the claimant must refuse this offer of employment; and (3) the claimant must be reasonably fitted for the work offered.[15] If the foregoing elements are satisfied, this Court must then determine whether the claimant may nonetheless receive benefits pursuant to a permitted statutory exception.[16] In the instant case, the first and third elements are not disputed. Thus, the only issues before this court are whether Gaskill in fact refused an offer of employment, and, if so, whether a statutory exception applies.

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[14] 19 *Del. C.* § 3314(3).

[15] *Wallington v. Performance Staffing*, 2013 WL 1400849, at *2 (Del. Super. Ct. Mar. 28 2013); *Quinones v. Access Labor*, 2009 WL 5177148, at *3 (Del. Super. Ct. Nov. 2 2009).

[16] *Id.*

Refusal of an offer of work must be deliberate on the part of the claimant.[17] This Court has defined "refuse" as "to decline to accept and to show or express a positive unwillingness to do or comply with something asked."[18] Based on the factual findings and record made by the Appeals Referee and UIAB, this Court cannot conclude that Gaskill refused an offer of work. Gaskill accepted employment with BesTemps and, after being assigned to Color-Box as a temporary warehouse worker, was clocked-in for six hours on the day of his orientation. Gaskill only left the orientation after failing to reach an agreement with Color-Box personnel on his schedule, at which time he was clocked-out; this cannot be said to amount to an expression of positive unwillingness to comply with what was asked of him. This Court further notes that this case does not truly involve an offer of work–the offer was already unequivocally accepted by Gaskill when he was employed by BesTemps and accepted the Color-Box assignment, and, because he was clocked in for six hours on orientation, Gaskill had already started working for Color-Box. Thus, in applying *de novo* review to the legal issue of whether Gaskill is disqualified from benefits under § 3314(3), this Court must conclude that the element of refusal of an offer of work has not been established, because such offer had already been accepted. Accordingly, there is no need to evaluate whether any of the statutory exceptions to § 3314(3) apply.

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[17] *Wallington,* 2013 WL 1400849, at *3 (citing *Quinones*, 2009 WL 5177148, at *2).

[18] *Jacobs v. CDI*, 1993 WL 258791, at *1 (Del. Super. Ct. June 9 1993) (citing *Webster's Third Int'l Dictionary* 1909 (1971) (internal quotations omitted).

The Appeals Referee and UIAB only analyzed whether Gaskill was disqualified under § 3314(3). A claimant may also be disqualified from receiving unemployment benefits under 19 *Del. C.* § 3314(1) if the "individual left work voluntarily without good cause attributable to such work. . . ."[19] While this Court cannot engage in its own fact finding or credibility determinations on appeal, "[t]he issue of whether the facts amount to a voluntary quitting or leaving of employment without good cause is a question of law subject to review by this Court."[20] If the record below supports application of § 3314(1) to disqualify Gaskill from receiving benefits, then the Board's misapplication of § 3314(3) would not amount to legal error requiring reversal of the Board's decision.

"Good cause" as used in § 3314(1) "must be such cause as would justify an individual to voluntarily leave the ranks of the employed and join the ranks of the unemployed."[21] The reason for leaving employment "must be for reasons connected with the employment, not for personal reasons."[22] If there is good cause to resign, before leaving or quitting his employment, the claimant "must do something akin to exhausting his administrative remedies by. . .seeking to have the situation corrected

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[19] 19 *Del. C.* § 3314(1).

[20] *Smith v. Placers, Inc.*, 1993 WL 603375, at *2 (Del. Super. Ct. Nov. 17 1993) (citing *State ex rel. Dep't of Labor v. Unemployment Ins. App. Bd.*, 297 A.2d 412, 414 (Del. Super. Ct. 1972)).

[21] *Donald v. Manpower*, 1995 WL 339079, at *2 (Del. Super. Ct. Feb. 7, 1995) (citing *O'Neal's Bus Serv., Inc. v. Employment Sec. Comm'n*, 269 A.2d 247, 249 (Del. Super. Ct. 1970)).

[22] *Smith*, 1993 WL 603375, at *2 (citation omitted); *Donald*, 1995 WL 339079, at *2.

by proper notice to his employer."[23] Stated differently, the claimant must make a "significant effort" to inform the employer of the claimant's dissatisfaction with a work-related condition or situation, in order to give the employer a chance to remedy the situation before resigning.[24]

The UIAB's factual findings support application of § 3314(1) to disqualify Gaskill from the receipt of benefits. The record demonstrates that Gaskill voluntarily chose to not follow through with the Color-Box assignment because of his custody arrangements with the mother of his child. Gaskill had accepted employment with BesTemps and the Color-Box assignment, and indicated on his BesTemps application that he was available to work every weekend. Notwithstanding this, Gaskill was dismissed by Color-Box after being clocked-in for six hours when he refused to accept the mandatory schedule on the grounds of his child custody arrangements–a quintessential personal reason unrelated to his employment. Gaskill never informed Color-Box of his scheduling conflict prior to his orientation. The Appeals Referee specifically found a lack of evidence as to whether Gaskill exhausted his child care options before attending the Color-Box orientation, and, during a discussion with Ware the day after his orientation, Ware told Gaskill she would have never assigned Gaskill to Color-Box if Gaskill has informed her of his situation. Despite Ware telling Gaskill that she would inform him of any future assignment opportunities,

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[23] *O'Neal's Bus Serv., Inc.*, 269 A.2d at 249 (citing *Alabama Textile Prods. Corp v. Rodgers*, 82 So.2d 267, 269 Ala. Ct. App. 1955)).

[24] *See Smith*, 1993 WL 603376, at *2.

Gaskill only attempted to follow-up with Ware once after not receiving any immediate response from Ware. Gaskill made no further attempts to follow-up with BesTemps about job opportunities simply because he was offended by Ware's "disruptive" tone. In his own words, Gaskill made no attempt to further contact BesTemps because he "just chose to shove off on that."

These facts demonstrate a failure on Gaskill's part to make a significant effort to inform BesTemps and Color-Box of his scheduling conflicts, and to pursue further assignments. Gaskill could have simply not checked the box on his BesTemps application indicating he could work every weekend. He could have taken proper steps before accepting employment with BesTemps to make child care arrangements for the weekends on which he had custody of his child. And finally, Gaskill could have attempted to follow-up with BesTemps on further job opportunities that would be conducive to his schedule. Gaskill did none of these things. His current situation is a result of his own voluntary actions made for his own personal reasons.

Accordingly, there is substantial evidence to support the UIAB's decision to disqualify Gaskill from the receipt of unemployment benefits. In examining the record *de novo* for legal error, this Court concludes that while the Board should have applied § 3314(1) rather than § 3314(3), this does not amount to legal error warranting reversal because the record demonstrates that Gaskill voluntarily left his employment for personal reasons and without good cause.

## CONCLUSION

In light of the substantial evidence in support of the UIAB's decision, as well

as the absence of any error of law or abuse of discretion, the decision of the UIAB must be, and is, hereby **AFFIRMED.**

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

WLW/dmh