

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

CHARMAINE D. BERNARD,)	
)	
Appellant,)	
)	C.A. No: N13A-03-007 FSS
v.)	
)	APPEAL
GENESIS HEALTH CARE and)	
UNEMPLOYMENT INSURANCE)	
APPEALS BOARD,)	
)	
Appellee.)	

Submitted: October 15, 2013
Decided: November 25, 2013

***Upon Appeal from the Unemployment Insurance Appeal Board –
AFFIRMED in part, REVERSED in part***

1. On September 22, 2012, Appellant was working as a full-time certified nursing assistant for Genesis Health Care, on light duty restriction. Appellant alleges she was sent home by a supervisor for failing to complete her duties. Both parties agree that Appellant was out of work since then, initially pending a disciplinary hearing and then due to surgery on November 6.

2. Appellant filed for unemployment benefits on September 27, 2012. Benefits were granted on October 17, 2012 because Appellant was discharged

without just cause. Appellant collected unemployment through October 23, 2012 when Employer allowed her to return to work. The parties agreed, however, that Appellant would not actually work again until she recovered from surgery scheduled for October 29, but later postponed to November 6.

3. Employer timely appealed the initial grant of benefits. A hearing was held November 26, 2012. By that point, Appellant was out of work due to surgery and was receiving disability benefits. Accordingly, under 19 *Del.C.* § 3314(8), the Appeals Referee held that Appellant was disqualified from unemployment benefits. That finding reflected Appellant's status then, but it did not address the September 23-October 23 interval.

4. Appellant timely appealed the Appeals Referree's decision. The Board affirmed stating "[Appellant] is currently out on medical leave," and "is disqualified from the receipt of benefits until she becomes able and available for work as determined by a doctor's certificate." The Board's decision, however, also failed to address the September 23-October 23 interval. Appellant then appealed to this court.

5. Review of the Board's decision is limited to whether the Board's findings were supported by substantial evidence and whether the decision is free from

legal error.¹ The court will not weigh evidence, determine questions of credibility, or make its own factual findings and conclusions.²

6. Both in her opening brief³ and during the Board hearing,⁴ Appellant explained she is only claiming unemployment benefits from September 23-October 23, 2012. That was the time she was restricted to light duty but yet not on medical leave. Clearly, the light duty restriction was not an issue as Employer welcomed Appellant back to work on October 23 with no change in her medical status. Anyway, there is no evidence supporting Appellant's disqualification from unemployment benefits from September 23-October 23.

7. After October 23, Appellant left work due to surgery. To any extent unemployment benefits were claimed after October 23, Appellant is disqualified under 19 *Del.C.* § 3314(8) as the Board found. (Her position tacitly admits that.)

¹ *Thompson v. Christina Care Health Sys.*, 25 A.3d 778, 781–82 (Del.2011).

² *Id.* at 782.

³ Appellant's Opening Brief, Trans. ID 52936158, 1 (June 20, 2013) ("Was sent home from work without any reason nor was being payed for 09/23/12 to 10/23/12.")

⁴ *Charmaine Bernard v. Genesis*, UIAB Appeal Docket No. 10868614, Hearing Transcript at 6 (Feb. 13, 2013) ("I started my disability after my surgery, not before my surgery... so that shouldn't be included today... because I stopped getting unemployment on October 23rd.")

For the above reasons, the Unemployment Insurance Appeal Board's decision is **AFFIRMED** in part, **REVERSED** in part. The case is remanded for entry of an order consistent with the above.

IT IS SO ORDERED.

/s/ Fred S. Silverman

Judge

CC: Prothonotary
Charmaine Bernard, *via U.S. mail*
Maria Aprile Sawczuk, Esquire
James T. Wakley, Deputy Attorney General