

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

CALDWELL STAFFING SERVICES,)	
)	
Employer-Appellant,)	
)	
v.)	C.A. No. 02A-07-003 JRS
)	
SHANTELL L. WILLINGHAM,)	
)	
Employee-Appellee,)	
)	
and)	
)	
UNEMPLOYMENT INSURANCE)	
APPEAL BOARD,)	
)	
Appellee.)	

Submitted: April 28, 2003
Decided: May 22, 2003

Appeal from the Unemployment Insurance Appeal Board.
REMANDED.

ORDER

This 22nd day of May 2003, upon consideration of the appeal of Caldwell Staffing Services (“Caldwell Staffing”) from the decision of the Unemployment Insurance Appeal Board (the “Board”), dated June 23, 2002, granting Shantell Willingham’s application for benefits, it appears to the Court that:

1. This appeal follows the Board’s award of unemployment benefits to Ms.

Willingham after the Board found that Caldwell Staffing did not have “just cause” to terminate her. On appeal, Caldwell Staffing contends, in addition to other arguments, that the Board violated its due process right to participate meaningfully in the hearing because the Board prevented Mr. Randall, the President of Caldwell Staffing, from cross examining witnesses. The parties agree that the record of the Board’s hearing does not indicate that a Board member prohibited Mr. Randall’s cross examination of witnesses. In its appellate briefing, Caldwell Staffing submitted an affidavit from Mr. Randall in which he alleges that the relevant conversation occurred before the hearing and *off the record*.

2. By order dated February 6, 2003,¹ the Court concluded that it could not decide the due process issue without a threshold factual finding from the Board regarding whether a Board representative did or did not restrict Mr. Randall’s right of cross examination. The Court remanded the case and instructed the Board to “receive verified statements from all of its representatives involved in the hearing addressing whether Mr. Randall was advised that he could not cross examine witnesses during the hearing.”² Furthermore, the Court directed: “[f]actual findings on remand should then be prepared in writing and submitted to the Court within forty-

¹*Caldwell Staffing Services v. Willingham*, 2003 Del. Super. LEXIS 41.

²*Id.* at *4-5.

five (45) days of this Order.”³

3. In response to the February 6th order, the Board has submitted affidavits from all of the Board members who were present at the hearing. Each affiant has stated that he or she “did not make any representations to James D. Randall, the Caldwell representative, or any other party in this case ‘off of the record,’ regarding cross-examining witnesses or any other matter.” Caldwell Staffing contends that these affidavits do not constitute adequate “factual findings” as contemplated by the February 6th order. The Court agrees.

4. The Court has a limited role in reviewing appeals from the Board.⁴ The Court may not look beyond the record in considering the appeal.⁵ Most importantly, the Court may not make its own factual findings.⁶ Because the Board only submitted affidavits, the Court is now faced with a record containing conflicting sworn testimony. The Court may not reconcile the inconsistent affidavits or determine *de novo* which is more credible; this fact-finding function is beyond the province of the

³*Id.* at *5.

⁴*See Keim v. Greenhurst Farms*, 2001 Del. Super. LEXIS 444, at *3 (“The Supreme Court and this Court repeatedly have emphasized the limited appellate review of the factual findings of an administrative agency.”).

⁵*See Hubbard v. Unemployment Ins. Appeal Bd.*, 352 A.2d 761, 763 (Del. 1976)(“Upon appeal from a denial of unemployment benefits, the Superior Court is limited to consideration of the record which was before the administrative agency.”).

⁶*Keim*, 2001 Del. Super. LEXIS 444, at *4.

Court.⁷ Rather, the Board, as the trier of fact,⁸ must weigh Mr. Randall's affidavit against the Board members' affidavits to determine whether a Board representative told Mr. Randall that he may not cross examine witnesses during the hearing. After weighing the evidence, the Board must either conduct further proceedings to determine the issue or decide the issue on the affidavits alone.⁹ In either event, at the conclusion of this process, the Board must prepare its factual findings in writing with respect to this issue and submit them to the Court.¹⁰ The Court will then review the findings in the context of the appropriate standard of review.¹¹

5. The Court again **REMANDS** this case to the Board. The Court will allow twenty (20) days for the Board to submit separate factual findings in compliance with the foregoing instructions.

⁷See *Ingram v. Barrett's Bus. Serv., Inc.*, 2002 Del. LEXIS 209, at *4 ("This Court does not weigh the evidence, determine issues of credibility, or make its own factual findings.").

⁸See *Hitchens v. Unemployment Ins. Appeal Bd.*, 1987 Del. Super. LEXIS 1195, at *15 ("[T]he Board. . .is the ultimate finder of fact.").

⁹The Board should conduct whatever proceedings are necessary to reach this factual determination, whether requested by the parties or undertaken on the Board's own accord.

¹⁰While the outcome of this process may appear to be a foregone conclusion, the process must be undertaken (in earnest) nevertheless before this Court can properly undertake appellate review.

¹¹See *Ingram*, 2002 Del. LEXIS 209, at *3-4 ("On appeal from a decision of the UIAB, the scope of this Court's review is limited to a determination of whether the Board's decision is supported by substantial evidence and is free from legal error.").

IT IS SO ORDERED.

Judge Joseph R. Slights, III

Original to the Prothonotary.