

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

MURPHY MARINE SERVICES, Inc., :  
 :  
 Petitioner, : C.A. No. 02A-07-17SCD  
 :  
 v. :  
 :  
 THEODORE JACKSON, and :  
 UNEMPLOYMENT INSURANCE APPEALS :  
 BOARD, :  
 :  
 Respondents. :

*Submitted November 19, 2002,  
Decided, December 13, 2002.*

O R D E R

*Upon review of Petitioner's appeal from the decision of the Unemployment  
Insurance Appeal Board—REVERSED.*

This 13<sup>th</sup> day of December, the Court having considered the parties' briefs, and the record  
in this matter, it appears that:

- (1) Theodore Jackson ("Jackson") has been continuously employed by Murphy Marine Services, Inc. ("Marine Services") since December of 1994.
- (2) On March 18, 2002, Jackson reported as required by law, for jury duty in the United States District Court for the District of Delaware. He was selected as a juror and participated in a six day trial. Jackson was not paid by his employer for his time on jury duty. He was paid \$40.00 per day by the federal government for this compulsory civic service.
- (3) Jackson returned to work on March 27, 2002, where he has continued his duties to date. Jackson filed for unemployment benefits for the six days he served as a juror. The Claims Deputy granted Jackson benefits. Marine Services appealed the decision to a Claims Referee

who affirmed, and then to the Unemployment Insurance Appeal Board (“UIAB”) which also affirmed. Marine Services now seeks review of the UIAB decision.

(4) The essential holding of the UIAB in affirming the Claims Referee was that “as a matter of public policy... it must be concluded that claimant was able and available for work despite his jury service. Accordingly, [Jackson] is eligible to receive benefits.”

(5) The gravaman of Marine Services’ argument on appeal is twofold: first, at no time while serving on jury duty was Jackson unemployed, and second, Jackson was not available for work as required by 19 Del. C. §3314(3). In response, Jackson argues that he cannot be in two places at once, and therefore, as the policy of the unemployment compensation statute (“the Act”)<sup>1</sup> suggests, he must be considered available for work under Title 19.

(6) The function of this Court on review of a UIAB decision is to determine whether the decision is supported by substantial evidence<sup>2</sup> and is free from legal error.<sup>3</sup> Substantial evidence is that which is relevant to a reasonable person, or that which adequately supports a reasonable conclusion.<sup>4</sup> This Court does not weigh the evidence, determine questions of credibility, or make factual findings.<sup>5</sup> This Court reviews questions of law *de novo*.<sup>6</sup>

(7) This appeal presents no factual issues. It will be reviewed solely on the application of the pertinent statutes. The Act is a comprehensive unemployment compensation statute.<sup>7</sup> The public policy promoted by the Act is to prevent “economic insecurity due to unemployment [as it] is a serious menace to the health, morals and welfare of the people of this State... [and] to

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<sup>1</sup> See DEL. CODE ANN. tit 19 §3301 *et. seq.* (1995).

<sup>2</sup> See *Unemployment Ins. Appeal Bd. v. Duncan*, 337 A.2d 308 (Del. 1975); see e.g. *General Motors Corp. v. Freeman*, 164 A.2d 686, 688 (Del. 1960).

<sup>3</sup> See *Longobardi v. Unemployment Ins. Appeal Bd.*, 293 A.2d 295 (Del. 1972); see also *Boughton v. Div. of Unemployment Ins.*, 300 A.2d 25, 26-27 (Del. Super. 1972), *Ridings v. Unemployment Ins. Appeal Bd.*, 407 A.2d 238, 239 (Del. Super. 1979).

<sup>4</sup> See *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994).

<sup>5</sup> See *Johnson v. Chrysler Corp.*, 231 A.2d 64, 66-67 (Del. Super. 1985).

<sup>6</sup> See e.g. *State, Dept. of Corr. v. Worsham*, 638 A.2d 1104, 1106 (Del. 1994).

prevent its spread... by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment from which benefits may be paid for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance.”<sup>8</sup> The Act must be interpreted to eliminate economic insecurity<sup>9</sup>, and absorb the hardship of lost wages between periods of employment.<sup>10</sup>

(8) To this end, the Act provides that “[a]n unemployed individual shall be eligible to receive benefits with respect to any week only if the Department finds that the individual... [i]s able to work and is available for work and is actively seeking work...”<sup>11</sup> “‘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...”<sup>12</sup> Clearly, eligibility demands the threshold finding that a claimant is unemployed.

(9) “Jury service... on the part of citizens of the United States is considered under our law in this country as one of the basic rights and obligations of citizenship. Jury service is a form of participation in the processes of government, a responsibility and a right that should be shared by all citizens....”<sup>13</sup> Pursuant to this fundamental policy, federal jurors are protected by statute in that “[n]o employer shall discharge... any permanent employee by reason of such employee’s

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<sup>7</sup> See *supra* note 1.

<sup>8</sup> See DEL. CODE ANN. tit. 19 §3301.

<sup>9</sup> See *E.I. DuPont de Nemours & Co. v. Dale*, 271 A.2d 35 (Del. 1970).

<sup>10</sup> See *Boughton*, 300 A.2d at 27.

<sup>11</sup> DEL. CODE ANN. tit. 19 §3314(3).

<sup>12</sup> See *id.* at §3302(17).

<sup>13</sup> See *Penn v. Eubanks*, 360 F.Supp. 699, 702 (D.C. Ala. 1973); see also the Jury System Improvements Act, 28 U.S.C. §1861 (1994). The House Judiciary Committee of the United States Congress provided valuable insight into the juries role in American democracy by stating that:

The status of the jury system in common law nations has been recognized historically... [and] has an awesome responsibility in American justice. It determines the fate of men—their property, their freedom, and sometimes their lives. The Supreme Court of the United States has described ...[that] the vital purpose served by juries in judicial proceedings ... is to guard against the exercise of arbitrary power—to make available the commonsense judgment of the community as a hedge against the overzealous or mistaken prosecutor and in reference to the professional or perhaps conditioned or biased response of a judge....

jury service, [or] attendance in connection with such service, in any Court of the United States.”<sup>14</sup>

(10) It is undisputed that Jackson was not terminated during his jury service. He continues to work for Marine Services. Further, the evidence clearly shows that Jackson commendably performed his civic duty and received \$240.00 for six days of jury service.

(11) The legal issue *sub judice*, is whether under the Act an employee serving on a federal jury and protected under the Jury System Improvements Act is unemployed for purposes of unemployment benefits. The UIAB did not address the threshold question of whether Jackson was unemployed. Upon careful review of the Act, the Jury System Improvement Act, and the overarching public policies associated with the goals envisioned by each, the answer to this question must be in the negative.

(12) From the outset, the Act provides that the purpose of the legislation is to prevent economic hardship and insecurity associated with unemployment. In effect, eligibility under §3302(17), the sole authority cited by the UIAB, necessarily requires that employment be terminated, not merely interrupted. The fact that an employee may not be paid during the interruption associated with jury duty is regrettable, but is a matter best left to the labor market. Any other interpretation would fail to give effect to the expressed intentions of the legislature.<sup>15</sup>

(13) One of the fundamental responsibilities associated with living in this great democracy is that of serving on a jury. This civic duty is so compelling that a federal juror’s job is protected by federal statute. Ultimately, an employer that terminates an employee for serving on a federal

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H.R. Rep. No. 95-1652, at 4-5 (1978)(*citations omitted*), reprinted in 1978 U.S.C.C.A.N. 5477, 5478.

<sup>14</sup> 28 U.S.C.A. §1875(a).

<sup>15</sup> See generally *Rubick v. Sec. Instrument Corp.*, 766 A.2d 15, 19 (Del. 2000).

jury is subject to serious fines and financial penalties, including back wages and damages.<sup>16</sup>

Therefore, under the federal statute, anyone serving on a jury necessarily remains employed.<sup>17</sup>

(14) Jackson was obligated to perform a fundamental civic duty by serving on the federal jury. His employment was protected by federal statute, and it remains undisputed that at no time was he terminated by Murphy Marine. As a matter of law, Jackson was at no time unemployed for purposes of unemployment benefits under 19 Del. C. §3301. The fact that he would have earned more at Murphy Marine, or that his employment contract does not require him to be paid while on jury duty is not a matter contemplated, nor remedied by the Act.

THEREFORE, the decision of the Unemployment Insurance Appeal Board is  
REVERSED.

IT IS SO ORDERED

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Judge Susan C. Del Pesco

Original to Prothonotary  
xc: G. Kevin Fasic, Esquire  
Stephani Ballard, Esquire  
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<sup>16</sup> The Delaware unemployment compensation system precludes double recovery of wages. That is, one cannot receive unemployment benefits for the same period in which s/he receives wages. Under the federal statute, an employee terminated for performing jury service would not be eligible for unemployment benefits for that period because the employee can recover past wages as matter of right. It then follows that the state statute is inapplicable where a claimant seeks unemployment benefits after being terminated for performing jury service.

<sup>17</sup> See generally *supra* note 14.