

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

GARRY R. JACKSON,	)	
	)	
Appellant,	)	
	)	C.A. No. N10A-01-003 MMJ
v.	)	
	)	
UNEMPLOYMENT INSURANCE	)	
APPEAL BOARD,	)	
	)	
Appellee.	)	

Submitted: September 15, 2010

Decided: October 19, 2010

**On Appellee's Motion for Reargument of the Court's Opinion  
Dated August 23, 2010  
DENIED**

**MEMORANDUM OPINION**

Garry R. Jackson, *pro se*

Phillip G. Johnson, Esquire, Department of Justice, Wilmington, Delaware,  
Attorney for the Unemployment Insurance Appeal Board

**JOHNSTON, J.**

## **FACTUAL AND PROCEDURAL CONTEXT**

Claimant Garry R. Jackson, an HVAC technician, was released from his employment with Carrier Rental Systems due to a lack of available work. Jackson applied for training programs in Delaware and New Jersey, but was denied. Consequently, Jackson enrolled in a vocational school, Pennco Tech. Jackson's classes were scheduled for 7:00 a.m. to 2:30 p.m. on weekdays, from April 13, 2009 to December 21, 2009.

On January 25, 2009, Jackson filed for unemployment benefits. In a questionnaire from the Delaware Department of Labor, Jackson indicated that he was available for part-time work and that his primary objective was to attend school. As a result of the questionnaire and Jackson's vocational enrollment, a Delaware Department of Labor Claims Deputy declared Jackson ineligible for unemployment benefits. The Claims Deputy found that Jackson was not—as is required by statute—“able to work . . . available for work and . . . actively seeking work.”<sup>1</sup> Jackson appealed to an Appeals Referee.

The Referee acknowledged Jackson's willingness—and Pennco Tech's receptiveness—to transfer into a night program in the event that he found employment. Additionally, the Referee noted that Jackson worked

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<sup>1</sup> 19 *Del. C.* § 3315(3).

from 7:00 a.m. to 5:00 p.m. in his last position, supported a household, and was in need of financial assistance. However, the Referee held that Jackson did not rebut the presumption that a student is not available for work. The Referee affirmed the Claims Deputy's decision, finding that Jackson did not demonstrate an intent to accord priority to his employment. Jackson appealed the Referee's decision to the Unemployment Insurance Appeal Board ("Board").

Following an October 14, 2009 hearing, the Board found that Jackson's priority was education, and not the pursuit of employment. The Board noted that unemployment benefits are to "provide temporary relief for people who lose their jobs through no fault of their own while they actively pursue new employment." The Board affirmed the Referee's decision. Jackson appealed the Board's decision to this Court.

The Court determined that the sole issue is whether Jackson was available for work. The availability requirement is satisfied when the claimant is "willing, able and ready to accept suitable work which he does not have good cause to refuse, that is, when he is genuinely attached to the labor market."<sup>2</sup> The Court relied upon *Morgan v. Unemployment Insurance*

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<sup>2</sup> *Ashmore v. Unemployment Comp. Comm'n*, 86 A.2d 751, 753 (Del. Super. 1952).

*Appeal Board*,<sup>3</sup> which outlines three principles that guide the determination of a student's availability for work:

- (1) there is a rebuttable presumption that a full-time student is not available for work;
- (2) to rebut the presumption, [a claimant] must demonstrate that he does not fall into the category of an ordinary college student whose primary purpose is to obtain an education and who is available for work only conditionally or on a limited basis;
- (3) in arriving at a determination of primary purpose, the factors to be examined include employment history and the duration of full-time employment, [the claimant's] economic requirements and most particularly, those related to support obligations, good faith efforts to obtain unconditional full-time employment, and whether or not if school and employment conflict necessity dictates that [the claimant] accord priority to his employment and manifests a willingness to forego school.<sup>4</sup>

The burden was on Jackson to rebut the presumption that he is an ordinary college student whose primary purpose is to obtain education.

Applying the *Morgan* principles, the Court evaluated Jackson's employment history, his economic requirements, and his willingness to forego school to engage in employment. Jackson worked in the HVAC industry for twelve years. He was 48 years old, married, and had seven children. Jackson's unemployment inhibited his ability to pay child support. Though Jackson indicated that education was his priority on the Delaware

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<sup>3</sup> 416 A.2d 1227 (Del. Super. 1980).

<sup>4</sup> *Id.* at 1229-30.

Department of Labor questionnaire, the Court recognized that Jackson repeatedly manifested an intent to change his schedule to accommodate full-time, unconditional employment. Jackson asserted this intent to the Claims Deputy, the Appeals Referee, and the Board. Jackson explained that his questionnaire answer was the result of a misunderstanding between himself and the Department of Labor. The Court noted that Jackson was not represented by counsel.

The Court found that the Board's decision was not supported by substantial evidence. It determined that the evidence rebuts the presumption that Jackson was not available for work. The Court held that the Board erroneously concluded that Jackson failed to make himself available for work by enrolling in daytime classes. The appropriate inquiry is whether Jackson would manifest a willingness to forego education when faced with a conflict between education and employment.<sup>5</sup> Jackson repeatedly stated that he would prioritize employment over education. The Court reversed the Board's decision.

On September 2, 2010, the Board filed a Motion for Reargument. The Board argues that it, as the fact-finder, determines the credibility of witnesses and the weight of evidence. The Board asserts that the Court gave

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<sup>5</sup> *Morgan*, 416 A.2d at 1230.

excessive weight to Jackson's statements. The Board contends that Jackson's assertions that he would forego education if the opportunity for employment presented itself do not prove that he would actually follow through and perform the act. The Board afforded more weight to Jackson's lack of action than to his stated intentions. The Board argues that Jackson's failure to take action to make himself immediately available for employment amounts to substantial evidence that Jackson was not available for employment.

## **DISCUSSION**

### ***Standard of Review***

On a motion for reargument, "the only issue is whether the court overlooked something that would have changed the outcome of the underlying decision."<sup>6</sup> The Court generally will deny the motion unless a party demonstrates that the Court has overlooked a controlling precedent or principle of law, or unless the Court has misapprehended the law or facts in a manner that affects the outcome of the decision.<sup>7</sup> A motion for reargument is not intended to rehash the arguments that already have been decided by the Court.<sup>8</sup>

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<sup>6</sup> *McElroy v. Shell Petroleum, Inc.*, 618 A.2d 91, 91 (Del. 1992).

<sup>7</sup> *Cummings v. Jimmy's Grille, Inc.*, 2000 WL 1211167, at \*2 (Del. Super.)

<sup>8</sup> *McElroy*, 618 A.2d at 91.

### *Analysis*

The Court explained that pursuant to *Morgan*, the appropriate inquiry is whether Jackson would forego his education if faced with a conflict between education and employment. Nonetheless, the Board maintains that Jackson was required to take immediate action to make himself available for employment. The Board erroneously focused on Jackson's absence of action, despite Jackson's repeated assertions that he would forego education if employment were available. Jackson was not required to discontinue his education when he had yet to find employment. There was no conflict between education and employment. The Board's decision was not supported by substantial evidence. Jackson's repeated and consistent statements, considered together with his undisputed need for income generated by fulltime employment and his long-standing history of fulltime employment, constituted substantial evidence, as a matter of law, that rebutted the presumption that he was not available for work.

### **CONCLUSION**

The Board has failed to demonstrate that the Court overlooked a controlling precedent or legal principle, or misapprehended the law or facts in a manner that would affect the outcome of the decision.

**THEREFORE**, the Board's Motion for Reargument of the Court's August 23, 2010 Decision Reversing the Board's Denial of Unemployment Benefits is hereby **DENIED**.

**IT IS SO ORDERED.**

*/s/ Mary M. Johnston*  
The Honorable Mary M. Johnston