

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

TAMIRA D. BAKER,)	
)	
Appellant,)	
)	
v.)	C.A. No. 02A-10-001 HDR
)	
HOSPITAL BILLING &)	
COLLECTION SERVICE, LTD. and)	
UNEMPLOYMENT INSURANCE)	
APPEAL BOARD,)	
)	
Appellees.)	

Submitted: January 15, 2003

Decided: April 30, 2003

Tamira D. Baker, Dover, Delaware, *pro se*.

Jennifer C. Bebko Jauffret, Esq., Richards, Layton & Finger, Wilmington, Delaware, for Appellee Hospital Billing & Collection Service, Ltd.

Stephani J. Ballard, Esq., Deputy Attorney General, Wilmington, Delaware, for Appellee Unemployment Insurance Appeal Board.

**Upon Appeal from a Decision of the
Unemployment Insurance Appeal Board
*DISMISSED***

RIDGELY, President Judge

ORDER

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This 30th day of April, 2003, upon consideration of the parties' briefs and the record below, it appears that:

(1) Tamira D. Baker appeals from a decision of the Unemployment Insurance Appeal Board ("the Board" or "UIAB"), which concluded that Baker was disqualified from the receipt of unemployment benefits because she voluntarily terminated her employment with Hospital Billing & Collection Services, Ltd. ("HBCS") without good cause attributable to her work.

(2) Tamira D. Baker was employed by Hospital Billing & Collection Service, Ltd. from December 3, 2001 until March 14, 2002 as a part-time Patient Account Representative, Level I.

(3) HBCS contends that Baker voluntarily terminated her employment, basing that contention on a letter that it claims was executed and signed by Baker stating that she was giving her two weeks notice of resignation and that her last day of work would be March 14, 2002. The entire letter was printed, including Baker's name, which was printed at the bottom. Baker denies that she wrote the letter of resignation and alleges that the letter was forged by some unknown person within HBCS.

(4) Baker's supervisor, Terrell Eason, testified that Baker informed her that she was looking into a job with another company, which would either be full-time, or at least more hours than what she was working for HBCS. Following that statement, Eason claimed, Baker handed her the letter of resignation. HBCS presented evidence that Baker had been interested in obtaining a full-time position

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with HBCS, but that no such positions were available at the time.

(5) According to Baker, she was approached by Eason in the parking lot of HBCS when she arrived for work on March 14, 2002. Baker contends that she was still in her car when Eason came out of the building and approached her, telling her that there was no work for her that day and that she would be contacted when work would again be available. Baker was not contacted by HBCS after that date.

(6) On March 15, 2002, Annie Grillo of the Human Resources department at HBCS received the alleged letter of resignation. HBCS then processed the separation as a voluntary resignation by Baker.

(7) On June 16, 2002, Baker filed a claim with the Department of Labor for unemployment benefits, alleging that she had been laid off due to lack of available work. A Department of Labor Claims Deputy found that Baker was qualified and eligible for benefits.

(8) HBCS appealed the Claims Deputy's finding and an evidentiary hearing was held before an Appeals Referee on August 13, 2002. Three witnesses appeared for HBCS and Baker appeared by telephone. On August 16, 2002, the Appeals Referee issued a decision finding that the letter of resignation did not appear to have been written by Baker and that she was laid off through no fault of her own and, therefore, entitled to unemployment benefits.

(9) HBCS filed an appeal from the Appeals Referee's decision to the Board on August 21, 2002. The Board duly notified the parties and scheduled a hearing on the matter for September 18, 2002.

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(10) Baker contacted the Board Secretary, Helen McClure, a number of times to inquire about the hearing and postponement of the hearing. McClure advised Baker to write a letter for postponement due to prior engagements. On September 9, 2002, Baker faxed a letter to McClure requesting a postponement of the hearing due to job interviews and doctors' appointments. The postponement request was denied by the Board Chairman. On September 10, 2002, McClure telephoned Baker to notify her that the Board did not grant her request for postponement. Baker alleges that McClure also advised her that it was not necessary for her to attend the hearing because she had won the first hearing which was being appealed and that she could call back for the decision after the hearing. Baker advised the Board that she would not appear at the hearing. Baker acknowledges that she knew that new evidence was likely to be presented at the hearing.

(11) The Board convened on September 18, 2002 and held the hearing as scheduled. Baker did not appear at the hearing. Baker's former supervisor, Terrell Eason, also did not appear. Annie Grillo and Michael Oneschuck appeared as representatives and testified for HBCS. The Board considered the evidence presented to the Appeals Referee and the new evidence. Following the hearing, the Board found that Baker had written and executed the letter of resignation and that Baker had voluntarily terminated her employment for personal reasons. The Board concluded she was disqualified from receiving unemployment benefits. Baker appealed that decision to this Court.

(12) Four issues have been raised on appeal to this Court. Baker now argues

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that the testimony of Grillo and Oneschuck was hearsay that cannot support the Board's decision. Baker also argues that the Appeals Referee should have been obligated to attend the UIAB hearing to defend his prior decision to grant benefits. The Board submitted a brief on this appeal, raising the issue of whether Baker is entitled to dispute the Board's decision after failing to appear at the Board hearing despite receiving proper and timely notice.¹ HBCS raised the issue as to whether the Board properly concluded that Baker's claim for unemployment benefits should be denied due to voluntary resignation without good cause attributable to her work.

(13) The UIAB Rules and Regulations provide that "[a]ll parties to the appeal shall be present at the Board's hearing. Failure to appear within 10 minutes of the time indicated on the Notice may result in the Board hearing the appeal in absence of the delinquent party. . . ."² A party who does not appear at the hearing before the Board waives her right to participate in the hearing process.³ This Court has dismissed appeals from Board decisions for failure to exhaust administrative remedies when a claimant has failed to appear for the hearing and the Board dismissed the

¹ Aside from arguing this issue, the Board also submitted argument against Baker's claim that the Appeals Referee was obligated to appear before the Board to defend his prior decision. However, the Board takes no position, and did not submit any argument, with regard to the underlying merits of Baker's separation from employment and the Board's decision as it pertains to that issue.

² UIAB Rules and Regulations 4.2 (2003).

³ *Mullins v. Dover Downs, Inc.*, 1998 WL 278402 (Del. Super. Ct.).

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appeal.⁴ Because Baker has failed to exhaust the administrative process the appeal must be dismissed.

(14) Even if the Court considers the merits of Baker's appeal the Court finds no basis to reverse the decision below. Administrative boards are not constrained by the rigid evidentiary rules which govern jury trials, but should hear all evidence which could conceivably throw light on the controversy.⁵ Therefore, an informal tribunal, such as the UIAB, is not bound by the Delaware Rules of Evidence, but it may follow those rules in its discretion so long as a party is not unduly prejudiced.⁶ Hearsay evidence is generally admissible at administrative hearings for certain purposes.⁷ However, the admission of hearsay evidence does not determine the probative effect of the hearsay and the findings of an administrative body cannot rest alone on hearsay evidence.⁸

(15) Baker was not present for the hearing before the Board and, therefore, did not raise any objection with regard to the testimony before the Board as being unduly prejudicial, or even as to whether the testimony was in fact hearsay. Because such objections were not raised below, those arguments are waived and cannot be

⁴ See *Griffin v. Chrysler and UIAB*, 2000 WL 33309877 (Del. Super. Ct.).

⁵ *Ridings v. UIAB*, 407 A.2d 238, 240 (Del. Super. Ct. 1979); *Henson v. Div. Of Motor Vehicles*, 1993 WL 141861 (Del. Super. Ct.), at *2.

⁶ *Henson*, at *2.

⁷ *Barnett v. Div. Motor Vehicles*, 514 A.2d 1145, 1147 (Del. Super. Ct. 1986).

⁸ *Id.*, 514 A.2d at 1147; *Geegan v. Unemployment Compensation Comm'n*, 76 A.2d 116 (Del. Super. Ct. 1950).

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properly raised on appeal.

(16) A judicial officer has no cognizable interest in seeking to have his rulings or legal interpretations sustained.⁹ This extends to an Appeals Referee for the Department of Labor. Therefore, the Appeals Referee, the fact-finder at the prior hearing, was not obligated to appear before the Board to defend his decision below.

(17) Delaware's unemployment compensation statute provides that the findings of the Board as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive and the jurisdiction of the Court shall be confined to questions of law.¹⁰ Therefore, on an appeal from a decision of the Unemployment Insurance Appeal Board, this Court must ascertain whether the Board's conclusions are supported by substantial evidence and free from legal error.¹¹ To prevail on appeal, the appellant must show that the Board committed an error of law or demonstrate that the findings of the Board are not supported by substantial evidence.¹² Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.¹³ It is within the discretion of the Board, not the Court, to weigh the credibility of witnesses and resolve conflicting

⁹ *Wilmington Trust Co. v. Barron*, 470 A.2d 257, 262 (Del. 1983).

¹⁰ 19 *Del. C.* § 3323(a).

¹¹ *Devine v. Advanced Power Control, Inc.*, 663 A.2d 1205, 1209 (Del. Super. Ct. 1995); *Ridings v. UIAB*, 407 A.2d 238, 239 (Del. Super. Ct. 1979).

¹² *Boughton v. Div. Of Unemployment Ins.*, 300 A.2d 25, 26-27 (Del. Super. Ct. 1972).

¹³ *Oceanport Industries, Inc. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del. 1994); *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981).

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testimony.¹⁴ Thus, the Superior Court does not weigh the evidence, determine questions of credibility, or make its own factual findings.¹⁵ If there is substantial evidence and no legal error, the Court will affirm the Board's decision.¹⁶

(18) The Board considered as evidence the handwritten letter of resignation allegedly written by Baker as well as other documents used as samples of her handwriting. The Board heard testimony from Annie Grillo and Michael Oneschuck as to company procedure and their personal actions and observations as they related to the facts of this case. In addition, the Board considered the evidence and testimony presented to the Appeals Referee below by both parties. The findings of fact by the Board were based on the Board's determination of credibility of the testimony and evidence presented before it and the Board's resolution of conflicting testimony and evidence. The Board is free to more readily accept or give greater weight to the credibility of one witness over another if it is supported by substantial evidence in the record.¹⁷ The Board may also make reasonable inferences from the testimony.¹⁸ The Board was obligated to weigh the conflicting evidence and make a determination; it

¹⁴ *Starkey v. UIAB*, 340 A.2d 165, 166 (Del. Super. Ct. 1975), *aff'd*, 364 A.2d 651 (Del. 1976).

¹⁵ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

¹⁶ *Longobardi v. UIAB*, 287 A.2d 690, 692 (Del. Super. Ct. 1971), *aff'd*, 293 A.2d 295 (Del. 1972).

¹⁷ *Playtex v. Lewis*, 2000 WL 33115725 (Del.), at *2.

¹⁸ *Playtex Products, Inc. v. Leonard*, 2002 WL 31814637 (Del. Super. Ct.), at *9.

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did so based on the evidence presented.¹⁹ The Board's findings of fact and conclusions as to Baker's qualification and eligibility for unemployment benefits are supported by substantial evidence and are free from legal error.

NOW, THEREFORE, IT IS ORDERED that the appeal from the decision of the Unemployment Insurance Appeal Board denying unemployment benefits to Tamira D. Baker is ***DISMISSED***.

/s/ Henry duPont Ridgely
President Judge

cmh

oc: Prothonotary

xc: Order distribution

¹⁹ *See id.*