

April 28, 2003

Christie L. Hubble
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Melissa McDermott Joseph, President
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P.O. Box 264
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Date Submitted: February 24, 2003

RE: Christie L. Hubble v. Delmarva Temporary Staffing, Inc. & UIAB
C.A. No. 02A-09-001

Dear Ms. Hubble and Ms. Joseph:

This case comes before the Court on appeal from the Unemployment Insurance Appeal Board (the "Board"), which denied Christie L. Hubble's ("Claimant") claim for unemployment benefits. The Board's decision is affirmed for the reasons stated herein.

1. Factual Background and Procedural Posture

The evidence presented below established the following facts. Employer is a temporary staffing agency. In late 2001, Claimant was working for the Division of Social Services ("DSS"), pursuant to Employer's assignment. Claimant missed several days of work in the month of December due to a persisting medical condition. On the days she was absent from work, Claimant had some contact with her on-site supervisor, that is, her supervisor at the DSS. However, Claimant did not contact Employer to report her absence. Claimant's assignment at the DSS expired on

December 28, 2001. Claimant did not contact Employer regarding any future work assignments.

The investigating Claims Deputy determined that Claimant should be denied unemployment insurance benefits. The Appeals Referee reversed this decision and found that Claimant was entitled to benefits. On appeal, the Board remanded the matter to the Appeals Referee for consideration of evidence regarding an alleged time sheet discrepancy that had been excluded during the initial hearing. Although the Appeals Referee ultimately concluded that this evidence was irrelevant to Claimant's dismissal, she affirmed the original decision of the Claims Deputy and denied Claimant's request for unemployment benefits.

After hearing additional evidence on appeal, the Board upheld the Appeals Referee's revised decision. In doing so, the Board made the following findings of fact and conclusions of law:

The Appeals Referee found that claimant's multiple no call/no shows, without medical documentation, as well as her failure to contact the employer for new assignments constituted wilful or wanton conduct which disqualified her from benefits. The Board, with one member opposing, agrees and affirms the Referee as follows.

The Board finds that the evidence shows that claimant abandoned her position by failing to report to work from December 13-21, 2001. While claimant claims to have been ill and disabled from work on those dates, she was unable to produce any medical documentation to support that contention. The Board does not accept claimant's testimony as credible that her doctor's office refused to give her a note simply because they did not have a copy of an earlier note they had written.

The law is well settled that job abandonment, in the absence of proof of good cause, is disqualifying misconduct, for purposes of unemployment compensation. Accordingly, the Board finds that claimant is disqualified from the receipt of benefits.

Claimant filed an appeal of this decision on January 29, 2003.¹

¹ Employer filed a purported "Answering Brief" on January 10, 2003. This brief is disregarded not only because it is unresponsive but also because Employer, a corporation, failed to enlist an attorney to represent it on appeal. See *Transpolymer Indus., Inc. v. Chapel Main Corp.*, Del. Supr., No. 284, 1990, Horsey, J. (Sept. 18, 1990) (ORDER) (noting "[w]hile a natural person may represent himself or herself in court even though he or she may not be an attorney licensed to practice, a corporation, being an artificial entity, can only act through its agents and, before a court only through an agent duly licensed to practice law").

2. Issues Presented for Review

In essence, Claimant argues that the evidence in the record fails to support the Board's conclusion that she voluntarily abandoned her job without good cause. To the contrary, Claimant argues that her failure to appear for work was not abandonment and, furthermore, that her absence was medically justified.²

3. Discussion

A. Standard of Review

In reviewing the decisions of the Board, this Court must determine whether the Board's findings and conclusions are free from legal error and supported by substantial evidence in the record.³ *Unemployment Ins. Appeal Bd. v. Martin*, 431 A.2d 1265 (Del. 1981); *Ponchvatilla v. United States Postal Serv.*, Del. Super., C.A. No. 96A-06-19, Cooch, J. (June 9, 1997), Mem. Op. at 2; 19 Del. C. § 3323(a) ("In any judicial proceeding under this section, 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."). In looking for "substantial evidence," the Court is looking for "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Gorrell v. Division of Vocational Rehab. and Unemployment Ins. Appeal Bd.*, Del. Super., C.A. No. 96A-01-001, Graves, J. (July 31, 1996), Letter Op. at 4. Moreover, "[i]t is not the appellate court's role to weigh the evidence, determine credibility questions or make

² The Court has attempted to couch Claimant's arguments in the manner necessary to afford Claimant a fair hearing. *See Jackson v. Unemployment Ins. Appeal Bd.*, Del. Super., C.A. No. 85A-NO-9, Bifferato, J. (Sept. 24, 1986), at 3 (Superior Court may characterize claimant's arguments to comport with the law to exhibit leniency toward a *pro se* litigant so that her case may be fully and fairly heard).

³ The Court ignores any new facts or evidence Appellant submits since this review is on the record only. *See Hubbard v. Unemployment Ins. Appeal Bd.*, 352 A.2d 761, 763 (Del. 1976).

its own factual findings, but merely to decide if the evidence is legally adequate to support the agency's factual findings." *McManus v. Christina Service Co.*, Del. Super., C.A. No. 96A-06-013, Silverman, J. (Jan. 31, 1997), Opinion and Order at 4.

B. The Right to Unemployment Benefits

Section 3315 of Title 19 of the Delaware Code provides, in relevant part:

An individual shall be disqualified for benefits:

(1) For the week in which the individual left work voluntarily without good cause attributable to such work and for each week thereafter until the individual has been employed in each of 4 subsequent weeks (whether or not consecutive) and has earned wages in covered employment equal to not less than 4 times the weekly benefit amount.

Under this section, the claimant has the burden of proving "good cause." *Longobardi v. Unemployment Ins. Appeal Bd.*, 287 A.2d 690, 692 (Del. Super. 1971). Unless an employee does "something akin to exhausting his administrative remedies by, for example, seeking to have the situation corrected by proper notice to his employer," good cause to abandon one's job does not exist "merely because there is an undesirable or unsafe situation connected with his employment." *O'Neal's Bus Serv., Inc. v. Employment Sec. Comm'n*, 269 A.2d 247, 249 (Del. Super. 1970).

The Board concluded that there were two justifications for denying Claimant unemployment insurance benefits: first, that Claimant abandoned her position by failing to report for work from December 13-21, 2001, without explanation or notice; and second, that Claimant neither resubmitted her resume to Employer nor contacted Employer regarding new assignments after the expiration of her assignment at DSS on December 28, 2001. Claimant's on-site supervisor testified that Claimant had failed to show for work December 13th through 21st and had likewise failed to produce a doctor's note explaining the absence. At the Board hearing, Claimant was unable to produce a copy of the note she alleges she had presented to her on-site supervisor for the dates December 13th through 21st. The Board found Employer was justified in terminating Claimant because these facts supported the conclusion that Claimant had abandoned her job. Additionally, a representative for Employer testified that Claimant had failed to resubmit her resume after the end of her assignment at DSS. Claimant does not dispute this fact.

On appeal, Claimant argues that she reported and submitted medical justification for her absence to her on-site supervisor at DSS and that this notice was sufficient to meet Employer's notice requirements. The Board ruled that Claimant had failed to provide medical documentation sufficient to excuse her absence from work. This ruling was not conditioned upon Claimant presenting such evidence to Employer. The Board implicitly held that the notice given to Claimant's on-site supervisor for December 9th, 10th, and 11th was sufficient by excluding those dates from its findings of fact regarding the absences that justified termination. Claimant was unable to produce evidence that she had given such documentation to her on-site supervisor to the Board. The Board's conclusion will stand.

Claimant next argues that because Employer had previously failed to discipline her for

reporting work absences to her on-site supervisor, Employer is estopped from asserting failure to do so as cause for termination. Again, the Board's decision was not contingent upon Claimant's failure to inform and provide medical documentation to Employer, specifically. Rather, the Board held only that Claimant had a duty to notify a supervisor of her absence and the reason there for. Accordingly, this challenge is denied.

Claimant's final argument is based upon evidence that was not considered by the Board in making its decision. Claimant argues that the misunderstanding regarding overpayment was inadequate to support her dismissal. The Board's decision contains no reference to any facts or assumptions regarding the alleged time sheet alteration. This argument fails on the merits as well.

4. Conclusion

A review of the record satisfies the Court that the Board's findings of fact and conclusions of law are supported by substantial evidence and are free from legal error. Considering the foregoing, the Board's decision denying unemployment benefits is affirmed.

IT IS SO ORDERED.

Very truly yours,

T. Henley Graves

cc: Prothonotary's Office
Unemployment Insurance Appeal Board

Unemployment Insurance Appeal Board
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